September 23, 2013

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

RE: Final Rules on Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings (Release No. 33-9415; No. 34-69959; No. IA-3624; File No. S7-07-12, RIN 3235-AL34)

and

Proposed Amendments to Regulation D, Form D and Rule 156 under the Securities Act (File Number S7-06-13), and specifically, Part V and Questions 97-99 re Definition of Accredited Investors

Dear Ladies and Gentlemen:

I write this letter as an individual investor deeply involved in the start-up economy. Serving in multiple professional associations, I actively advocate and work towards helping build a sustainable ecosystem based on the Final and Proposed Rules referenced above. I am deeply concerned, however, that the Final Rules on General Solicitation and Advertising, as well as the Proposed rules regarding Regulation D, are likely to have significant unintended and undesirable, yet preventable, negative consequences far from their legislative and regulatory intents. Certification of Accredited Investors is a critical issue since, without check writers, there will be no checks for start-up businesses. Let us not seek to fix what is not broken, driven by theoretical concerns about a problem (potential inaccurate self-certification of Accredited Investors) for which there is little evidence of existence, and in so doing undermine the very goals that the JOBS Act was intended to achieve.

Specifically, the present lack of clear, practicable and generally understood mechanisms for accomplishing the task of establishing Accredited Investor status for natural persons participating in Generally Solicited 506(c) offerings (as compared to previous, and still accepted, practice of self-certification in 506[b] offerings) is likely to preclude the participation of many or most such investors in 506(c) offerings. This effective disenfranchisement will deprive issuers of the participation and support of the major previous funding source for early-stage enterprises. For this reason, reaching an agreed, clearly understood, and practicable real world set of guidelines and procedures for Accredited Investor verification remains a critical, but solvable to the mind of this writer, challenge.

The primary issue and difficulty here is that a significant majority of Accredited Investors regularly participating in the Regulation D-based, external funding rounds of young and start-up companies do so on the basis of self-certification using the Net Worth standard. This method is what I have used personally. It is practically unchallengeable to say, however, that Safe Harbors #2 and #3 as contained in the Final Rules (Verification of Accredited Investor Status via Issuer or Third-Party documentation of Net Worth) are both unacceptably intrusive and practicably infeasible. Intrusiveness speaks for itself, while the reasons why these approaches are impracticable as presently described involve both the requirements for external valuation of assets and liabilities, and for re-valuation and re-verification at three-month intervals. Personally, I have made an Angel investment on average more than once per quarter for the past decade, and the imprecise and debatable task of valuing assets such as illiquid and non-public securities, private companies, real estate, art, and more, makes any such external professional valuation difficult, time-consuming and fundamentally unreliable. As a result, individual Angels such as myself are likely to choose (or be forced) to eschew participation in Generally Solicited 506(c) deals (and the companies they represent). Furthermore, redirecting investments into other asset classes (including 506[b] deals, as far as such remain), foreign entities, and the like, will assume increased attractiveness to the individual Angel community, but will not have the desirable local economic consequences that so motivated the bipartisan majorities that overwhelmingly passed the JOBS Act.

Given the foregoing discussion of probable, and most likely unintended, consequences arising from the present regulatory picture, the following three possibilities are recommended for the Commission's consideration.

Each of these could provide consistency with prior Commission rulemaking and guidance, and avoid or greatly ameliorate the negative practical consequences discussed above.

Recommendations:

1. Allow the current Accredited Investor self-certification methods available in 506(b) offerings to remain in place for 506(c) offerings. Safe Harbors #2 and #3 in the Final Rules still require and depend on self-certification that all liabilities necessary to compute Net Worth have been disclosed. Another proposal submitted, namely the Angel Capital Association (ACA) White Paper suggesting that membership in an ACA member group (an Established Angel Group, or EAG) serve as a Principles-Based method for verification of Accredited Investor status, also ultimately relies on the self-certification that such groups typically require as a prerequisite for admission. (This suggestion additionally does nothing for the vastly greater number of active individual Angels not belonging to an Established Angel Group.) Concerns about the theoretical but in reality rare instance of individuals falsely claiming Accredited Investor status and then seeking redress for losses could be addressed by requiring Accredited Investor self-certification to include execution of an affidavit containing a Draconian penalty (such as 100% of an investment's initial or final value, whichever is greater) for false self-certification. Such an affidavit executed by less experienced investors, with the assistance of an Issuer representative, could also require Issuer representative signature and carry penalties for false inducements without positive affirmation of adequate understanding by the investor. Such affidavits should not be problematical for sincere individuals and responsible issuers, and would eliminate the additional expenses, procedures and angst over this issue in 506(c) transactions.

