September 25, 2013

VIA E-Mail: *rule-comments@sec.gov*

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

Re: *Amendments to Regulation D, Form D and Rule 156 under the Securities Act; Release Nos. 33-9416, 34-69960, and IC 30595; File No. S7-06-13*

Dear Ms. Murphy:

On July 10, 2013, the Securities and Exchange Commission (Commission) amended Rule 506 of Regulation D, Form D and Rule 144A under the Securities Act of 1933 to implement Section 201(a) of the Jumpstart Our Business Startups Act (JOBS Act). These amendments to the Commission's rules among other things enable general solicitation in private offerings under Rule 506 of Regulation D, and disqualify certain issuers and their affiliates from using Rule 506 if they have been the subject of specified "bad acts." The Commission also issued proposed amendments to Regulation D, Form D and Rule 156, to implement the rulemaking on general solicitation and general advertising (Proposed Amendments), including Rule 507 (Proposed Rule 507(b)), proposed amendments to Form D (Proposed Form D Amendments), and new Rule 510T (Proposed Rule 510T).

The National Venture Capital Association (NVCA)[1] is pleased to have the opportunity to comment on the Proposed Amendments. Venture capital plays a critical role in fulfilling the purpose for which Regulation D was designed: facilitating capital formation. In particular, venture capital funds have a history of creating high-growth companies and promoting innovation in critical areas such as information technology, life sciences and clean energy. These companies have played a disproportionately large role in creating job growth and developing the U.S. economy. These proven results of venture capital investments are a tangible manifestation of the goal of capital formation.

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[1] The National Venture Capital Association (NVCA) represents more than 400 venture capital firms, comprising over 90% of all the venture capital under management in the United States. NVCA's mission is to foster the understanding of the importance of venture capital to the vitality of the U.S. and global economies, to stimulate the flow of equity capital to emerging growth companies by representing the public policy interests of the venture capital communities at all levels of government, to maintain high professional standards, and to provide research data and professional development for its members.

Venture capital funds and the companies in which they invest (portfolio companies) have historically relied on Rule 506 of Regulation D as the primary exemption from registration under the Securities Act. We believe that the Proposed Amendments in their current form would, if implemented, unjustifiably hinder the ability of venture capital funds and their portfolio companies to rely on Rule 506 unless refinements are made prior to adoption.

The NVCA has strongly supported the JOBS Act and to date has not felt it necessary to comment on the amendments regarding general solicitation. We continue to believe that venture capital firms are unlikely to engage in broad use of general solicitation given the fact that venture capital funds draw down commitments over longer time frames which places more importance on credit worthiness and eliminates a larger group of potential investors from the general public, thereby decreasing the utility of general solicitation for venture capital funds.

We are, however, now compelled to submit these comments because we have significant concerns about the Proposed Amendments, especially with regards to the unintended consequences for the venture capital industry and the broad scope of information that the Commission is seeking to collect. Since many venture capital and growth equity firms are small, every additional regulatory and tax requirement puts significant pressure on existing firms' ability to continue operations or for new firms to be formed. This, in turn, puts at risk the opportunities for innovative companies to be funded.

Our comments focus on (i) what we believe would be an overly broad application of Proposed Rule 507(b), which would disqualify issuers, their predecessors, and affiliates from relying on Rule 506 of Regulation D following a failure to timely file a Form D; (ii) Proposed Form D Amendments which greatly expand the nature and scope of information reported; and (iii) Proposed Rule 510T, which would require that an issuer conducting an offering in reliance on Rule 506(c) submit to the Commission any written general solicitation materials.

In sum, we believe that these changes would hinder capital formation through complexity, uncertainty and cost in situations in which additional protection for investors or the financial industry is unnecessary.

Proposed Rule 507(b): Disqualification For Failure to File Form D

Proposed Rule 507(b) would disqualify a venture capital fund from relying on Rule 506 of Regulation D from raising capital in a private offering if it, any of its predecessors, or any of its affiliates, failed to timely file a Form D in a prior offering. As applied to venture capital funds, this proposed rule is overly broad, and would penalize venture capital funds for instances of non-compliance for which they bear no practical responsibility. For example, if a partner in a venture capital fund serves on the board of directors of a portfolio company, the venture capital fund may technically be considered to be an affiliate of the portfolio company, but it would lack effective day-to-day control over the portfolio company's individual filing decisions.

We believe that it would serve no policy goal to penalize a venture capital fund that has invested in a portfolio company for the failure of its portfolio company to make a timely filing. Along the same lines, many venture capital firms maintain multiple investment funds, all of which

likely would be considered to be affiliates of each other. In such circumstances, it would serve no policy goal to penalize broadly all of the funds if a single fund failed to file a Form D in a timely manner.

