Via electronic mail at rule-comments@ sec.gov

August 12, 2013

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

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

Dear Ms. Murphy:

Thank you for the opportunity to provide comments to the Securities and Exchange Commission on its proposed amendments to Regulation D under the Securities Act of 1933, and Form D.[1]

AngelList is a web-based platform that, among other things, helps accredited investors connect with startups in need of financing. Congress sought to encourage platforms precisely like AngelList by passing Section 201(c) of the Jumpstart Our Business Startups Act (the "**JOBS Act**"). With over 100,000 startups on AngelList and almost 20,000 accredited investors, we have a view into how most modern technology startups finance the early stages of their growth.

We are concerned that the newly proposed Form D filing rules could create disastrous unintended consequences for the startup community. We will explain how the proposed rules are a poor mix with modern startup financing and suggest some alternatives that better support the stated goal of monitoring general solicitation financing activity.

AngelList would be happy to discuss any of our concerns or recommendations further as you develop your proposed regulations on this matter.

Overview of Modern Startup Financing

The proposed rules appear to be tailored to how Wall Street raises funds, not the startup community. If the issuer generates a detailed Private Placement Memorandum (PPM) and circulates it to a variety of investors, then most of the steps detailed in the proposal may not be difficult: just file a Form D 15 days before you circulate the PPM, file the PPM with the SEC, and amend the Form D when the financing is complete. The fact that non-compliance is severely punished is not a concern in this scenario, because the issuers, investment banks, and law firms know and implement the rules carefully.

[1] *See* Amendments to Regulation D, Form D and Rule 156 under the Securities Act, 78 Fed. Reg. 44806 (July 24, 2013) (the "**Release**").

However, the same rules applied to early stage startups will prevent them from forming. Since young companies are responsible for most of the job growth in the US, we believe this is against the spirit of the JOBS Act. Modern entrepreneurs usually are not well-financed business people; they are engineers and designers who realize their idea is growing fast enough that they need capital to feed it. They often need small amounts of capital (less than $1 million) and can't afford the lawyers, investment bankers and broker dealers the proposed rules imply must be available to them. The proposed requirements involve many technical legal determinations, which most startups will not be able to afford at that stage. Because the rules are written with well-financed and well-lawyered issuers in mind, the result will be inadvertent non-compliance by otherwise well-meaning startups. Combined with the stiff penalties, this can prevent the early stage startups from fundraising entirely We believe the requirements should take into account the more limited resources of the startup community.

Unlike the Wall Street fundraising envisioned by the proposed rules, entrepreneurs are open to fundraising throughout their growth. In most cases, that's before they even have a lawyer (and they rarely, if ever, use bankers for this stage). The materials are usually pictures of the product in action, a constantly-updated profile on a site like AngelList, and links to bios of founders and others associated with the company. Investor questions and concerns are addressed transparently and instantly by modifications to the materials, emails, or postings on private forums. If investors keep asking about potential market size, for example, the startup will add a few sentences to their overview, or a slide to a presentation available online.

In that environment, rules that may be easy for Wall Street are a death sentence for startups. They are easy to break accidentally and the penalty for noncompliance is severe. There isn't a "start" to a formal financing round that a startup controls. They are constantly testing the waters to see whether their venture is far enough along that it can attract investor interest at a high enough valuation. Over time, startups "soft circle" investors and know they have enough interest to close a financing. The lead investor or startup proposes terms then a close happens very quickly. Chance meetings or opportunities to promote your startup rarely come with a 15-day advance notice built in. More importantly, many entrepreneurs will see others publicly discussing fundraising and will do the same – without filing papers first, since they didn't know it was required. Fundraising startups aren't profitable yet, so the penalty for non-compliance - a one-year financing ban – often means death for the startup.

There isn't a PPM. Materials entrepreneurs share with investors change daily – transparently, since investors are often following the startups on AngelList and are notified of the changes. This transparency supports good investment decisions. At AngelList, we've facilitated introductions that have resulted in over 2,000 financings with zero reported cases of fraud. That transparency disappears if entrepreneurs are told that every change the public can see requires a new SEC filing (the rule "510T"). Ironically, this will have the impact of moving information flow to conversations only, where it can't be monitored – the exact opposite of transparency.

