



ANGEL CAPITAL ASSOCIATION

August 20, 2012

Ms. Elizabeth M. Murphy, Secretary
US Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

Subject: Title II of JOBS Act of 2012 – Access to Capital for Job Creators

Dear Ms. Murphy:

The Angel Capital Association is pleased to submit recommendations to the Commission on rulemaking to implement Title II of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), and in particular the lifting of the ban on general solicitation or advertising in Regulation D Rule 506 offerings. Our recommendations are submitted with the idea of ensuring new rules meet Congressional intent for the JOBS Act – to broaden, not narrow, the pool of accredited angel investors to whom entrepreneurs and small businesses have access.

The Angel Capital Association (ACA) is the North American trade association of angel groups and private investors that invest in high growth, early stage ventures. ACA fuels the success of its members by providing them a combination of professional development and portfolio support services, and serving as the voice of the industry to the public and American policymakers. ACA has more than 170 member angel groups from throughout North America, representing over 8,000 accredited investors, and another 20 affiliate organizations. These members invest in about 1,000 startups and early-stage companies each year, in life science, technology, clean technology, and consumer products. Members have active portfolios of nearly 10,000 companies, and see nearly 75,000 startup company opportunities per year.

As the Commission considers rules for issuers to take reasonable steps to verify that purchasers of Rule 506 securities are accredited investors, we hope the following concepts are paramount:

- **The overall intent of the JOBS Act was to encourage more startups, which requires even more angel investment.** Angel investors are the wellspring of our economy – they and the startups they invest in are the true job creators in the United States. Angels are not Wall Street – they are Main Street. Angels invest their own money in virtually every community in the country to support high-growth, high-potential startups that transform the economy. Angel investors do this knowing that over half will fail and they will lose their money. When angels back a winner, they plow the returns back into more startups. It is important to have a regulatory system that recognizes this contribution and is consistent, as this will make a difference in the rate and amount angels invest in these high-growth companies. Angel investors are different from other and larger types of private equity funds and the Commission may want to think correspondingly about this difference in its rulemaking.

- **Do no harm: Preserve current Rule 506 standards when issuers do not generally solicit or advertise their opportunities** – We are not aware of any problems that exist for private offerings that attract organized, professional angel investment in our current system of Regulation D Rule 506 offerings. Issuers approach only those investors they reasonably believe to be accredited, based on relationships, reputations, and self-certification. ACA believes many offerings will continue to be made only to accredited investors, without any advertising or general solicitation. As the old saying goes, *“If it ain’t broke, don’t fix it.”* Adding requirements to this process creates burdens, hassles, and privacy concerns for accredited investors that would likely reduce capital availability to promising and innovative entrepreneurs. This strikes us as the exact opposite of what the JOBS Act intended.
- **Rules for offerings that do use general solicitation should minimize costs, burdens, and privacy issues for accredited investors.** Angels have many alternative uses for their cash and any action that adds unnecessary burdens to angel investing will cause many angels to make other types of investment that have less potential to create jobs and innovations. One of the overall intents of the general solicitation portion of the JOBS Act was to allow more angels to find out about deals. If the burden of completing a transaction that uses general solicitation is high, then fewer angel deals will get done. We understand that Congress called for a heightened standard of verification of accredited investor status when general solicitation is used, as there is a higher likelihood that non-accredited investors may try to get into a deal that has been advertised. That said, if rules to verify accredited investor status are too onerous, fewer accredited investors will participate, leading to fewer dollars available for promising startups. We favor prudent changes that ensure that investors are accredited, but do not impose undue burden on either the startups seeking money or the prospective angel investors. An informal poll of ACA members found that as much as many angels love investing in high-growth startups, if there are more costs, required time, hassles, or needs to provide private information to issuers, they will not make the investments.
- **Privacy is a major concern.** Angels will be exceedingly reluctant to give personal financial information to a startup. Under no circumstances should investors be required to provide tax documents or other sensitive statements to startups that by their very nature do not have controls, privacy policies, or other processes or staff in place to gather, store, and manage personally identifiable information in a secure fashion. Requiring issuers to collect and assess sensitive personal information has the potential of ensuring that almost no angel investment occurs for advertised offerings. There are other certification methods that ensure the intent of the law is met, while safeguarding the personal financial information of angel investors.
- **Issuers should have flexibility – the ability to select one method from multiple options - in verifying the accredited status of their investors (in advertised offerings) and no one course of action should be the right choice or “safe harbor.”** Flexibility would allow issuers to satisfy legislative intent for advertised offerings, while addressing a variety of experiences and situations for both issuers and investors. In addition, since general advertising will take Rule 506 into uncharted territory, the Commission should also preserve flexibility to be able to modify the verification rules or methods, depending on what early experience suggests may be prudent. Issuers that continue to restrict themselves to conducting offerings without general solicitation and advertising should not be subject to future regulatory uncertainty, however.

