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Urgent Angel Investors' Comments on Rule 506 Final & Proposed Regs

Sponsored by: A Group of New York, New Jersey, and Connecticut based angel groups.

About the petition

The Honorable Mary Jo White Chairman
U.S. Securities Exchange Commission

100 F Street NE

Washington, DC 20549

Dear Chairman White:

I am an angel investor in early-stage companies and member of a group of fellow angel investors. I write because on September 23, I believe the country will begin to suffer a significant reduction in angel investing and therefore the destruction of jobs, as companies go bankrupt or stop growing due to a lack of funding. This is the precise opposite of the intent of Congress in enacting the JOBS Act.

The SEC is understandably acting to regulate the securities industry and the \$1.7 trillion annually invested in private companies (compared to \$1.2 trillion raised via public markets in 2012). However, the SEC may accidentally grossly damage the vital angel investing industry in the process. Angel investors form the backbone of the startup economy. Each year, the US angel community invests approximately \$23 billion in over 67,000 new start-up businesses. Nearly all net new jobs in the United States between 1980 and 2005 came from companies 5 years old or less, according to a Kauffman Foundation Study, (<http://www.kauffman.org/research-and-policy/where-will-the-jobs-come-from.aspx>) the great majority of which were initially funded by angels. Preserving the capital investment that the angel community makes in start-up companies is key to job growth.

With respect to the new regulation, I am specifically writing to:

1. Request that the Commission withdraw its proposed amendments to Regulation D and Form D.
2. Propose clarification that limited "Friends and Family" participation by non-accredited investors in 506 (c) issues is allowed.

3. Propose clarification of the “facts and circumstances” that can be used by issuers to establish that an investor is accredited under 506 (c).

1. Withdrawal of proposed amendments to Regulation D and Form D

The proposed changes to the Reg D/ Form D requirements for 506(c) issuers are onerous and almost guaranteed to be unintentionally violated by start-up companies. A start-up company is typically a 1 to 5-person entity operating on a very limited budget. Complying with the multiple requirements of the proposed rules will be virtually impossible due to the rules' complexities, the cost, and the lack of available employee time. The proposed penalties for failure to comply are extreme, especially the loss of the right to use any 506 exemption for 12 months. In the start-up world, not having access to capital for a year will bankrupt many companies, and make the sector even riskier for angel investors.

We are gravely concerned that, if these Reg D requirements become effective, this additional risk level will cause a reduction in the approximate \$23 billion in capital that comes annually from the angel community. We urgently request that these rules be withdrawn in their entirety for start-up companies. We suggest defining Start-Up companies for these purposes as companies which are less than 5 years old, have at least two responsible officers, and have raised less than \$5 million in equity capital including the current planned issuance. Reg D forms should not be changed beyond the addition of the 506b or 506c election box. Additionally, issuers should not be penalized, in any way, for inadvertent disclosure (possibly construed as general solicitation) based on public Reg D filings, e.g., the common practice of technology publications to write stories about companies based on their Reg D filings.

2. Permission for limited unaccredited “friends and family” participation

Many startups are initially funded by equity infusions or loans from “Friends and Family,” frequently non-accredited investors. These investors are vital to many entrepreneurs who do not have the individual financial wherewithal to make a capital investment in a new venture, or even to quit a paying job elsewhere to spend time in a fledgling enterprise. For third-party investors like us, the commitment of Friend and Family is an initial sign of the commitment and integrity of an entrepreneur. In many cases, these early investors - many non-accredited- will have a security (such as a convertible note) that converts into the same security as that being offered to new purchasers. This is very positive news for an angel, as the people who know the entrepreneurs best are prepared to invest on the same terms as the new angel.

The angel-investing ecosystem needs clarification that the inclusion of these Friend and Family non-accredited investors will not prevent an issuer from using the 506 (c) exemption. A reasonable red line is that a company can have up to 20 unaccredited “Friends and Family” investors who put in a maximum of \$50,000 each, for a total of up to \$1,000,000 in capital invested.

