I appreciate the opportunity to comment on Title II of the JOBS Act. I also appreciate hearing that the Commission will likely take more than 90 days to deliver guidelines as the impact of this topic is so worthy of deliberation.

The following are edited excerpts from an online commentary I posted on May 4, 2010...

Let's not attempt to fix what's not broken with provisions that asphyxiate investment in startup ventures and subsequently stifles what has historically been the most sustainable source of new job creation during a period of hopelessly high unemployment.

I believe that there should not be further adjustments to the income and net worth requirements for a person to be considered an "accredited investor" by the SEC under the 1933 Act. If this were to occur it will materially decrease the pool of private capital that is available to finance new companies, and in turn, innovation, job creation and economic growth.

We can debate forever the wisdom behind an over-inclusive system that uses personal wealth as a proxy for investment sophistication. Yet, many others (myself included) would maintain that the accredited investor standard prevents many individuals with either adequate access to information, experience, due diligence skill, sector expertise, entrepreneurial spirit or emotional tolerance for risk, to embrace the so-evident risks associated with private venture investments.

I agree with the recent opinion expressed on this subject by digital strategist Alex Alben in the Seattle Times…"*more investors today have access to financial information and filings through electronic databases than ever before. The old notion that only wealth buys access to financial information is increasingly quaint in our digital age. The financial crisis of 2008-09 was not precipitated by millionaires losing money in private placements…the monetary amount should not be a moving target, changeable at the whim of the SEC… Both houses of Congress should pass a bill with meaningful consumer protection and bank oversight, but not harm privately funded startups in the process*."

If lawmakers are so intent on identifying the $200,000 income level as "the rich"… as those capable of taking on a greater financial burden in the form of higher taxes, shouldn't those same individuals continue to have the right of access to private equity and venture capital transactions, the asset class that has historically delivered investors the highest returns?

Rich enough to tax at higher levels should at the very least mean rich enough to invest with discretion.

I believe the accredited investor thresholds as they are applied to investments in early-stage businesses are arbitrary, under-inclusive, undemocratic, discriminatory, and unnecessarily restrict innovation, economic growth and new job creation. All individuals should be allowed to invest in new businesses. Why should a non-accredited adult son be restricted from investing in his father's restaurant? Why should a non-accredited mother be restricted from investing in her daughter's internet startup? Wealth and income are clearly not reliable indicators of sophistication or domain expertise. The current rules should exempt private investments in venture capital.

Leave the current law alone. It may not be ideal, but it certainly is not broke. Let it be.

Assuming appropriate disclosure of all of the risks entailed, any investor, regardless of their income should be eligible to invest in private ventures.

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The following are edited excerpts from an online commentary I posted on 12/10/10…

The availability of risk capital for early-stage ventures has proven itself to be remarkably resilient. It has overcome the cycles and uncertainties of our economy, as well as, the myopic tax policies perpetuated by our partisan politics. But I foresee a fresh challenge to the startup ecosystem on the horizon—and it is the direct result of bad brokers, disingenuous dealers, unprincipled promoters and iniquitous issuers.

These “bad actors” (to incite regulatory jargon) that I am referring to are the fraudsters who make confidence a career by peddling perilous product to unwitting investors of all sizes and sophistication. More often than not, they camouflage their chicanery under the cover of Regulation D.

Reg D provides for some companies to offer and sell their securities without having to register the securities with the SEC enabling access to the capital markets for small companies that could not otherwise bear the costs of SEC registration as would be otherwise mandated under the Securities Act of 1933.

Reg D is a success story that began when the SEC created the exemption in 1982 with the intent of simplifying capital-raising for small business owners to launch or expand their ventures. Subsequently, the provision has enabled literally hundreds of thousands of new ventures. Businesses ranging from neighborhood taverns in urban alleys to nascent technologies in Silicon Valley have relied upon Reg D to quickly, cheaply and efficiently secure financing.

But, private placements offered under Reg D have likewise endured a checkered history beginning with the Prudential Securites Inc. offering that devoured $1.4 billion from 100,000 investors back in the late 1980s. That was only the beginning as more recent abuses include;

- Stanford International Bank–for running a “massive Ponzi scheme” and offering phony CD’s via private placement deals totaling $2.7 billion.
- Provident Royalties, LLC—fraud and Ponzi scheme related to $485 million in oil and gas limited partnerships.
- Medical Capital Holdings Inc.—fraud accounting for an estimated $1.2 billion in investor losses from the sale of private securities in the form of notes on medical receivables.
- DBSI Inc—charged this past December with promoting a $600 million Ponzi scheme related to the sale of fraudulent tenants-in-common real estate exchange products.

