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September 25, 2019

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission
Division of Corporate Finance, Office of Financial Services
100 F Street, NE
Washington, DC 20549

Re: Concept Release on Harmonization of Securities Offering, File No. S7-08-19

Ladies and Gentlemen:

AngelList Advisors, LLC and its affiliates (collectively, "**AngelList**" or "**we**") are pleased to respond to the US Securities and Exchange Commission's (the "**Commission**") Concept Release on the Harmonization of Securities Offering Exemptions, Release Nos. 33-10649; 34-86129; IA-5256; File No. S7-08-19 (the "**Release**"), which addressed possible improvements to simplify, harmonize, and improve the exempt offering framework and related regulations.

About AngelList

AngelList operates an online platform for venture investing. AngelList advised funds have invested over $1 billion into approximately 3,895 startups. More than 250 angels and VCs funded equity investments into more than 1,100 startups through AngelList in 2018 alone. We estimate that AngelList managed funds participate in approximately 28% of top-tier U.S. VC deals.[1]

Many investments on the AngelList platform are structured as single-investment funds that invest in startups, as described in the no-action letter granted to us by the Commission staff ("**Staff**") on March 23, 2013. Increasingly, emerging managers are raising and managing pooled venture capital funds on the AngelList platform as well. AngelList also manages larger private funds that invest in a broadly-diversified pool of investment opportunities on the AngelList platform.

[1] The percentage of top-tier U.S. VC deals in AngelList advised funds' portfolios is based on third-party reports of top-tier VC firms' early-stage U.S. investing activity, as of January 15, 2019. While we believe these reports to be reliable, we have not independently verified their accuracy. "Top-tier U.S. VC" is defined by AngelList based on our internal assessment of funds' industry reputations.

Key Recommendations

Based on our experience managing the AngelList platform, we have a unique perspective on the private markets. We see how the Securities Act of 1933 (the "**Securities Act**") and related rules and regulations are and are not effective in balancing the needs of investor protection and capital formation on a daily basis.

We believe that the current private offering regulatory regime works reasonably well, and as a result, that the Commission should substantially preserve the existing exempt offering framework. The continued existence of a simple, self-executing safe harbor available for offerings to accredited investors under Rule 506 of Regulation D under the Securities Act is, in our view, essential for the effective functioning of private capital markets.

However, we believe that improvements could be made to the existing regulatory framework to reflect trends and developments shaping the venture capital ecosystem, which we outline below. We have focused our response to the Release on those questions that we believe are of particular importance to the venture capital fund managers, investors, and startups that utilize the AngelList platform. Specifically, we will address:

A. Improving stage-appropriate private market liquidity for accredited investors;
B. Expanding access to diversified funds investing in startups; and
C. Additional changes to Simplify the Regulation of Startup Investing.

In addition, we are supportive of the positions advanced by the Angel Capital Association in its response to the Release with respect to the accredited investor definition and Rule 506 of Regulation D. We also refer to the letters submitted by our sister companies OpenDeal Inc. (dba Republic), relating to aspects of the Release aimed at responsibly increasing access to capital for emerging private companies through crowdfunding-related exemptions, and CoinList Services, LLC (dba CoinList), relating to aspects of the Release affecting issuers and investors in digital assets and related securities.

Observations on Trends Shaping Venture Capital

We have observed the following key developments shaping the venture capital ecosystem:

- **Startups are Staying-Private Longer**: High-growth startups are staying private longer for a variety of well-documented reasons. [2] This has resulted in less IPO activity and fewer companies willing to assume the perceived risks and uncertainties of the public markets and the burdens of ongoing reporting obligations under the Securities Exchange Act of 1934 (the "**Exchange Act**").

[2] See, e.g., Testimony of Scott Kupor, CEO & Managing Partner, Andreessen Horowitz, Securities and Exchange Commission, Investor Advisory Committee, June 22, 2017, available at: https://www.sec.gov/spotlight/investor-advisory-committee-2012/kupor-sec-testimony.pdf; and McKinsey&Company, Grow fast or die slow: Why unicorns are staying private (Feb. 13, 2017) (May 2016), available at http://www.mckinsey.com/industries/high-tech/our-insights/grow-fast-or-die-slow-why-unicorns-are-staying-private.