3. Clarification of “facts and circumstances” establishing an investor is accredited

The “facts and circumstances” that can be used under the principles-based methodology provided in the rule for issuers to establish that an investor is accredited should include verification of the investor’s membership in an established angel group as one of the valid standards. The Angel Capital Association has developed guidance (available at: http://www.angelcapitalassociation.org/data/Documents/Public%20Policy/GuidanceonEAG09_03_13.pdf) as to what constitutes an “Established Angel Group.”

It is essential to address and clarify this issue, as the overwhelming majority of angel investors will refuse to give highly personal financial information to a startup company or their intermediaries. That kind of invasive process will increase closing costs and complexity, delay financings, lead to the risk of identity theft, and cause many of our members to stop investing going forward. And that means bankruptcy, arrested growth, and destruction of jobs.

Additionally, it should be stated clearly that an issuer can reasonably assume that individuals investing over a threshold amount (we suggest \$10,000) can reasonably be assumed to be accredited, based on the assumption that anyone investing such an amount has significant free cash available.

General Solicitation and the Angel Industry

Addressing the three issues outlined above is crucial to prevent a dramatic decline in cash investment into startups after September 23 because we believe most issuers will elect, and most angels will demand, 506 (c) rather than 506 (b) issues. The penalties if an issuer filed under a 506(b) exemption and then is construed to have generally solicited are extremely severe: rescission and potential Blue Sky violations. With the increase in social media, including Twitter and Facebook, many standard start-up industry events like Business Plan competitions, Tech Demo Days, and even some angel group meetings, could eventually be interpreted as general solicitation. The formal press and individual attendees often cover such events on websites, blog posts and via social media channels. Entrepreneurs need these events and their online equivalents to connect with potential clients, employees, service providers, and other business relationships; investors need them to assess potential investments. Without clarification on general solicitation activities, we expect very limited 506 (b) issues.

To prevent the severe reduction of 506 (b) offerings, and to help maintain the existing healthy angel ecosystem, the Commission could provide some further guidance as to what constitutes general solicitation for early stage companies. In particular, clarification that (1) Demo days, pitch events and similar events where attendance is limited to a specific number of attendees, for instance 300 attendees, are not general solicitations, and (2) any event, no matter the number of attendees, at which the issuer does not present information about a securities

offering are NOT considered as generally soliciting.

Thank You,

Signatures

1. Name: Jo Ann Corkran on Sep 19, 2013
Comments: I am one of the Managing Partners of Golden Seeds. Golden Seeds is a nation-wide angel group. We have more than 280 members, all of whom are accredited investors, and we have, collectively, invested over \$58,000,000 in over 58 companies in the last 7 years.

2. Name: Graham Gullans on Sep 19, 2013
Comments: Co-Founder, Empire Angels. NY Based investment group focused on funding early stage start up with a membership of young investors.

3. Name: Joe Rubin on Sep 19, 2013
Comments: Founding Member, ARC Angel Fund. 70 member angel fund in NYC

4. Name: Vanessa Wilson, CFO, Golden Seeds on Sep 19, 2013
Comments:

5. Name: Peggy Wallace, Managing Partner Golden Seeds on Sep 19, 2013
Comments: I am one of the Managing Partners of Golden Seeds. Golden Seeds is a nation-wide angel group. We have more than 280 members, all of whom are accredited investors, and we have, collectively, invested over \$58,000,000 in over 58 companies in the last 7 years.

6. Name: Steve Sinek on Sep 19, 2013
Comments:

7. Name: Brian Cohen on Sep 19, 2013
Comments: I am the chairman of the most active angel group in the United States.

8. Name: Robert Delman on Sep 19, 2013
Comments: I am a Managing Director at Golden Seeds

9. Name: Lilia Shirman on Sep 19, 2013
Comments: Please don't stifle entrepreneurship and angel investing!

10. Name: Otis Carter on Sep 19, 2013
Comments:

11. Name: Deborah Jackson on Sep 19, 2013
Comments:

12. Name: Anonymous on Sep 19, 2013
Comments:

13. Name: Tom Nicholson on Sep 19, 2013
Comments: I am a founding member of the Angel Round Capital (ARC) Fund an early stage investing group based in NYC.