There is an irony in these proposals. The stated reason for them is to track general solicitation financing activity – the very activity that is now entirely out in the open and trackable on sites like AngelList without needing additional regulation. The net effect of these proposals will be reduce transparency and real-time communication rather than merely measuring it as it happens.

Alternative Solutions

To summarize the problems that the proposed regulations will impose on the startup community:

1. The requirement to file a Form D 15 days prior to the financing, or at the close of financing even if a financing doesn't close, is meaningless in our world. Startups are always financing.
2. The requirement to formally file all written materials provided to investors with the SEC is not feasible in a world where the materials are updated continuously.
3. The requirement to include disclosures every time you mention a financing doesn't work for most places those appear (try tweeting boilerplate legal text in 140 characters, or requiring reporters to include it in stories).
4. These technical legal requirements place burdens on startups at a stage before they may have legal advice, and the very severe penalty for non-compliance (not fundraising for a year) is a death penalty for a not-yet-profitable business.
5. Specifically relevant to AngelList, "affiliates" or "promoters" of startups that violate these rules are also subject to penalty. Given our neutral role, we are concerned that a broad interpretation there could lead us to accidentally be swept up in this. With over 100,000 companies I'm quite certain at least one will accidentally miss something and not cure with the SEC, potentially barring offerings by AngelList and all other companies listed on AngelList for one year.

We believe the SEC can monitor financing activity even better without putting the startup ecosystem at risk. Here are some suggestions that overcome the specific problems outlined above:

1. ***Allow third parties to do the filing on issuer's behalf via API[2].*** Sites like AngelList can automatically register, via API, some very simple data with the SEC: Company, founder, contact information, date when they turned on financing, optional URL to view financing materials. We can help both communicate the new regulations and facilitate compliance with them. This

[2] An API (application programmer interface) allows a program to automatically communicate with another program. In this case, AngelList's site could automatically file the correct information with the SEC in the normal course of an entrepreneur kicking off fundraising. To really encourage compliance, filing requirements should be limited to information already collected while setting up a profile.

only works if we don't have to collect heavyweight information envisioned in a Form D – just a lightweight "we're raising" sent at any time up to close.

2. ***Allow the company (or a third party like AngelList) to hold the financing materials so the SEC can access them.*** Companies should just need to give the SEC a simple URL where most of the financing activity happens, as opposed to making a formal filing with the SEC every time an update is made. AngelList or other sites can keep change logs so the SEC can see what the materials looked like at a point in time.

3. ***Only require legends and disclosures when terms are communicated.*** Acknowledging the existence of the financing somewhere publicly (media, Twitter, conferences, etc.) shouldn't require legends and disclosures.

4. ***Drop the 15-day-in-advance before financing rule entirely.*** This creates a minefield for startups without actually helping anybody – even the SEC states that they won't review the materials at that time. Make the Form D filing "after the fact" as it is today.

5. ***Don't impose death penalties for noncompliance. Instead, reduce the costs of compliance.*** The reason for the high non-compliance rates in the venture and startup community is that the information made public by the Form D is usually highly confidential. Startups often want to control the timing of their financing announcement and prefer not to reveal amounts raised for competitive reasons. If more of the Form D information was confidential rather than public, compliance rates would jump dramatically.

6. ***Don't be overly broad in the penalty application.*** There are many businesses like AngelList, incubators, and VCs that surround startups. These businesses are built to avoid getting in the way of a startup's autonomy – they should not be penalized for activities that a startup undertakes on their own that the business can't control. The current penalties seem to apply broadly; any penalties should be applied only to the entity that doesn't comply, not to all of the supporting businesses surrounding it.

Thank you for your attention to these matters. We remain excited by the opportunities new startup companies will have to reach capital and grow more quickly. We just want to make sure the SEC can meet the public needs without accidentally harming the startup community we believe the JOBS Act was intended to foster.

We would be happy to make ourselves available to discuss our views on this at more detail at your convenience. We believe that implemented correctly, the JOBS Act will be a boon to the startup community, and are willing to help in any way we can.

Sincerely,

Naval Ravikant
CEO, AngelList