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December 12, 2012

The Honorable Mary L. Schapiro
Chairman
U.S. SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, DC 20549

RE: Economic Cost Estimates of Delaying Finalization of Proposed Rule 506(c) approach $41 Billion in lost or delayed Small Business Capital Formation and upwards of 24,000 new jobs lost or deferred monthly since July 4, 2012

Dear Chairman Schapiro:

Section 201 of the Jumpstart Our Business Startups Act (JOBS Act) requires the Securities and Exchange Commission (Commission) to implement clarifying rules no later than July 4, 2012 and thereby remove the ban on general solicitation for certain issuers. It has yet failed to do so.

As a result, a prevalent condition of uncertainty presently exists where those seeking to utilize the safe harbor rules detailed under Regulation D as modified by the JOBS Act are unclear and uncertain as to how to best proceed. Those wishing to avail themselves of the new qualified general solicitation and advertising provisions of the Securities Act of 1933 as amended by the JOBS Act Section 201[1] are unable to do so absent finalization of the proposed rule, and are mandated to sit on the sidelines awaiting Commission action in this matter. But for most of these issuers, the incentive to wait is quite dear, stifling their ability to go beyond their limited network of prospective investors with whom they possess a pre-existing relationship.

Sometimes we can lose sight of the economic, market and human effects of administrative delay. A medical device inventor, who has invested all his entrepreneurial skills and life savings in waiting out FDA approval now desperately needs new investor capital to manufacture and bring his life's dream to market. An experienced homebuilder who is finally trying to open the new subdivision on land he has managed to hold on to through the worst of times, cannot get the institutional financing he needs and waits to solicit the ever so close pool of accredited investors. These people and many others have been waiting since April 5, 2012 to avail themselves

[1] Jumpstart Our Business Startups Act, Pub. L. No. 112-t06, § 20 I (a), 126 Stat. 313 (20 12).

of the reforms, and approach a larger pool of prospective accredited investors and can do nothing in the interim but await the opportunity to do so.

We are aware of a substantial number of otherwise compliant prospective issuers literally sitting on the sidelines, awaiting your action so that they might hope to comply with the new provisions of the law and get the life-blood capital Congress intended.

Clearly it is difficult to quantify the economic impact of delaying (many have argued needlessly delaying) implementing the straight forward rule recommended by the Commission staff which now apparently still sits in limbo. However we have attempted to perform these calculations in an effort to establish the hidden costs of delay. By what we "reasonably believe" are statistically valid calculations performed by an independent analyst, it seems the amount of lost or deferred investment capital since the July 4, 2012 missed deadline for rulemaking approximates $41,036,620,000 through December 5, 2012[2]. This figure was taken from a comprehensive analysis of Form D filings for that time period. In addition, utilizing applicable like industry job creation survey data, we believe this lost capital translates into an average of 24,162 jobs[3] lost or deferred per month during that same time period. Sadly, this is likely to continue at this pace until this crucial rule whose comment period ended over two month ago is adopted as final.

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[2] Upon suspicion that the Commission's failure to timely enact rules specifically mandated by the new law would adversely affect capital formation and corresponding job creation, we requested that a private analysis of Edgar Form D filings electronically submitted to the SEC be performed by Knowledge Mosaic® Inc., an independent EDGAR monitoring company, comparing the reported funds raised in the Form D's filed since the Congressional "not later than" date of July 4, 2012 through the 5 month period ending December 5, 2012 and compared it with the equivalent time period in 2011. Not surprisingly, applying the same standards to both study periods and utilizing what was "reasonably believed" to be a somewhat similar methodology used by the SEC's RSFI study "*Capital Raising in the U.S.: The Significance of Unregistered Offerings Using the Regulation D Exemption*" published in February of this year, we found that for those comparative time periods there was a decrease of $41,036,620,063 in 2012 compared to 2011. A not unreasonable conclusion could be that this decrease was caused in large part by the market uncertainty and fencepost sitting resulting from the Commission's failure to establish this legislatively mandated safe-harbor definition in the 2012 study period. This decline is in the face of what otherwise would be a recent market trend of year to year increases in private fundings, If the decrease relative to the recent growth trend is factored in, it amplifies the decline attributable to the market uncertainty. As the RSFI study summary pointed out: "*Among broader trends in capital raising, there has been a shift from public to private capital raising over the past three years, due to both a decline in public issuances and an increase in private issuances: public issuances fell by 11% from 2009 to 2010 while private issuances increased by 31% over the same period.*"

[3] Further we applied historic Job Creation/Private Invested Capital data to this approximate $41 billion dollar deficit during the time of delay and yielded a jobs lost or deferred figure attributable to this decrease in Form D reported capital. A number of Job Creation/Invested capital figures were considered and ultimately we determined what was believed the most applicable data was represented by extrapolation from the comprehensive annual study performed by the Center for Venture Research, Whittemore School of Business and Economics at the University of New Hampshire consisting of similar private investments made in 2011 with the exclusive prerequisite that they be from accredited investors only. In it, the average investment to Job created figure was $339,673 in the year of investment. Applying this data, it was determined during the 5 month period in which the Commission failed to comply with the JOBS Act requirements, approximately 120,811 jobs were lost relative to the same time period in 2011, a time which was absent the environment of regulatory uncertainty the Commission has created since the mandated date.

Seemingly well intentioned decisions, based on protectionism or personal beliefs or even personal legacy, are nonetheless having the net effect of stonewalling the implementation of what was signed into law by President Obama on April 5, 2012. Undoubtedly, the changes in means of soliciting accredited only investors will necessitate significant industry modifications. State Security regulators will operate under a new enforcement paradigm of targeting misleading or unfair advertising with enforcement through the anti-fraud provisions of applicable law. Unfair or improper sales can be rescinded, and the FTC and its state counterparts will become an ally of those seeking to protect the unsuspecting widows, orphans and AFL-CIO members from any easily discernable unscrupulous advertising and solicitation.

But the real trade-off for these changes is substantial job creation and easier capital formation for small and expanding enterprises at a time when both Houses of Congress and the President rightfully elected to accept that trade-off. In doing so they took bold steps to help combat a devastatingly floundering economy by supporting the backbone of the start-up and emerging business sector. These bold initiatives are being thwarted by costly regulatory inaction. Let the legacy of your tenure not be one of costly stonewalling and obstructionism, but needed reform and job creation by promptly calling for an immediate vote of the Commission to finalize this matter. Ironically this failure to timely act represents a loud symbol from the most organized, fairest and respected enforcement agency in the government, demonstrating a paradoxical disregard for abiding by the very laws it is charged with enforcing.

Respectfully Submitted,

Ross M. Horwitz

RMH:mw

cc: The Honorable Patrick McHenry, Chairman Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs

The Honorable Elisse B. Walter, Commissioner
U.S. Securities and Exchange Commission

The Honorable Luis A. Aguilar, Commissioner
U.S. Securities and Exchange Commission

The Honorable Troy A. Paredes, Commissioner
U.S. Securities and Exchange Commission

The Honorable Daniel M. Gallagher, Commissioner
U.S. Securities and Exchange Commission