Most significantly, the Commission indicated that the policy to be served by Proposed Rule 507(b) is to ensure that "an issuer cannot avoid disqualification by simply conducting future offerings through a successor or other affiliated entity." [2] In the context of a venture capital fund and its portfolio companies, it would be virtually impossible to manipulate the rules to avoid disqualification in this manner. A portfolio company could not avoid disqualification by raising capital through a venture capital fund, and vice versa, because an operating company and a private fund are different types of entities with differing capital structures and different corporate purposes. Nor as a practical matter could a venture capital fund easily raise money through a separate affiliated fund, since each fund has its own unique investors, investment objectives, and assets.

We believe that the Commission's concern could be more directly addressed by a rule that covered affiliates formed solely for the purpose of avoiding disqualification, which could operate in a manner similar to Exchange Act Rule 12g5-1, and particularly its subparagraph (b)(3), which defines record holder with the proviso that a fund or company cannot circumvent Exchange Act registration by forming an entity solely to reduce the number of record holders.[3] At least in the context of venture capital funds, we urge the Commission to limit the scope of Proposed Rule 507(b) to the issuer, its predecessors, and affiliates formed solely for the purpose of avoiding disqualification.

Proposed Form D Amendments: Providing Expansive Additional Information

The Proposed Form D Amendments would require venture capital funds and their portfolio companies to provide an expansive array of additional information with regard to offerings utilizing Form D. Such additional information includes: website identification; expanded details regarding the issuer; expanded details regarding the offered securities; the types of investors participating in the offering; the use of proceeds from the offering; and for offerings under new rule 506(c), information relating to the types of general solicitation used and the methods used to verify the accredited investor status.

We believe that the Proposed Form D Amendments would significantly reduce the utility of offerings under Regulation D because of the increased costs and burdens associated with gathering, verifying, and processing this long list of additional information. Furthermore, it is unlikely that the additional information in the Proposed Form D Amendments would either further the goal of protecting investors or prevent systemic risk to the financial industry. The increased costs of the Proposed Form D Amendments in terms of risking future funding of innovation in the

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[2] See the Commission's Proposing Release at page 53, and Request for Comment number 46.

[3] See §240.12g5-1(b)(3): If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

United States would far outweigh the Commission's goal of collecting data and assisting in its rulemaking efforts. These burdens should not be placed on venture capital funds or their portfolio companies. We urge the Commission not to adopt the Proposed Form D Amendments and not to shift its burden onto those venture capital firms which can least afford its additional costs.

Proposed Rule 510T: Temporary Requirement to Submit Soliciting Materials

Proposed Rule 510T would require an issuer to submit to a Commission intake page all written soliciting materials used in offerings under new Rule 506(c). The stated purpose of Proposed Rule 510T would be to facilitate the Commission's efforts to monitor the types of soliciting materials that are being used.

We believe that this proposed requirement, similar to the Proposed Form D Amendments, would be costly and overly burdensome for venture capital firms, many of which as mentioned are small and leanly staffed. In order to comply with the requirement, venture capital firms would have to engage legal counsel to determine which communications are soliciting materials within the scope of the new requirement. While standard marketing materials would clearly be subject to the new requirement, other materials may or may not be subject to the proposed requirement. For example, it is unclear whether emails between funds and potential investors, or specific diligence materials about portfolio companies and other matters provided on an individual basis would be subject to this requirement but, if so, they would be burdensome to evaluate from a legal standpoint, compile and submit. More generally, venture capital funds would need to implement controls and procedures designed to identify, evaluate and submit all written materials in a timely manner, which would be the date of first use under the current proposals. Most venture capital firms qualify as "exempt reporting advisers" so they are not required to have such types of expensive systems, in part because Congress determined that they do not present the same risks to investors or the financial system as other investment advisers.

Further, we believe that the Commission has alternative means at its disposal to monitor market practices in connection with general solicitation activities. The Commission could monitor market practices through inspections, or voluntary information sharing by issuers or their trade associations, such as NVCA. We urge the Commission not to adopt this proposed requirement.

Conclusion

Under the Proposed Amendments we believe that Proposed Rule 507(b), the Proposed Form D Amendments and Proposed Rule 510T and are cost-prohibitive and burdensome to the venture capital industry, while being unnecessary for the protection of investors or the financial industry. We believe that in terms of a cost benefit analysis the Commission is asking venture capital firms to significantly broaden the scope and nature of information under Regulation D and such an expansion is burdensome enough that it could prove a barrier to entry for new venture capital funds and cause existing funds to consolidate or close down all together. It would be a truly unfortunate result, and directly opposed to Congressional intent as demonstrated by the JOBS Act,

if the Commission adopted rules that stifle innovation, economic growth and job creation at a time when Congress recognized the power of the venture capital industry to promote such goals.

We urge the Commission to consider our comments carefully, and we would be pleased to provide further input. Please do not hesitate to contact me, or NVCA's Senior Vice-President of Federal Policy & Political Advocacy, Jennifer Dowling, at 703-524-2549.

Sincerely yours,

Bobby Franklin
President