2. Provide additional guidance (by Rule-Making, No Action Letter, Frequently Asked Question [FAQ] or other publication methods) for Safe Harbors #2 and #3, namely, Principles-Based Issuer or Third Party Verification of Accredited Investor status by Net Worth. Specifically, the Commission could indicate that a given level of documented previous Regulation D-based (or comparable) investment activity is an acceptable basis for reasonable and Principles-Based judgment of Accredited Investor status. By this suggestion, experienced Angels would provide Issuers or Third Parties with specific but limited, and thus far less intrusive and sensitive, financial documentation with which to establish their Accredited Investor status. For example, providing definitive evidence of more than $100,000 (or $200,000, or whatever the Commission decided) in previous Regulation D-based investments would allow the investor to be deemed Accredited for all later investments. This approach would be far less intrusive, but concrete and practicable, and being part of an investor's permanent record would eliminate the need for re-assessment and re-verification every three months. By way of calibration, many Established Angel Groups require new members to indicate a readiness and intention to invest an aggregate of $100,000 to $250,000 over their first three years of membership; if accomplished and documented, this could serve as a concrete threshold criterion for permanent qualification as an Accredited Investor. While investors new to the activity would obviously be unable to make use of this standard, such "new" investors could still qualify as Accredited by use of one of the other established safe harbors such as Income or comprehensive proof of net worth, or restrict themselves to 506(b) deals at first. In any case, the majority of experienced Angels, both within and beyond the Angel Capital Association, would be enabled to continue to freely participate in the new category of 506(c) offerings by such additional Commission guidance.

3. Return to the original financial knowledge and sophistication criteria for which income and net worth became proxies in the 1980's. (This addresses Proposed Amendments Questions 97-99 on the definition of Accredited Investors.) Clearly, a wealthy heir does not automatically have the requisite knowledge, experience or sophistication to make wise financial decisions (even if he or she has the wealth to endure errors of judgment.) In contrast, many individuals of lesser financial means have the necessary knowledge and should not be precluded, as a matter of justice, from participating in these fruitful economic pursuits. Strict numerical definitions of Accredited Investor status thus can be considered to have become (inappropriately) a "tail wagging the dog." To avoid this unjust, self-imposed and counter-productive inconsistency, non-financial means for qualification as an Accredited Investor should be reconsidered. Some of these criteria might include: (a) a graduate degree (such as a Masters or Doctorate in Business, Economics or Finance, from an accredited educational institution); (b) a certain duration of membership (two years?) in an Established Angel Group such as those comprising the Angel Capital Association, whose affiliated Angel Resource Institute offers regular seminars on investing best practices both locally and at

numerous association-sponsored regional and national meetings each year; or (c) employment experience (two years or more?) as a documented, full-time C-level executive, or Board Member, of a recognized and legitimate commercial firm or non-profit entity. Such non-financial criteria for qualification as an Accredited Investor could be certified on a Principles Basis by Third Parties as set forth in current Safe Harbor #3.

In closing, the current lack of general understanding of what indeed may have been intended to be expressed and enabled by the Final Rules for verifying Accredited Investor status threaten to undermine and render moot the primary intention of Title II of the JOBS Act, namely, facilitating the access to capital of Start-Up (the "S" in JOBS Act) and early-stage growth enterprises. I believe it to be eminently within the Commission's authority to clarify this unworkable situation by means of one or more of the recommendations made above, and in so doing, to unleash and enable the intended desirable consequences of this important piece of legislation. I remain at your service and available to discuss or participate further in any way deemed useful, and thank the Commission and its staff for their courteous and attentive accessibility and consideration.

Respectfully submitted,

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