

HELP ACA PRESERVE ACCREDITED ANGEL INVESTING AND MAKE SURE STARTUPS HAVE ACCESS TO CAPITAL

Dear ACA Member:

As you know, the Securities and Exchange Commission issued final Rule 506 permitting startups to use general solicitation when raising funds from accredited investors. As required under the JOBS Act, issuers under 506(c) must “take reasonable steps to verify” that all purchasers are accredited investors. The rule is effective as of 09/23/2013.

www.sec.gov/rules/final/2013/33-9415.pdf

The SEC did not define “reasonable steps to verify,” stating instead that whether the verification requirement is met would be a case-by-case, objective determination of “facts and circumstances.” However, the SEC did provide four alternative, non-exclusive “safe harbors” issuers may rely on. Under these, an angel investor would have to provide an entrepreneur (or permitted third party) detailed personal financial data on income or net worth -- including paystubs; IRS forms 1040, 1099 or W-2; bank and brokerage statements; appraisals, and/or credit reports. These materials must be current within 90 days prior to an investment.

Turning over private financial documents is a non-starter for ACA and its members. Experienced angels who are active in the startup ecosystem will not willingly turn over confidential financials just so they can invest their own money. In fact, these “safe harbors” are highly unsafe: they invade investors’ privacy, raise concerns about confidentiality, and impose costly and unworkable burdens on startups for retention of sensitive investor data.

In addition to the final rule, the Commission also proposed new rules for Regulation D and Form D, which impose tremendous burdens on startups. Under the proposed rules, issuers using 506(c) would be required to: file a Form D at least 15 days in advance of any general solicitation; electronically furnish to the SEC all general solicitation communications no later than the date of first use; and require lengthy legends on all solicitation materials. If they don’t meet these filing requirements and deadlines, they are barred from any Rule 506 offering for a year. Understandably, the entrepreneurship community widely objects to these proposals.

ACA needs your help in getting the proposed rules withdrawn, and establishing that active, accredited investor angels can continue to support startups and other small businesses, as we have done for decades. ACA is asking the SEC for guidance on this issue and offering a remedy we believe serves the SEC’s verification objectives, and will keep angel capital flowing to deserving startups.

Please see the following pages for templates and tools you can use to let the SEC, members of Congress and others know that these rules would harm small business capital formation rather than enhance it. Feel free to adapt these templates as appropriate.

Your actions are extremely important! Thank you for your support.

[Hudson, Verrill, Eckert]