September 23, 2013

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Attn: Ms. Elizabeth M. Murphy, Secretary

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

Thank you for the opportunity to comment on the Proposed Rule Amendments to Regulation D, Form D, and Rule 156 under the Securities Act File No. S7-06-13 (the "Proposed Rules").

EarlyShares is an Internet platform that connects small businesses and startups seeking capital (collectively referred to as "Companies") with investors under exemptions provided for in the JOBS Act, including Title II. Since inception in 2011, EarlyShares has been optimistic about the opportunities contained within the JOBS Act, which will offer Companies less restrictive means to access capital while also providing a broader population of investors greater access to investment opportunities.

We have actively participated in and supported the efforts of the Commission to develop a robust market built upon the final implementation of the JOBS Act rules. If implemented effectively, we believe that these opportunities will drive progress, create jobs and generate economic growth throughout the United States.

We understand that the Commission needs to ensure certain information is available regarding Rule 506 usage so that it can "better assess, and, if necessary, take steps to respond to, fraudulent practices in the market for privately offered securities."[1] However, this need must be balanced against the understanding that Companies must be nimble, and most operate with extremely limited resources.[2] The survival and success of these Companies depends upon their ability to think on their feet, change direction at a moment's notice, and to rely on low cost solutions wherever possible.

The JOBS Act was intended "to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies."[3] To develop a thriving marketplace, we agree that creating a regulatory framework that protects market participants against the most likely forms of abuse is essential. However, the Proposed Rules introduce multiple, expensive, unclear and overly punitive friction points in the capital formation process which may result in the opposite effect of what the JOBS Act intended to accomplish.

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[1] *See* Proposed Rules at p.124 (stating that "data on the incidence of fraud in private securities offerings is extremely limited and the Commission is unable to estimate the extent of fraud in the existing market for privately offered securities or the degree, if any, to which such fraud may increase upon the adoption of Rule 506(c)").
[2] *Id.* at 115 (recognizing the median Regulation D offering size from 2009-2012 was $1.5 million).
[3] Pub. L. No. 112-106, 126 Stat. 306 (2012)

In an effort to balance the needs of investor protection and ease of access for all participants, EarlyShares offers the following comments with recommendations:

1. Timing of the Filing of Form D and Form D Closing Amendment – The only filing requirement should be within 15 days after the first sale of securities.

The advance filing of Form D presents challenges for Companies who must react quickly, adjust course frequently and may not always have 15 days to wait to begin their capital raise. Filing a Form D in advance will signal planned capital-raising activity and related details to potential competitors. That risk alone may cause some Companies to be reluctant to use Rule 506(c) when they might otherwise.

In addition, we believe that Companies will inadvertently violate this requirement due to lack of understanding and knowledge of it. The interests of state regulators to gauge whether an issuer is attempting to comply with securities laws should not outweigh the flexibility and nimbleness needed by Companies pursuing a capital raise.

Regulation D does not currently contain a requirement to file a final amendment to Form D. The final amendment requirement was removed in 1986 because the benefits of that filing were deemed negligible to investors and removing the requirement saved money for issuers and resources for the Commission.[4] We contend that the same logic should continue to prevail.

In addition, the Commission should consider utilizing an application programming interface ("API") with Internet platforms that have secure servers (like EarlyShares) so that the information can be shared seamlessly with the Commission. This software tool will increase compliance because Companies will expend little additional effort in "filing" this information and updates or changes would automatically be captured. A safe harbor should be granted for platforms that facilitate this method if they are otherwise compliant.

2. Amendment to Rule 507 – Do not impose the one-year disqualification for future offerings.

The Commission predicts in its Proposed Rules that this amendment could significantly reduce non-compliance with Form D filing requirements for Rule 506 offerings.[5] In our view, this is *not* an appropriate sanction to incentivize compliance with Form D filing requirements. Rather, it has the very real potential of putting a Company out of business by severely limiting their ability to raise capital if they fail (potentially inadvertently) to comply. The unduly burdensome nature of the sanction is likely to have unintended consequences not contemplated by the Proposed Rules: Companies will avoid utilizing Rule 506 altogether.

3. Mandated Legends and Other Disclosures for General Solicitation Materials – Legends on general solicitation materials should only be mandated where terms of the offering are disclosed.

While these legends may better inform potential investors whether they are qualified to

[4] *See* Proposed Rules at p.27.
[5] *Id.* at 53.

participate in 506(c) offerings, this same goal can be accomplished by posting these legends where terms of the offering are disclosed. Practical considerations supporting this position include: 1) Investors will review terms before purchase of securities; 2) The legal costs for determining which materials are "written" will be substantial; 3) If the materials change (which they will, frequently), the burden of multiple submissions of these new materials will create an increased burden on Companies and the Commission; and 4) The limitations of various channels of communication (i.e., 140 character limit on Twitter).

4. Mandatory Submission of General Solicitation Materials – No mandatory submission of general solicitation materials requirement.

The Commission estimates that compliance with the proposed requirements related to written general solicitation materials would result in an estimated burden of two hours per offering under Rule 506(c).[6] The two-hour estimate is significantly understated given the time necessary to collate, prepare and submit with the frequency required and we do not view this as a realistic requirement.

Rather than place this burden on the Company, we suggest that the Commission consider utilizing an API with Internet platforms that have secure servers (like EarlyShares) so that the Commission can easily see and review the general solicitation materials from where Company offerings are being managed.

5. Definition of Accredited Investor – Do not heighten the income or net worth thresholds for accredited investors.

At least 8.7 million U.S. households, or 7.4% of all U.S. households, qualified as accredited investors in 2010, based on the net worth standard in the definition of "accredited investor."[7] A defining premise of the JOBS Act is to make investment opportunities available to those who were previously not permitted to access them. Heightening the income or net worth thresholds violates this concept, further institutionalizes inequality in the market, and builds upon the extremely flawed premise that an individual who already has a certain amount of money is by definition a more sophisticated investor than someone who does not. To our knowledge, there is no evidence suggesting that the lower tier of accredited investors (who would be eliminated under the new definition) are investing irresponsibly or have been harmed as a result of their accredited status. Moreover, the new requirements that mandate Companies to verify an investor's accredited status prior to completing an investment already provides an additional level of protection.

In conclusion, EarlyShares is deeply committed to this market and will fully implement all rules, regulations and policies as determined and required by the Commission. Our goal is to assist and guide Companies and investors through an investment process that is transparent, compliant and beneficial to all participants. We are, however, concerned that implementation of the Proposed Rules without considering our recommendations will have the unintended negative consequence of inhibiting the success and vitality of

[6] *Id.* at 103.
[7] *Id.* at 120.

the capital-raising marketplace. We are optimistic that upon review, the Commission will adopt rules, regulations and policies that find the proper balance between investor protection and a Company's ability to raise capital effectively.

Please contact EarlyShares if there is anything that we may do to assist the Commission with this rulemaking process.

Respectfully submitted,

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