14. Name: Vamsi Sistla on Sep 19, 2013
Comments: Angel Limited Partner and Board Advisor.

15. Name: Aaron Sahagun on Sep 19, 2013
Comments:

16. Name: Martin Babinec on Sep 19, 2013

Comments: I have had a role in helping start 4 different seed capital funds backed by private angel investors across Upstate NY. These funds are a critical source of capital for companies to create jobs that can retain our region's top talent.

I am in complete agreement with the petition's description of the chilling effect the proposed regs would have on angel investing as well as the recommended changes that can be made to help fuel more angel participation in line with the congressional intent of the legislation.

Martin Babine
Founder & Chairman
Upstate Venture Connect

17. Name: Cynthia McClintock on Sep 19, 2013
Comments:

18. Name: Angel French on Sep 19, 2013
Comments:

19. Name: Jennifer Jordan on Sep 19, 2013
Comments:

20. Name: Anonymous on Sep 19, 2013
Comments:

21. Name: Deborah Reynolds on Sep 19, 2013
Comments: This is incredibly important for business and jobs growth! Please consider and act on the articles in this petition!

22. Name: Joan Zief on Sep 19, 2013
Comments: Please seriously consider these comments. It would be an embarrassment to the SEC to have such negative consequences for most startups seeking funding and then in retrospect go back to correct. Thank you.

23. Name: Scott McIntyre on Sep 19, 2013
Comments: Vital assessment, deeply appreciated.

24. Name: Katie Schuller Bleakie on Sep 19, 2013
Comments:

25. Name: Aaron Sahagun on Sep 19, 2013
Comments: FundingPost Manager for the SouthWest

26. Name: Anonymous on Sep 19, 2013
Comments:

27. Name: Letitia Richardson on Sep 19, 2013
Comments:

28. Name: Jae Lee on Sep 19, 2013
Comments:

29. Name: Aron Placencia on Sep 19, 2013
Comments:

30. Name: Anonymous on Sep 19, 2013
Comments:

31. Name: Raymond Sobieski on Sep 19, 2013
Comments:

32. Name: Joshua B Siegel on Sep 19, 2013
Comments: I am the Co-Chairman of Georgetown Angels, a national angel investment group and fully support this petition.
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33. Name: Anonymous on Sep 19, 2013
Comments:
-
34. Name: Nada Jain on Sep 19, 2013
Comments:
-
35. Name: Justin Connor on Sep 19, 2013
Comments:
-
36. Name: Morton Schneider on Sep 19, 2013
Comments:
-
37. Name: Jennifer Sargent on Sep 19, 2013
Comments:
-
38. Name: Anonymous on Sep 19, 2013
Comments:
-
39. Name: Margaret Pederson on Sep 19, 2013
Comments:
-
40. Name: Loretta McCarthy on Sep 19, 2013
Comments: I am a Managing Partner at Golden Seeds, one of the largest and most active angel investment firms in the US. This letter has been written after extensive review of the implications of the JOBS Act for our industry. We appreciate prompt attention to these issues.
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41. Name: Barbara G Raho on Sep 19, 2013
Comments:
-
42. Name: Dan Coates on Sep 19, 2013
Comments:
-
43. Name: Michael Sauvante on Sep 19, 2013
Comments: As a non-profit think tank dedicated to local economic development and the tools needed by small businesses to get on with the job of creating jobs and growing our economy, we could not agree more with the assertions in this petition.
-
44. Name: Adam Quinton on Sep 19, 2013
Comments:
-
45. Name: Kellee Joost on Sep 19, 2013
Comments: As a current member of the Golden Seeds angel investor network and former entrepreneur, I view the above-mentioned actions as critical in maintaining the strong growth we've recently seen in the start-up environment and the ability for individuals to create their own success.
-
46. Name: Sara Weinheimer on Sep 19, 2013
Comments:
-
47. Name: Julia Pimsleur on Sep 19, 2013
Comments:
-
48. Name: Heather Coull on Sep 19, 2013
Comments:
-