- **Increasing Importance of Stage-Appropriate Liquidity**: As startups choose to stay private longer, early investors are required to hold their investments for increasingly long periods. This locks up available investment capital, which could otherwise be liquidated and reinvested. Incremental capital is also often more expensive or not available for issuers that are not able to provide investors with liquidity opportunities.[3] Ensuring that lengthening time to liquidity does not deter early-stage startup investment is critical as increases in aggregate investment in startups lead to additional job creation.[4] Accordingly, we believe that stage-appropriate liquidity for accredited investors in startups that are not yet ready to undertake an IPO and Exchange Act reporting can be an essential driver of early-stage capital formation overall.

- **Growing Need for Diversified Funds Investing in Startups**: Due to the decreasing number of IPOs, fewer investors have access to investment opportunities in high-growth startups. We observe on the AngelList platform that the longer high-growth startups remain private, the more the high returns from a small set of these companies are disproportionately responsible for overall returns across the platform. This makes diversification particularly important for the startup equity asset class. Accordingly, we believe that investors would benefit from increased access to diversified startup investment opportunities through pooled investment vehicles, while preserving important investor protections.

A. Improving Stage-Appropriate Private Market Liquidity for Accredited Investors

Venture capital and angel financings are mostly illiquid, long-term equity investments. Companies choosing to stay private longer exacerbates the impacts of this illiquidity. The average time from founding to IPO for a U.S. technology company has more than doubled, from four years in 1999 to 11 years in 2014.[5] As fewer companies choose to go public during their rapid growth phases, we observe that investors are becoming more heavily dependent on the private secondary markets for liquidity. Unfortunately, these markets are relatively illiquid, opaque, and involve high transaction costs due, in part, to regulatory complexity, risk, and uncertainties.

Clear and straightforward regulation is needed to promote stage-appropriate liquidity for accredited investors in private companies that are not yet ready to undertake an IPO and Exchange Act reporting obligations, while maintaining appropriate investor protections. Private secondary market liquidity could be a critical driver of capital for new startups, which are the primary engines for both job creation and expanding the pipeline for IPOs in the U.S. We believe that regulatory updates that promote transparent and efficient liquidity for early-stage accredited investors would drive startup growth by:

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[3] See, e.g., Final Report of the SEC Advisory Committee on Small and Emerging Companies (September 2017), available at https://www.sec.gov/info/smallbus/acsec/acsec-final-report-2017-09.pdf.

[4] See *Synergizing Ventures*, Akcigit, Ufuk and Dinlersoz, Emin and Greenwood, Jeremy and Penciakova, Veronika, (August 14, 2019), University of Chicago, Becker Friedman Institute for Economics Working Paper No. 2019-115, available at: https://ssrn.com/abstract=3454585.

[5] McKinsey&Company (Feb. 13, 2017) (May 2016), *Supra.*

- Encouraging startup capital formation by decreasing investor risk through the improved ability to sell private shares quickly, at reasonable prices, and with low transaction costs.[6]

- Allowing seed and pre-seed investors who specialize in supporting early-stage startups to reinvest capital from successful investments into new businesses more quickly.[7]

- Bringing secondary transactions onto open and transparent platforms with clear and efficient regulation so markets can be monitored to simultaneous reduce fraud and facilitate the legitimate benefits of liquidity for the early-stage financing environment.

As a result, we recommend that the Commission enhance stage-appropriate liquidity limited to accredited investors in the private market through the following steps.

1. **Adopt a safe harbor exemption for limited private resales to accredited investors**

Current Regulation

Investors most frequently rely on Rule 144 or the so-called "Section 4(a)(1-1/2)" exemption for secondary transactions in private securities. Unfortunately, we believe that complexity and uncertainty regarding the application and availability of these exemptions create additional transaction costs, discourage the formation of transparent and liquid markets, and increase discounts at which secondary buyers are willing to purchase shares.