Each of these private placement pilferings were conducted under the cover of Reg D in the virtual absence of gatekeeper protection or regulatory oversight. Regulators and lawmakers are rightly concerned, particularly with the private placements of limited partnerships that have been capitalized

by offerings to “accredited” individual investors through independent broker-dealers that reap commissions as high 10%.

Though initially intended to enable entrepreneurship and small business financings—the legitimate users of Reg D have been eclipsed by the scamsters. The deals have become gateways to multi-million paydays for issuers, dealers and brokers.

“Fraudsters are primordial creatures who live in their own lawless existence,” says Neal H. Levin of Freeborn & Peters in Chicago, whose practice is committed exclusively to busting fraudsters and recovering assets. “To a fraudster, it’s kill or be killed and they will use whatever tools are available to them in order to conquer. Reg D has certainly proven to be one such tool.”

Considering the responsibility of lawmakers to protect unwary investors form unscrupulous promoters and the readiness for regulators to expand their regimes—private investments that claim to be exempt from SEC registration are a torrid topic these days.

There were 11,000 Reg D deals filed in 1996, but that number has swelled to a reported 26,485 in 2009 when estimated offerings exceeded $609 billion. Regulators are ill-equipped and lacking the proper resources to evaluate the thousands of oil and gas ventures and real estate partnerships that file under Reg D each year.

“Investors have been exposed to far more risk in private placement offerings than Congress could have imagined”, according to Denise Crawford, president of the North American Securities Administrators Association, adding “Reg D offerings receive virtually no regulatory pre-screening at any level of government.” Not surprisingly, Crawford and many others have been lobbying for a rollback of the federal statues in an effort to return the pre-empted authority back into the hands of the state regulators. In turn, they hope to close the oversight gap that Ponzi scheme operators tend to gravitate towards to engage in their duplicitous dealings.

Good luck with that. Investors certainly deserve better protection from fraudsters, but whether or not our budget, brain matter and bandwidth-strapped regulators have the resources to capably clean out the commode is a topic for another column.

The Investment News Fraud Charge Tracker presently lists 60 securities and ponzi frauds which account for $9.4 billion in bilkings, most of which were executed as private placements under Reg D. Of these 60 frauds, 20 of them (one-third) resulted in investor losses which exceed $50 million, yet these larger frauds accounted for $8.9 billion (95%) of the total losses tracked

Clearly, more effective oversight is desperately needed to protect investors from the multi-million dollar private placement scams—so why not start at $50M?

My fear is that the sincere interest and obvious need to protect investors from these menacing mountebanks will give rise to regulatory overreach…that the earnest interest to reduce the oversight gaps that fraudsters freely operate in will inadvertently impair the ability of small businesses to finance their ventures. It almost occurred last year when former Senator and Banking Committee Chair Chris

Dodd's dealings nearly gutted Reg D—which would have most certainly produced the unintended baby-bathwater consequence of stymieing the startups that depend upon the provision to provide efficient access to risk capital.

There is no evidence to suggest that the typical $1-10 million startup or small business financing facilitated by Reg D is a forum for fraud. In a letter to Dodd last March, the Angel Capital Association noted "The angel investment arena has been virtually complaint-free in terms of fraud. Accredited angel investors make their own decisions to invest directly into small businesses, without securities dealers or investment advisors." That point needs to resonate with our lawmakers who tend to be notoriously nescient with respect to nuance—particularly when there are headlines to be made.

Any fund, limited partnership or series of funds that solicit investments from individual investors and subsequently collect north of $50 million from investors should be required to register as private fund advisors.

Such a requirement would reduce oversight gaps and provide regulators at the state and federal level with the transparency required to identify potential pockets of individual investor's capital at risk.

If there is a compelling case as to why limited partnerships that solicit hundreds of millions of dollars from individual investors should be exempt from oversight—I have certainly never heard it.

Leave Reg D alone with respect to early-stage ventures. Private investment is the *sine qua non* of startups and small businesses.

Regulate the issuers that make a business of aggregating capital—not the investors, who deserve access, transparency and choice.

Jeff Joseph

Entrepreneur & Investor

Evanston, Il