



October 30, 2013

The Honorable Mary Jo White  
Chairman  
US Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549

Dear Chairman White:

As national organizations that support the start-up and growth of innovative small businesses, we want to express the importance of ensuring that the Commission's final and proposed rules related to lifting the ban on general solicitation for Rule 506 offerings do not reduce investment in small and startup entrepreneurial businesses. We join the Angel Capital Association in asking that that the proposed rules are withdrawn and clarifying guidance is provided for the final rules.

We appreciate the importance of regulation to protect investors from fraud, but we urge the Commission to consider several factors:

- Entrepreneurial companies are important to job creation and innovation in the United States. We note particularly the study by the US Census Bureau that companies five years old or less created all of the net new jobs over a 25 year period.
- Angel investors are an important source of capital for many of these innovative start-ups. For instance, the Association of University Technology Managers (AUTM), has tracked the source of initial funding for university spin-out companies for the past five years. They have consistently found that accredited individual investors are the source of initial funding for a third of all university start-up companies. All of the signing organizations are therefore deeply concerned about any changes that would diminish the size of the pool of accredited investors.
- Startup and seed investments are precisely the types of financing that need uniformity and simplicity the most. It is important to ensure that entrepreneurs raising capital have the same regulations regardless of their state and that they are able to raise capital via both existing rules (now called 506(b)) and via general solicitation and general advertising (now called 506(c)). Members of all of our national organizations throughout the country are often involved in

venture forums and demo days as part of their economic development missions and have done so for many years.

We recognize that the JOBS Act required issuers to take “reasonable steps to verify” that investors are accredited when relying on Rule 506(c). However, “reasonable steps” should not include disclosure of personal financial information by angel investors already well-versed in the startup economy. Active angel investors are both accredited investors and knowledgeable about the risks of angel investing. This combination of fact and circumstances provides richer validation than the “check-the-box” method prohibited by Congress.

Angel group members work closely with entrepreneurs over long periods (often years) to provide essential “mentorship capital” and support in addition to financial backing. If angels are required to navigate cumbersome and costly requirements to provide private financial data to every startup in which they invest, they are likely to go elsewhere. Angels invest their own funds and are not hedge funds or private equity managers, which have extensive infrastructure already in place to help determine whether a limited partnership investment is suitable for a potential accredited investor.

The national organizations signing this letter are also very concerned about the proposed rules on Regulation D, Form D, and Rule 156. The proposed rules do not effectively protect small businesses or investors; are not required by the JOBS Act; and, are not consistent with the intent of Congress to make capital more available to startups and small companies.

A few of the most egregious ways in which the proposed rules may preclude altogether any use of general solicitation by small business, and thwart the ability of accredited investors to invest include:

1. Filing Form D 15 days prior to any general solicitation imposes heavy costs and regulatory burdens on startups, and forces entrepreneurs to navigate a minefield of potential regulatory sanction when making any type of public comment if even contemplating a future offering.
2. Requiring entrepreneurs to electronically furnish copies of each item of general solicitation no later than the date of first use also imposes fatal burdens of cost and complexity on issuers who can least afford it, without achieving relative benefits in terms of regulatory oversight.
3. Lengthy legends and other standard disclosure requirements would increase costs of general solicitation for issuers, and would be unlikely to be read by most interested individuals.
4. Penalties for non-compliance, including prohibiting an issuer from using Rule 506 for an offering for one year, are drastic, unnecessary and would effectively grind to a halt the flow of capital to startups under Rule 506(c).

Not only would these proposed requirements and penalties drive away investors and gravely impair the flow of capital to small businesses, the reasons for the rule are unclear. The Commission included no constraints on how regulators may use submitted materials, nor established whether the Commission in fact could even collect all such material it seeks.

We respectfully request the Commission take three actions: Withdraw the proposed rules; provide clarification on the definition of “general solicitation” particularly as related to demo days and venture forum events; and, provide guidance in regard to Rule 506(c), to the following effect:

If an issuer verifies that a purchaser is a member of an established angel group\*, an accredited investing platform, has made previous investments via Rule 506 or is otherwise actively engaged in the startup community and also provides written representation that he or she is an accredited investor, the issuer will have met the verification requirement of Rule 506(c).

Thank you for your consideration of these issues and your support of innovative small businesses. We want to ensure that the entrepreneurial startups that create important innovations and high quality jobs not only continue to have this important type of capital so they can grow, but that they are not subjected to regulations that make new and existing companies die for lack of capital and/or large legal costs and penalties involved in filing Form Ds and general solicitation materials that are included in the proposed rules.

Sincerely,

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State Science & Technology Institute

Marianne Hudson  
Angel Capital Association

Elizabeth Hymn  
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Bob Moore  
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National Business Incubation Association

\*Established Angel Group definition is available at  
[www.angelcapitalassociation.org/data/Documents/Public%20Policy/GuidanceonEAG09\\_03\\_13.pdf](http://www.angelcapitalassociation.org/data/Documents/Public%20Policy/GuidanceonEAG09_03_13.pdf).