While Rule 144 provides a safe harbor from the definition of an underwriter for purposes of Section 4(a)(1) of the Securities Act, it imposes substantial restrictions when used by insiders and affiliates that make its availability for particular transactions uncertain. This uncertainty can be present in the context of startup investments, where investors often serve as advisers, have investor rights, or are actively involved with the startup's management team. In many cases, an investor may not be able to determine with certainty whether she is an affiliate. Also, Rule 144 securities are not "covered securities" for purposes of federal law and, therefore, do not preempt state blue-sky laws. This requires expensive and time-consuming legal analysis for each transaction. The legal and diligence costs often required to rely on Rule 144 can render the use of this rule impractical, especially for smaller investors.

Likewise, we believe that Section 4(a)(7) is of limited use in the context of resales of securities in private startups for several reasons:

- **Impractical Disclosure Requirements**: The Section 4(a)(7) exemption is conditioned on the availability of often-impractical financial disclosures (such as GAAP-compliant

[6] See., e.g., How to Reform Equity Market Structure: Eliminate "Reg NMS" and Build Venture Exchanges, Daniel Gallagher, Former SEC Commissioner (February 23, 2017), available at: https://www.heritage.org/article/how-reform-equity-market-structure-eliminate-reg-nms-and-build-venture-exchanges.

[7] By way of example, we observed that investors who received liquidating distributions from an AngelList syndicate that exited its portfolio position in May 2018 invested approximately 48% more capital in new investments on the AngelList platform in the twelve months following the distribution compared to the twelve months preceding the distribution. Over the same periods, the average investment size on the AngelList platform was generally unchanged.

financials). In many cases, startups are unwilling or unable to devote the substantial resources necessary to create the required disclosures. Moreover, even if an investor has access to the relevant financial information, they are often restricted by contractual confidentiality obligations from disclosing that information to prospective buyers.

- **General Solicitation**: Section 4(a)(7) prohibits the use of general solicitation, which can make it difficult for the selling security-holder to find a purchaser willing to invest in a private company, particularly outside of established tech hubs.

- **Issuer Concerns**: Startup investment agreements often require that an investor receive consent or waiver from the issuer before consummating a secondary sale. Without the approval of the issuer, it is even more challenging to access the disclosure information required under Section 4(a)(7). We believe that issuers are often unwilling to provide consent to transfers and the disclosure of financial information, even when available, due to concerns that they may take on significant potential liability to the secondary buyer in the event the shares subsequently lose value. Additionally, startups can be reluctant to approve secondary sales due to concerns that further resales could increase shareholder counts beyond the threshold set forth in Section 12(g) of the Exchange Act. Likewise, the approval of secondary sales around the time an issuer is conducting a new primary offering can create a risk that the resales and primary sales may be integrated and requires additional legal analysis.

- **Legal Uncertainties**: There is considerable uncertainty regarding whether investors can (as many do) rely on "Section 4(a)(1-½)." While Section 4(a)(7) was intended to codify this shadow rule, we believe it has not been widely relied upon for the reasons set forth above. Following the adoption of Section 4(a)(7), however, it is unclear the extent to which "Section 4(a)(1-½)" remains a viable option, adding to the legal uncertainties regarding private secondary transactions.

Proposed Updates

To address these issues, we recommend the Commission adopt rules to harmonize the issuer exemption under Rule 506 of Regulation D with the resale exemption under Section 4(a)(7) by creating a simple, self-executing safe harbor under Section 4(a)(7) for limited sales to accredited investors of securities in private companies that are not yet ready to undertake an IPO and Exchange Act reporting obligations (a "**Qualifying Private Sale**"). This safe harbor would have the following characteristics:

- **Available only for sales to accredited investors**: A Qualifying Private Sale could only be made to accredited investors, as defined in Rule 501(a) under Regulation D. This would ensure that Qualifying Private Sales are not available more broadly than would be the case in primary sales under Rule 506 of Regulation D.

- **Available only for securities issued by private issuers**: A Qualifying Private Sale would only be available for securities of issuers that are not subject to Section 13 or 15(d) of the Exchange Act and that would not be either exempt from reporting pursuant to Rule 12g3–2(b) or a foreign government (as defined in Rule 405 under the Securities Act) eligible to register securities under Schedule B.

- **Available only below a limited transaction size**: Neither the seller, nor any person acting on the seller's behalf, could sell, together with all sales of securities of the same class sold for the account of such person within the preceding three months, more than a specified aggregate amount of the class of security being sold by such seller under the Qualifying Private Sale safe harbor. We do not believe any limitation on float, market capitalization, or other aggregate metrics of resales by all investors would be practicable because determining compliance with such requirements would require current non-public information from the issuer or other parties.

- **General solicitation permitted**: Sellers in a Qualifying Private Sale would be able to use general solicitation, provided they take or cause to be taken "reasonable steps to verify" the buyer's accredited investor status as currently required by Rule 506(c) of Regulation D. We believe this would materially help investors find buyers for their shares when seeking liquidity, especially outside of tech hubs.

- **No affirmative disclosure requirements**: Sellers in a Qualifying Private Sale would not be subject to the Information Requirements of Section 4(a)(7)(d)(3). This is consistent with both current market practice under Section 4(a)(1-½) and the conditions for primary sales to accredited investors under Rule 506. This exception would allow investors who do not have access to or the right to share the requisite information otherwise required under Section 4(a)(7) to participate in a Qualifying Private Sale.

- **Clarification of outstanding class requirement**: The Commission would clarify that Section 4(a)(7)(d)(8) applies to the first issuance of any security in the class involved in the transaction and not the particular security being sold. We believe this would address a point of uncertainty regarding the availability of Section 4(a)(7) and, thereby, avoid the need for transactional diligence or uncertainty regarding individual holding periods.

- **Section 12(g) of the Exchange Act**: Issuers would be permitted to count any holders that acquire shares, directly or indirectly, from a single seller in a Qualifying Private Sale as a single beneficial owner. This provision would be intended to address issuer concerns that subsequent resales could jeopardize an issuer's exemption from Exchange Act registration. We believe this change would help improve issuers' willingness to consent to secondary transfers.

- **Private securities litigation safe harbor**: Shareholders who acquired shares through a Qualifying Private Sale would not have a private right of action against the issuer under Section 10(b) and Rule 10b-5 of the Exchange Act. This provision would be intended to alleviate issuer concerns regarding potential liability to secondary buyers, which would help improve issuers' willingness to consent to secondary transfers.

- **Integration**: Qualifying Private Sales would not be integrated with primary offerings or sales by the same issuer under Regulation D. We believe the certainty provided by this provision would help improve issuers' willingness to consent to secondary transfers.

- **Expand broker-dealer registration exemption for Section 4(c) platforms**: The safe harbor in Section 4(c)(1) of the Securities Act should be extended to allow operators of platforms that otherwise comply with the terms of that section to also manage Qualifying Private Sales without registering as a broker or a dealer.[8] This would be a logical expansion of Section 4(c) because the shares being sold would predominantly have been issued in Rule 506 offerings that would have qualified under Section 4(c), and the purchasers would still be limited to accredited investors as is the case under Rule 506. We believe this would be a key step to developing liquidity and transparency in the private resale market.

- **Covered securities**: Because the Qualifying Private Sale safe harbor would be implemented under Section 4(a)(7), we anticipate that shares sold in Qualifying Private Sales would fall within the existing definition of "covered securities" under the National Securities Markets Improvement Act of 1996. This would obviate the cost and uncertainty of ensuring the availability of substantive state-by-state blue-sky exemptions, without the need for further rulemaking or legislative action.

By reducing the barriers to the widespread utilization of the Section 4(a)(7) exemption for secondary transactions among accredited investors, we believe the Qualifying Private Sale safe harbor would reduce transaction costs, encourage the formation of liquid markets, and improve pricing for secondary transactions. It would also bring many secondary transactions onto open and transparent platforms, with clear and efficient regulation and oversight. These developments would encourage capital formation in a manner consistent with existing investor protections by reducing the illiquidity risk of startup investments and allowing investors to more quickly reinvest proceeds from successful investments.

2. Flexibility for Venture Capital Fund Advisers to Provide Liquidity

As secondary liquidity opportunities improve, investors in venture capital funds would benefit if such funds were able to offer redemption rights in connection with a fund's sale of portfolio securities.

Current Regulation

Historically, returns are generally realized by early-stage venture capital funds in the latter half of the fund's term. This posed little issue when portfolio companies exited in four years and average fund lives were seven to ten years. Today, however, venture capital fund managers are seeking alternative paths to liquidity as companies take longer to exit and fund lives extend.

[8] See Section 15(a)(2) of the Exchange Act (providing for the Commission's authority to, by rule or order, provide exemption from broker and dealer registration requirements).

Unfortunately, existing regulations limit venture capital fund managers' ability to offer funds with redemption rights that would give investors flexibility on the timing of their liquidity (and, therefore, lower risk). If a fund sells securities of a private portfolio company in a secondary transaction, the fund typically distributes the proceeds of the sale pro rata to its limited partners. This effectively forces all limited partners to select the same liquidity timing for that portfolio investment. If venture capital fund managers could offer redemption rights to their funds' investors, however, managers would be able to use the proceeds of liquidity events to redeem electing investors. This would allow venture capital fund investors to elect whether, and to what extent, to participate in the sale of a portfolio security at each investor's discretion. We believe this flexibility would become increasingly important to venture capital fund investors as the time to traditional IPOs extends and the opportunity for secondary liquidity in the interim improves. This issue is particularly acute in the context of single-security venture capital funds used by investment syndicates such as those offered on the AngelList platform. Some syndicate investors may desire liquidity, while others would prefer that the fund continue to hold their proportionate share of the underlying portfolio securities. Fund managers cannot easily accommodate those investor preferences under existing rules.

Regulations promulgated under the Investment Advisers Act of 1940 (the "**Advisers Act**") limit venture capital fund advisers' ability to offer redemption rights to investors without potentially subjecting themselves to registration requirements as investment advisers[9] and, correspondingly, without the fund potentially losing the exception from the registration requirements of the Investment Company Act of 1940 (the "**1940 Act**") under Section 3(c)(1) as a result of no longer being a "qualifying venture capital fund" as defined in Section 3(c)(1)(C) if the fund had admitted more than 100 (but fewer than 250) limited partners.

Proposed Updates

To address these issues, we recommend that the Commission amend Rule 203(l)-1 to allow venture capital funds to offer limited redemption rights that would complement the enhanced ability of accredited investors, including funds, to sell shares in Qualifying Private Sales. Funds with these liquidity provisions should also still meet the definition of a "venture capital fund" for purposes of Section 3(c)(1) of the 1940 Act so that they can continue to rely on that provision for an exception from 1940 Act registration.

B. Expanding Access to Diversified Funds Investing in Startups

As high-growth startups stay private longer, we believe that increasing the availability of diversified funds to invest in startups is also critical to support both capital formation and investor protection.

Private startup investments may present an appropriate alternative to publicly available equity investment opportunities for some investors. Investments on the AngelList platform overall have resulted in a 15.6% rate of return, compared with a return of approximately 15.3% in the

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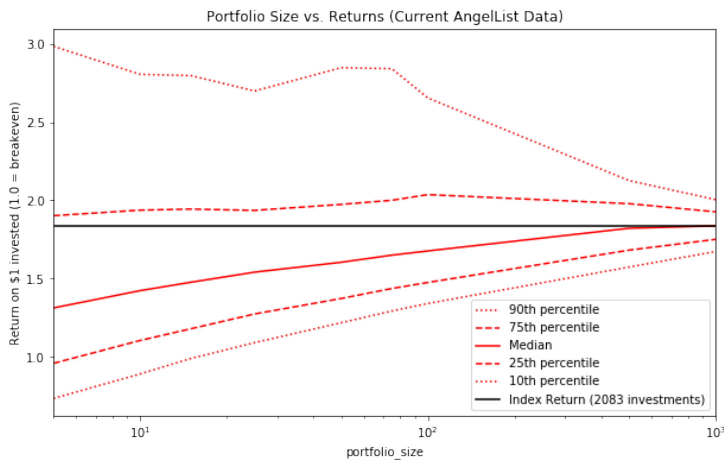
[9] This is because Rule 203(l)-1(a)(4) defines a venture capital fund as a private fund that, among other things, "[o]nly issues securities the terms of which do not provide a holder with any right, except in extraordinary circumstances, to withdraw, redeem or require the repurchase of such securities...."

NASDAQ Composite Index over the same period.[10] Unlike the NASDAQ Composite Index, no index fund or similarly diversified product is broadly available to provide investor access to the startup equity asset class.

Significantly, the performance of investments made by funds on the AngelList platform appears to strongly indicate that larger, diversified portfolios of startups are likely to outperform smaller, more concentrated portfolios. An analysis of AngelList data suggests that as the number of investments in startups held in a portfolio increases, median returns (or the returns experienced by a typical investor) also increase:



In other words, median returns from startup investments increase with portfolio size, based on AngelList data.[11]

We believe this is because AngelList data suggests that the internal rates of return ("**IRRs**") of individual early-stage investments are drawn from a heavy-tailed power-law distribution. That is to say, a small number of highly successful investments account for a substantial portion of returns for the overall market. This means the multiplicative effects of compounding returns and the trend of companies staying private longer have a profound, exponential impact on the return multiple (MOIC/TVPI) of the best-performing early-stage venture investments. Based on a simulated model of the joint relationship between IRRs and investment duration, AngelList data suggests that after approximately eight years, a positive seed-stage investment begins to draw its return multiple from a power law distribution with unbounded mean (which is infinite in theory, but manifests itself in investments with increasingly large returns in practice). [12]

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[10] Past performance is not indicative of future results. AngelList platform returns are calculated net of fees, expenses and carried interest, as of September 1, 2019, and are partially or fully unrealized. Nasdaq returns are calculated from January 1, 2013 through September 1, 2019. AngelList platform returns calculations are not audited.
[11] See, What AngelList Data Says About Power-Law Returns In Venture Capital, Abe Othman, Ph.D., Head of Data Science, AngelList (June 19, 2019), available at: https://angel.co/blog/what-angellist-data-says-about-power-law-returns-in-venture-capital.
[12] The simulated portfolio returns shown and discussed above do not represent the actual composition and performance of any current or future AngelList fund. These simulated portfolio returns have inherent limitations. They do not reflect the impact that material economic and market factors had or might have had if actual investments had been made. Returns achievable by actual funds may also differ from simulated portfolios due to differences in the timing and prices of investments and the identity and weightings of securities holdings. Data

This result suggests that an increasing share of returns from startup investing will be concentrated in the (currently private) progression of late-stage "unicorns" from their earliest investment rounds. We believe that, on average, investors who are not able to obtain exposure to these investments before IPO will miss a large share of overall returns available from technology startups. In our opinion, this shows the need for broader investor access to diversified funds investing in startups.

It is difficult for most investors to construct a well-diversified portfolio that is more likely to contain such high-growth private companies. Most investors have difficulty accessing, evaluating, and executing investments in a sufficient number of startups in the private markets to obtain the same benefits as well-diversified pooled investment vehicles. Also, investing through a diversified fund managed by an investment committee can potentially mitigate the risk of adverse selection. Accordingly, we recommend improving the regulations that currently make it difficult to offer and manage broadly accessible pooled investment vehicles.

In this light, we propose the following regulatory updates:

1. **Ease the Regulations Applicable to Business Development Companies that Limit their Ability to Invest in Private Funds**

Business Development Companies ("**BDCs**") offer investors access to pooled investment vehicles with a relatively high degree of liquidity.

Current Regulation

Under the Commission's current rules, BDCs are generally limited in their ability to invest in pooled investment vehicles that are not required to register under the 1940 Act in reliance on Section 3(c)(1) or Section 3(c)(7) ("**Private Funds**"). Private Funds are not "eligible portfolio companies."[13] We understand the Staff's current position to be that funds that invest more than 15% of their assets in Private Funds may only offer and sell their securities to accredited investors. The administrative and reporting thresholds that would result from direct investments or even investments through syndicate special purpose vehicles make the BDC structure generally impractical under current regulations, making it important for BDCs to have the flexibility to invest in venture capital through Private Funds.

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concerning returns from simulated portfolios also do not consider tax impacts, fee waivers, and other factors that would cause actual returns to investors to differ materially from the simulated portfolio returns. While this letter presents the simulated performance of diversification based on the specified historic AngelList deals, these distributions and probabilities may not be the same during any other period. Some institutional and professional investors on the AngelList platform also have superior access to deals and information from AngelList and leads. The simulated portfolio analysis in this article may include returns from investments in funds that were only available to these institutional and professional investors, which may cause the simulated returns to differ materially from returns achievable by other investors on the AngelList platform. Moreover, market returns based on AngelList data may not be representative of the broader market of early-stage technology startups generally due to a number of factors, including the potential for selection bias in investment opportunities available to AngelList funds and the size and frequency of such investments accessible to a given investor.

