

ES150591

# WILLIAMS MULLEN

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September 16, 2013



Mary Jo White, Chairman  
United States Securities and Exchange  
Commission 100 F Street, NE  
Washington, DC 20549

Dear Chairman White:

I write to ask the Commission to revise Rule 501 of Regulation D to afford to persons in civil unions, domestic partnerships, and similar relationships, the same right and opportunity to qualify for accredited investor status as married persons have.

As a consequence of the decision of the US Supreme Court on June 26, 2013, in *United States v. Windsor*, we understand that the meaning of the term "spouse" under Rule 501 of Regulation D now means any person with whom the potential accredited investor is married, regardless of gender or sexual orientation. Unlike other federal statutes or rules on the books that may require amendment to come into conformity with the Supreme Court's decision, Rule 501 is drafted in such a way as to make this particular change in the law self-executing.

However, persons in same-sex relationships who are not permitted to marry, including those in civil unions and domestic partnerships legally recognized by various states, are held to a more restrictive standard.

The accredited investor rule is of existential importance to the startup community. If you are not an "accredited investor," you are effectively shut out of early stage investing.

The rule affords accredited investor status to a person who has individual net worth, or joint net worth with such person's spouse, that exceeds \$1 million, excluding the value of the primary residence of such person. Similarly, the rule allows a person who is married to combine her or his income with that of a spouse, as an alternative way to meet accredited investor status. But many angel investors in same-sex relationships reside in states that don't recognize same-sex marriage.

Accordingly, we propose that the Commission add the following defined term to Rule 501 of Regulation D:

A spouse of a natural person shall mean another person, regardless of gender or sexual orientation, whose relationship with the person specified: (1) may be characterized as such person's (i) husband, (ii) wife, (iii) spouse, (iv) domestic partner, or (v) designated beneficiary

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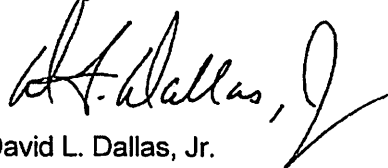
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under any applicable state law for the purpose of ensuring that each person in a two-person relationship has certain rights or financial protections based upon such designation; or (2) is that of the other party to a civil union with such person.

If one is a startup founder seeking backing from angel investors, the current accredited investor standard potentially forces you into the position of saying to an unmarried individual angel in a same-sex relationship, "I'm sorry, but unless you meet a more restrictive standard, your money is not as good as that of an angel who is married."

For the sake of justice, we respectfully urge you to adopt the clarifying rule set out above.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Dallas, Jr.", with a large, stylized flourish at the end.

David L. Dallas, Jr.