With those above guiding principles in mind, ACA recommends any one of the following as reasonable options for verifying accredited investor status in offerings that use general solicitation:

- Detailed Investor Suitability Questionnaire. Adding questions to the existing accredited investor questionnaire that ask if the investor has made similar high-risk, private investments or is the member of a recognized angel group could go a long way toward meeting the intent of the law. An extended but simple questionnaire like this was the most popular option for verifying accredited investor status in a recent ACA member poll.
- Minimum investment size as presumption of accreditation. Accredited investor status should be presumed when an investor has the ability and wherewithal to invest a large amount (say, \$25,000) or more in a given Rule 506 deal or with respect to a deal involving an angel group of syndicate that together invests \$100,000 or more.
- Review of investors on the Internet. Many experienced angel investors and angel groups are profiled on Web sites, articles, and other information on the Internet. Many issuers could find information about an investor to reasonably believe they are an accredited investor via a brief review. Some of this information is already in the SEC's database. For instance, a person who provides a questionnaire indicating that the person is accredited might be verified as such if for example, for three years in the previous seven years that person was a Named Executive Officer of a company which is a reporting company under the Securities Exchange Act of 1934 (other than certain smaller filers) or was the owner of more than five percent of a registered investment adviser with more than \$500 million in assets under management. Either group is more than likely accredited and the information would support the questionnaire.
- Reference checks on previous similar investments. For those investors for which information is not available on-line, investors could affirm that they have made previous Rule 506 offerings to show their ability to make such investments. Issuers could contact previous issuers from those companies to confirm the investor's involvement and/or the investment of an angel group (if the investor belongs to a formal angel investment organization).
- Certification by outside professional. While we have concerns about involved costs, another option might be a certification by the investor's attorney, certified public accountant, certified financial advisor, or similar professional. Such as certification should be simple – e.g. "I certify that this investor's annual salary is above \$200,000". The certification should be effective for one full year or at least the remaining length of the tax year in order to minimize burdens for both the investor and certifier.

The Commission could include these options as reasonable methods of verifying accredited investor status for advertised offerings as an FAQ on the SEC Web site, with issuers required to follow one of these recommended verification methods. They do not need to complete more than one method to meet the intent of the JOBS Act in advertised offerings.

The JOBS Act provides an important focus to encourage more job-creating startups for the American economy, and we believe this means they need access to even more angel capital to start and grow. The Angel Capital Association wants to ensure that rules the Commission sets do no harm to angel investment into innovative startups – make sure that the regulatory environment helps build angel investment and not reduce this critical kind of capital for our nation's startups.

We appreciate the opportunity to provide this input in writing and by meeting with Commission staff in person. If we can provide any additional information or clarification, please do not hesitate to contact the Angel Capital Association.

Regards,

A handwritten signature in black ink on a light pink rectangular background. The signature reads "Marianne Hudson" in a cursive script.

Marianne Hudson
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