[13] Section 55(a) of the 1940 Act limits a BDC's investment in non-eligible portfolio companies to no more than 30% of the BDC's total assets.

Proposed Updates

To address these issues, we suggest the Commission adopt rules providing that BDCs may invest in certain Private Funds, without limit. Specifically, we believe that the definition of "eligible portfolio company" in Rule 2a-46 should be amended to include Private Funds, provided that the Private Fund constitutes a "venture capital fund" under Rule 203-l of the Advisers Act and has aggregate capital commitments of not more than $10 million (a "**Qualifying Venture Fund**").[14]

We also propose that the Commission allow BDCs that invest more than 15% of their assets in Qualifying Venture Funds to offer and sell their securities to non-accredited investors

2. **Ease the Restrictions Applicable to Interval Funds that Limit their Ability to Invest in High-Growth Startups**

We believe that interval funds should be afforded more flexibility to make investing in high-growth startups practicable.

Current Regulation

Rule 23c-3 currently requires that an interval fund offer to repurchase shares in the fund at intervals of three, six, or twelve months. These set intervals for redemptions are not practical for venture investments. In general, returns for venture investments are realized only in the latter half of the term and, at that, sporadically. Further, we understand that interval funds are also subject to the Staff's position that funds that invest more than 15% of their assets in Private Funds may only offer and sell their securities to accredited investors, which limits their ability to invest in venture capital funds.

While tender offer funds would provide more flexibility with respect to the timing and size of repurchases under Section 23(c)(2) of the 1940 Act, the cost of complying with the tender offer rules under the Exchange Act, including Rule 13e-4, makes these funds unattractive relative to interval funds for the reasons cited by the Commission in footnote 543 of the Release. In particular, funds formed to invest in diversified pools of startups would necessarily have relatively small positions in each portfolio company. As a result, the size of distributions would likely be smaller relative to the cost of comply with the disclosure and manner of offer requirements under the Commission's tender offer rules.

Proposed Updates

To address these issues, we propose the Commission adopt rules to allow opportunistic repurchase intervals for funds that invest primarily in startups and Qualifying Venture Funds. Specifically, there should be no requirement for repurchases at particular intervals. Instead,

[14] We believe that it would be also advisable for corresponding statutory changes to be made to Sections 3(c)(1) and 3(c)(7) of the 1940 Act to provided that beneficial ownership by a BDC of the Private Fund shall be deemed to be the BDC only, notwithstanding the ownership of 10% of more of the issuer's voting securities, and Section 12(d) should be amended to ease applicable restrictions on funds of funds.

these repurchases should be periodic and discretionary, when and as proceeds from exits are liquid and distributable.[15]

As with BDCs, we also propose that the Commission allow interval funds that invest more than 15% of their assets in Qualifying Venture Funds to offer and sell their securities to non-accredited investors.

C. Additional Changes to Simplify the Regulation of Startup Investing

The Commission could make other changes to promote capital formation for startup companies and advance investor interests, which we discuss below.

Importantly, we believe the Commission should substantially preserve the existing accredited investor regime for startup investments as it considers potential changes to the composition of people and entities falling under the current accredited investor definition in Rule 501(a) of Regulation D.

We also believe it is essential to maintain a relatively simple, self-executing safe harbor available for offerings to accredited investors under Rule 506. Specifically, we strongly discourage any requirement to preemptively file a Form D before commencing an offering, which would make Rule 506 unworkable.

Any narrowing of the pool of available capital for high-growth startup companies or added complexity in effecting issuances in these offerings would jeopardize these markets unnecessarily.

1. Accredited Investor Definition

We believe it would not be advisable for the Commission to remove any class of persons currently included in the definition in Rule 501(a) or implement indexing for financial thresholds in the definition.

We find this proposal problematic for several reasons, including that it would: (i) narrow the pool of available capital; (ii) add complexity to the calculation of accredited investor status; and (iii) introduce uncertainty with respect to pre-existing investors' ability to participate in follow-on investments, all without meaningfully improving investor protections.

If the quantitative accredited investor thresholds are increased for inflation going forward, we would urge the Commission to adopt other means by which investors who no longer meet the thresholds may still qualify via their experience or sophistication. We refer to the response to the Release submitted by the Angel Capital Association for a thoughtful proposal in this regard.

[15] Subject to appropriate corresponding modifications to Rule 102(b)(2)(i) of Regulation M.

2. **Amend Rule 506(b) to Remove Restrictions Related to Investments by Non-Accredited Investors**

Rule 506(b) of Regulation D, which allows investments by up to 35 non-accredited investors, is currently rarely utilized due to the risk and uncertainty of complying with the financial disclosure requirements applicable to such sales to non-accredited investors. We believe that it would be in the best interest of startups and investors to ease the burden of relying on Rule 506(b) to offer securities to a small number of non-accredited investors in certain limited circumstances.

To address this, we suggest the Commission consider amending Rule 506(b) to waive the additional disclosure requirements otherwise applicable to non-accredited investors when their investment represents only a small portion of the offering. We have observed on our platform that when investors invest along-side sophisticated, active lead investors, they can benefit from the lead investors' diligence to make informed investment decisions and protect against fraud.

Accordingly, we propose waiving the information requirements under Rule 506(b) when non-accredited investors:

(i) individually invest less than a specified amount in the offering; and
(ii) in the aggregate invest less than a specified percentage of the total amount raised in the offering.[16]

These investment limits would require that accredited investors continue to take the bulk of the investment risk (and, presumably, take the lead on evaluating an investment) and ensure that non-accredited investors do not risk substantial amounts of their own capital above what would be permissible under other exemptions, such as Regulation CF.

Such a change would provide issuers with greater flexibility as well as provide additional access to startup investments for main-street investors, while maintaining appropriate investor protections.[17]

3. **Clarify what Constitute "Reasonable Steps to Verify" Accredited Investor Status for a Private Fund Relying on Rule 501(a)(8)**

We work with a substantial number of smaller Private Funds that meet the definition of "accredited investor" only under Rule 501(a)(8) because each equity investor meets the definition of an accredited investor. In these circumstances, we have observed conflicting interpretations and uncertainty amongst issuers' counsel concerning what constitutes "reasonable steps to verify" that the Private Fund is an accredited investor.

We suggest that the Staff issue guidance that reasonable steps to verify accredited investor status in these contexts includes reliance on the Private Fund advisor's representations.

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[16] To promote regulatory harmony in the Commission's rules, we propose that the individual maximum investment limits could be the same as those provided for in Regulation CF.
[17] In this respect, we agree with the concepts expressed by Chairman Clayton. See Walter J. Clayton, Chairman, Securities and Exchange Commission, Remarks on Capital Formation at the Nashville 36/86 Entrepreneurship Festival (Aug. 29, 2018), available at https://www.sec.gov/news/speech/speech-clayton-082918.

4. Amend Rule 503 to Provide for Private Filing of Forms D

We understand that substantial numbers of issuers forgo filing Form Ds, as required by Rule 503 of Regulation D. Presumably, this is because issuers have strong incentives not to file and instead rely on the statutory exemption of Section 4(a)(2). One such incentive is ensuring that competitors do not know the details of an issuer's fundraising and financing terms. This concern has become more acute in recent years with the proliferation of bots that crawl EDGAR for filing updates and cross-reference them to startup databases.

AngelList believes that the Commission should consider revising Rule 503 to allow issuers to file Forms D confidentially. Such filings would presumably remain accessible to state securities regulators, potentially through a linkage with the North American Securities Administrators Association's Electronic Filing Depository.

By removing incentives for "stealth" offerings, the Commission would have a better ability to differentiate between legitimate exempt private offerings and illegal unregistered offerings and to collect data that would advance compliance monitoring.

* * *

We appreciate the opportunity to submit, and the Commission's consideration of, our comments on the Release. We would be pleased to discuss our comments with you or provide any additional information you would find useful. If you have any questions regarding this letter, please do not hesitate to contact Erik Syvertsen at [redacted] or Robert H. Rosenblum of Wilson Sonsini Goodrich & Rosati at [redacted].

Very truly yours,

Erik Syvertsen

Erik Syvertsen
General Counsel
AngelList

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