49. Name: Heather Coull on Sep 19, 2013
Comments: I am the Marketing Manager at FundingPost - a Company that matches entrepreneurs with Investors.
<http://www.fundingpost.com>
-
50. Name: Laura Childs Saverin on Sep 19, 2013
Comments:
-
51. Name: Anonymous on Sep 19, 2013
Comments:
-
52. Name: Timothy Allen on Sep 19, 2013
Comments:
-
53. Name: Anonymous on Sep 19, 2013
Comments:
-
54. Name: David Nethero on Sep 19, 2013
Comments:
-
55. Name: Yuriy Porytko on Sep 19, 2013
Comments: This is of grave concern to me both as an early stage and angel investor and as an event manager for the national organization <http://www.fundingpost.com/>
-
56. Name: Jeffrey Finkle on Sep 19, 2013
Comments: I serve as co-chairman of the ARC Angel Fund a 70 person strong member led Angel Fund providing seed capital to entrepreneurs in the NY metro area.
-
57. Name: Jane Dresner Sadaka on Sep 20, 2013
Comments:
-
58. Name: Mindy Posoff on Sep 20, 2013
Comments:
-
59. Name: Sheryl Schultz Schlackman on Sep 20, 2013
Comments: This is very serious, and I hope you will carefully consider the ramifications of the JOBS act as it exists today. Thank you!
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60. Name: Gail Hoffman on Sep 20, 2013
Comments:
-
61. Name: Jan Norton on Sep 20, 2013
Comments:
-
62. Name: Anonymous on Sep 20, 2013
Comments:
-
63. Name: Eileen Durey on Sep 20, 2013
Comments:
-
64. Name: Christine Tate on Sep 20, 2013
Comments: As an active angel investor this well-intended legislation adversely affects the start-up and early stage investing community.
-
65. Name: Jonathan Hakakian on Sep 20, 2013
Comments: Managing Director, SoundBoard Angel Fund (Morristown, NJ)
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66. Name: David Beatty on Sep 20, 2013
Comments:
-
67. Name: Peter Stahl on Sep 20, 2013
Comments:
-
68. Name: Ann Semmer on Sep 20, 2013
Comments:
-
69. Name: Mary Lake Polan on Sep 20, 2013
Comments:
-
70. Name: Laura Baldwin on Sep 20, 2013
Comments:
-
71. Name: Lucia Epstein on Sep 20, 2013
Comments:
-
72. Name: Nancy Alexander on Sep 20, 2013
Comments:
-
73. Name: Lynn A. Polakoff on Sep 20, 2013
Comments:
-
74. Name: Laura Danforth on Sep 20, 2013
Comments:
-
75. Name: Anita Volz Wien on Sep 20, 2013
Comments:
-
76. Name: Emily H Susskind on Sep 20, 2013
Comments: This regulation will undermine precisely the activity that the law intended to encourage. It is perverse and ridiculous.
-
77. Name: Shirley Mueller on Sep 20, 2013
Comments:
-
78. Name: J. William Whitaker MD on Sep 20, 2013
Comments: This proposal will do nothing to take the risk out of early stage investing nor protect fools from being separated from their money. It will provide further headwinds to investing in this area at a time when early stage businesses and indeed the entire economy needs capital for growth that is essential for the betterment of all.
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79. Name: Juliana Mardones on Sep 20, 2013
Comments:
-
80. Name: Victoria Elenowitz on Sep 20, 2013
Comments:
-
81. Name: Kathleen Trainor on Sep 20, 2013
Comments:
-
82. Name: George Robertson on Sep 20, 2013
Comments: please consider the damage that this could cause to the capital available for new businesses.
-
83. Name: Allyn Taylor on Sep 20, 2013
Comments:
-

