



ROCK THE POST

154 Grand Street, New York, NY 10013

September 3, 2013

Ms. Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: Amendments to Regulation D, Form D and Rule 156 under the Securities Act
File No. S7-06-13**

Dear Ms. Murphy:

We very much appreciate the opportunity to comment on the Proposed Amendments to Regulation D, Form D and Rule 156 under the Securities Act, File No. S7-06-13 (the “Proposal”). While we support the Commission’s efforts to make capital more accessible to startup companies by modernizing securities laws, we believe that the proposed changes will have effects opposite of those intended.

In the US, 514,000 new businesses launch every month¹ adding on average 3 million jobs per year,² and access to startup capital is critical to their success and longevity. It is essential that the new regulations function within the context of the startup environment in a way that will enhance startups’ probability of success, not inhibit it.

The purpose of this letter is to explain RockThePost’s concerns regarding the proposed amendments by differentiating the dynamic startup landscape from that of established corporations. This letter also recommends several alternatives that can be realistically implemented to better Jumpstart Our Business Startups as intended by this legislation.

I. Background

RockThePost Corporation (“RockThePost” or “We”) is an investment platform for startups. Since we began operations in 2010, we shifted from a donation model to an investment model. In my current role as founder and CEO at RockThePost, I have been a

¹ The Kauffman Foundation. *Entrepreneurial activity 1996-2012*. Robert W. Fairlie at 4.

²Tim Kane, *The Importance of Startups in Job Creation and Job Destruction*, Ewan Marion Kaufman Foundation, (Jul. 2010), www.kauffman.org/uploadedfiles/firm_formation_importance_of_startups.pdf

strong proponent of the JOBS Act, having testified before the U.S. House Committee on Small Business and similar forums.

We would like to emphasize that the primary objective of the JOBS Act is “[t]o increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies”³ and not to increase the complexity of the fundraising process for pre-revenue and early-stage startups, which are in the worst position to endure and comply with such complexity.

Over the past decade, the cost of starting a company has dropped exponentially, from around \$2 million in the late 90’s to \$5,000 or so today,⁴ made possible by the proliferation of technology, a global marketplace, and access to information. Similarly, the current economic environment encourages entrepreneurs to forgo insecure corporate careers, financial incentives capped at a fraction of historical levels, and diminishing (if not eliminated) corporate pensions. But access to startup capital has not kept up with these radical changes.

II. The Reality of Our Startup Environment

(1) Under conditions of extreme and ever-changing uncertainty is when entrepreneurs thrive. Entrepreneurs increasingly employ *NY Times* bestselling author Eric Ries’ “Lean Startup” methodology to innovate, test, modify and launch their business ideas with relentless determination. Ries defines a startup as “a human institution designed to create a new product or service under conditions of extreme uncertainty.”⁵ It is entrepreneurs’ agility and adaptability that lead to a constant evolution of their businesses.

A prime example of this is PayPal. Before it became the leading web-based payment system, it was originally founded to create cryptography software. As Max Levchin describes his experience during fundraising, “Every week you go to investors and say, ‘We’re doing this, exactly this. We’re really focused. We’re going to be huge.’ The next week you’re like, ‘That was a lie.’”⁶ Today, in addition to contributing to the economy by processing over \$43 billion of transactions annually, PayPal employs over 13,000 people and produces over \$5 billion in revenue.

If Mr. Levchin had been operating under the currently proposed rules while commencing a new offering under Regulation D, he would have been penalized for changing course so frequently by being prohibited from fundraising for one year. Even if he pre-filed Form D in compliance with the proposed rules, his materials – let alone his entire business model – would have been out-of-date within 15 days and he would have had to re-file. Because of how few people work at early stage companies, filing compliance paperwork repetitively would be disruptive to business operations. These proposed rules would have been a death sentence for PayPal. This is the reality for many startups today.

³ Pub. L. No. 112-106, 126 Stat. 306 (Apr. 5, 2012)

⁴ Erin Griffith, “This Chart Shows the Future of Venture Capital,” *PandoDaily*. August 28, 2013. <http://pandodaily.com/2013/08/28/this-chart-shows-the-future-of-venture-capital/>

⁵ Eric Ries, *The Lean Startup*, Crown Publishing Group, 2011, at 6.

⁶ Jessica Livingston, *Founders at Work: Stories of Startups’ Early Days*, Apress Media LLC, 2008, at 20.

Recommendation:

A. Do not require Form D to be filed 15 days prior to advertising the offering. Instead, require Form D to be filed at the time of first sale of securities for offerings conducted by means of general solicitation.

This will also decrease the volume of Forms D that the Commission will have to process, because only issuers that successfully secure investment will file.

(2) Today's startup environment is heavily reliant on technology, connectivity, and multimedia communication. Entrepreneurs in a digital age are accustomed to promoting their startups on Facebook, Twitter, blogs, news media, and any venue offering the possibility of increasing their exposure. Furthermore, unlike Private Placement Memorandums (PPMs) for corporate clients in which investors respond to further inquiries offline and unrecorded, entrepreneurs constantly respond to inquiries quickly over email and a variety of documented media in an effort to access as many potential investors and users as possible.

On startup investment platforms such as RockThePost, entrepreneurs also have the ability to exchange private messages with accredited investors, facilitating quick written responses to potential investors. If these forms of written communication require a submission to the Commission, they will not be able to happen instantaneously and investment opportunities will be missed.

Likewise, many entrepreneurs on RockThePost submit pitch videos that potential investors can view. In addition, the use of Twitter and other social media will also present an area for inadvertent non-compliance as many in the startup community will use these to provide general information in a fast-paced environment. As innovations in technology continue, this will only happen quicker, and the regulations should not be permitted to slow it down.

Proposed Rule 510T, the temporary proposed rule for mandatory submission of written general solicitation materials, will inhibit entrepreneurs' ability to conduct normal business activities, in addition to increasing the chance that they inadvertently do not submit all of materials to the Commission by virtue of the media in which they work.

Additionally, the variety of the media that will likely constitute "written" information will force the Commission to build a system that can efficiently process varying formats of data with large file sizes, a marked change from the current EDGAR system that allows information to be uploaded in only four formats.

Recommendations:

B. Make it optional to file materials used via social media platforms and through non-traditional (digital) media under Proposed Rule 510T.

- C. Provide an Application Programming Interface ("API") by which an issuer could automatically submit all documents and materials in real time, so that the Commission will have a record of disclosed information while the entrepreneur will be able to carry out normal activities with minimal disruption. An API is a means of allowing other people, companies, websites, and apps a way to access data and functionality programmatically, so that companies like RockThePost and the entrepreneurs themselves can share information that is already collected online – such as on our platform – with the Commission. This information could include, but is not limited to, company name and registration, founder(s) names, contact information, date when the offering began, and links to access additional company information and materials.
- D. Remove the strict penalty for non-compliance, so that startups are not forced to go out of business by observing a one-year cooling-off period. Compliance will be made easier by Recommendation C above.

(3) Entrepreneurs have access to few, if any, of the resources available to more established operating companies, and they still manage to find success as a result of their ingenuity and determination. If compliance requires access to expensive resources, entrepreneurs will suffer.

Startups do not enter into conventional financing processes of more established operating companies. Cash-strapped entrepreneurs often seek limited free or discounted legal advice from university law clinics, *pro bono* lawyers, and trusted accelerator programs. They promote their products not by hiring PR agents, but by grass-roots and digital marketing campaigns costing nothing. They avoid paying for anything if they can get it for free. That is one of the reasons why the cost of starting a company today is so low.

Further, the majority of the terms of their offerings are determined at the time of the initial closing after negotiations with a lead investor. In addition, because most early-stage startups do not produce revenue, requiring them to spend valuable resources on compliance with legal fees over \$300 an hour would dissuade startups from embarking on general solicitation altogether.

It is critical that the proposed rule amendments be aligned with entrepreneurs' access to resources in a way that does not disrupt how they are best equipped to conduct business.

Recommendations:

- E. Provide mechanisms that make it easier and less expensive for entrepreneurs to comply with regulations. This includes:
- i. Providing digital, easy-to-understand forms, worksheets and educational tools for startups to utilize in order to better understand and comply with the regulations without requiring expensive legal counsel or other advisors.
 - ii. Providing integration mechanisms for third parties that support issuers, such as RockThePost, who can facilitate the compliance process, including an API for real-time filings.

- iii. Providing a safe harbor for otherwise compliant third parties that work with issuers who inadvertently commit errors so the third party remains protected from such issuers and can continue to serve the majority of compliant issuers.

III. Conclusion

In an effort to better align the spirit of the JOBS Act with the reality of the startup environment, we hope that you will consider our concerns and recommendations.

Entrepreneurs are innovative and efficient problem solvers. They are hard-wired to achieve their goals better, faster, cheaper and smarter than others. When they perceive how burdensome the proposed amendments are – not only to their ability to receive investments, but also to their ability to run a successful business simultaneously – they will surely find ways to circumvent the process as it currently stands. Ironically, this will result in less transparency, less compliance, and less access to the capital they desperately need.

We appreciate the opportunity to provide the Commission with our comments on the Proposed Amendments, and we would be happy to provide additional information, answer any questions that you may have and/or hold an in person meeting to help shed light on the subjects discussed herein.

Sincerely,



Alejandro Cremades
CEO
RockThePost