84. Name: Sam Gutmann on Sep 20, 2013
Comments:
-
85. Name: Mike Butts on Sep 20, 2013
Comments:
-
86. Name: Linda Rebrovick on Sep 20, 2013
Comments:
-
87. Name: Randy Ezratty on Sep 20, 2013
Comments: Angel investor since 1995. Thanks for your consideration.
-
88. Name: Gail Landis on Sep 20, 2013
Comments:
-
89. Name: Elizabeth Favaro on Sep 20, 2013
Comments: Member of Golden Seeds angel investor network
-
90. Name: Vanessa Alexandra Pestrutto on Sep 20, 2013
Comments: Program Director of New York Angels. New York Angels has invested in over 90 companies with over \$50 million in funding. With over 110 accredited investors meeting twice a month, we strive to support and mentor great young companies.
-
91. Name: Les Kreis on Sep 20, 2013
Comments: I am an angel investor with Cowtown Angels in Fort Worth, Tx, who hopes that the unintended consequences of this proposed legislation, as detailed in this petition, are thoroughly reviewed and considered.
-
92. Name: Kenneth Leiter on Sep 20, 2013
Comments:
-
93. Name: Edward Tolson on Sep 20, 2013
Comments:
-
94. Name: John Suhler on Sep 20, 2013
Comments: The proposed regulations and requirements for early stage companies seeking financing will smother entrepreneurial activity. This will be bad for the economy. John S.
-
95. Name: David Yuen on Sep 20, 2013
Comments: Member of New York Angels
-
96. Name: Alessandro Piol on Sep 20, 2013
Comments: Member: NY Angels, HBS Angels, TiE Angels
-
97. Name: Jason E. Klein on Sep 20, 2013
Comments:
-
98. Name: Arthur Lutzke on Sep 20, 2013
Comments: Having invested in startups since 1969, I believe these new requirements will cripple the ability of new companies to raise capital, after decades of productive capital raises.
-
99. Name: Anonymous on Sep 21, 2013
Comments:
-
100. Name: Mark Schneider on Sep 21, 2013
Comments:
-
101. Name: Una S. Ryan on Sep 21, 2013

Comments:

-
102. Name: Merle Tessier on Sep 21, 2013
Comments:
-
103. Name: Mary A McCaffrey on Sep 21, 2013
Comments:
-
104. Name: Carol Curey on Sep 21, 2013
Comments:
-
105. Name: Sandra Kresch on Sep 21, 2013
Comments: I strongly support the comments in the attached letter.
-
106. Name: Robert Oppenheimer on Sep 22, 2013
Comments:
-
107. Name: Denzil Rankine on Sep 22, 2013
Comments: I am a member of New York Angels
-
108. Name: Bruce Gallager on Sep 22, 2013
Comments:
-
109. Name: Anonymous on Sep 22, 2013
Comments:
-
110. Name: Paul Grossinger on Sep 22, 2013
Comments:
-
111. Name: Jenevra Georgini on Sep 22, 2013
Comments:
-
112. Name: James Butts on Sep 23, 2013
Comments:
-
113. Name: Tonny K Ho on Sep 23, 2013
Comments: Member of New ;York Angels
-
114. Name: Erica Duignan Minnihhan on Sep 23, 2013
Comments:
-
115. Name: Morgan Simonson on Sep 23, 2013
Comments: member of New York Angels
-
116. Name: S. Parker Gilbert Jr on Sep 23, 2013
Comments:
-
117. Name: Anne Estabrook, Managing Director, Golden Seeds LLC on Sep 23, 2013
Comments:
-
118. Name: Anonymous on Sep 23, 2013
Comments:
-
119. Name: Richard Katzman on Sep 23, 2013
Comments:

-
120. Name: Alain Bankier on Sep 23, 2013
Comments:
-
121. Name: Kathy Rocha on Sep 24, 2013
Comments:
-
122. Name: Diana Dowling on Sep 24, 2013
Comments:
-
123. Name: Harvey Brofman on Sep 24, 2013
Comments:
-
124. Name: Harvey Brofman on Sep 24, 2013
Comments: Member of New York Angels
Board Member of Long Island Angel Network
-
125. Name: Margaret Miao on Sep 25, 2013
Comments:
-
126. Name: Anonymous on Sep 25, 2013
Comments:
-
127. Name: Anonymous on Sep 26, 2013
Comments:
-
128. Name: Adam Famularo on Sep 26, 2013
Comments:
-
129. Name: Michael L. Faltischek on Sep 26, 2013
Comments: As Chairman of a local group, we take great care in assuring ourselves that members are accredited investors. Added regulation and greater scrutiny required by those companies seeking funding from our group would be unnecessarily burdensome and can cause existing members to become disinterested.
-
130. Name: Robert B.Catell on Sep 26, 2013
Comments: Long Island Angel Network
-
131. Name: Robert on Sep 26, 2013
Comments:
-
132. Name: Robert B.Catell on Sep 26, 2013
Comments:
-
133. Name: David Verrill on Sep 26, 2013
Comments:
-
134. Name: Anita Brearton on Sep 26, 2013
Comments:
-
135. Name: Anonymous on Sep 26, 2013
Comments:
-
136. Name: Anonymous on Sep 26, 2013
Comments: Member of the Long Island Angel Network
-

137. Name: Chris Hand on Sep 26, 2013
Comments:
-
138. Name: D. R. Widder on Sep 26, 2013
Comments: Member, River Valley Investors
-
139. Name: Peter Goldsmith on Sep 26, 2013
Comments: Long Island Angel Network
-
140. Name: Michael Widlitz on Sep 26, 2013
Comments:
-
141. Name: Cohava Gelber on Sep 26, 2013
Comments:
-
142. Name: Cohava Gelber on Sep 26, 2013
Comments:
-
143. Name: Samir Nizam on Sep 26, 2013
Comments:
-
144. Name: Jean Hammond on Sep 26, 2013
Comments:
-
145. Name: Anonymous on Sep 26, 2013
Comments:
-
146. Name: Yacov Shamash on Sep 27, 2013
Comments: I am a member of the LI Angel Group
-
147. Name: Ann-Marie Scheidt on Sep 27, 2013
Comments: As the founder of a student entrepreneurship competition that is currently seeking to expand its previous ~12-15 students ventures annually to several times that number, with associated related events, I am deeply worried by the potential impact of the general solicitation constraint.
-
148. Name: Russ Artzt on Sep 27, 2013
Comments: member of Long Island Angel Network
-
149. Name: Anonymous on Sep 27, 2013
Comments:
-
150. Name: Kirk Kordeleski on Sep 27, 2013
Comments:
-
151. Name: Michael Wu on Sep 27, 2013
Comments: A member of Long Island Angel Network
-
152. Name: Alan Mark on Sep 27, 2013
Comments: Mentor and Member of NY Angels and HBS Alumni Angels of New York
-
153. Name: Vincent Basilice on Sep 27, 2013
Comments:
-
154. Name: Vincent Basilice, MD on Sep 27, 2013
Comments: Member of NY Angels
-

155. Name: Steven Tiffen on Sep 27, 2013
Comments:

156. Name: Michael Sherrod on Sep 28, 2013
Comments: I believe these proposals deserve serious consideration.

157. Name: Jim Theroux on Oct 01, 2013
Comments:

158. Name: W. Lowell Putnam on Oct 01, 2013
Comments:

159. Name: Shane Schaffer on Oct 02, 2013
Comments:

160. Name: Carol Clark on Oct 06, 2013
Comments:
