

Testimony to the Committee on Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs and the Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises

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The Urgent Need for Swift Implementation of the Jobs Act

Mr. Chairman, Ranking Member(s), Distinguished Members of the Committees,

Thank you for the honor of appearing before the joint committee today and for the opportunity to speak on an issue of critical importance to the future of the American economy.

I am here today as an entrepreneur and small-businessman. My remarks focus specifically on the estimated \$50 billion market for small businesses raising growth capital from accredited investors through the Regulation D 506 exemption. While these transactions account for less than 10 percent of the dollar volume for the exemption, they are instrumental to the overall performance of our economy as the primary source of capital for new, high-growth start-up businesses. Lifting the ban on general solicitation, as is mandated by Title II, will result in a direct benefit for this market – providing more access to capital for growing businesses, more information and choice for investors and, as I think we all want, more jobs for Americans.

Background

I am the founder of CircleUp, a start-up business which supports other small businesses raising growth capital from accredited investors through the Reg D 506 exemption. CircleUp is a private investment platform that focuses on businesses outside of the technology sector, providing growth capital for consumer brands and products and retail companies through a network of accredited investors. My partner and I were inspired to found CircleUp because we saw a gap in the market – namely, established, high growth businesses struggling to find affordable capital and a network of investors eager to fuel their next stage of growth. They needed a simpler, more accessible way to come together. CircleUp provides a platform to do just that.

We founded our company in October 2011 and opened to investors in April of this year. Today, we have six full time employees and hope to double that over the next six months. More importantly, we are creating jobs across the country, unlocking investment capital, and fueling the growth of the next generation of small business in America. Mr. Chairman, Members of the Committee, we believe this is the American dream and that every investor and small businessperson deserves access to it.

We saw the difficulty of the general solicitation ban first-hand when going through the capital-raising process for our own company. As entrepreneurs, we were limited to going to a select few entrenched 'Angel' investors for fundraising and were prohibited from reaching out to wider networks. We believed in our idea and knew we wanted supportive investors from a wide range of backgrounds to partner with us on our journey. However, because of the ban on general solicitation, we could not publicly advertise the investment opportunity. Together, my partner and I had thousands of business contacts that we could have informed with one simple click. Instead, the process was manual – introductions from investors we knew well, hundreds of meetings, calls, emails and follow-up questions with investor after investor, all using decades old technology.

We were fortunate, and closed our investment round in a few months, because we are entrepreneurs with deep roots in Silicon Valley and because we are a technology-driven company. For many businesses, however, especially those outside the technology industry, it often takes a year, or more, to

raise capital. As any entrepreneur can attest, the process is laborious and inefficient. More profoundly, it distracts entrepreneurs from doing what they do best – running and growing the businesses that fuel our economy, create jobs, and invent the technologies and products that allow America to continue to lead the global economy.

The Primary Role of Small Business in America

Every year, our start-up experience is repeated hundreds of thousands of times across the country. America is a country full of ideas and entrepreneurs pursuing their dreams. Over the last two decades, small and new businesses have been responsible for creating 2 out of every 3 net new jobs, and today the country's 28 million small firms employ 60 million workers, fully half of the private sector workforce.

Investment capital is the oxygen on which young businesses survive and today the investment capital market remains on a slow path to recovery. There are essentially two core options for companies to raise money: debt and equity. Small business lending, at close to \$300 billion, is the largest source of capital. Overall lending fell dramatically from 2008 to 2011, and still has not recovered to its pre-2008 levels.

More importantly, for the high-growth businesses most associated with stimulating job creation, early-stage equity capital has also not fully recovered. Venture capital and “angel” equity investments are the most important source of capital for these companies because it allows them to reinvest into their business, rather than repay debt. Investment levels today remain lower than pre-2008 levels. Like lending, the number of venture capital deals completed fell more than 10 percent between 2008 and 2011. While the “angel” market has shown some signs of recovery, the amount invested in 2011 remains more than 13 percent below 2007 levels.

Behind these broad statistics are real Americans, small businesses, and investors, currently limited by the ban on general solicitation. We see these companies every day at CircleUp. There is Kim Walls, the Founder and CEO of Episencial, a skincare company in Los Angeles. Kim founded her company in 2009 to bring baby-safe, all-natural skincare products to the market. After an extensive product development process and strong early traction from hospitals and consumer buyers, she needed to raise expansion capital. Her company has a passionate following of customers, parents, and supporters interested in helping the business grow. Yet, because of current regulations, Kim could not make even a passing mention of the opportunity to invest in Episencial to her 20,000 fans on Facebook.

Or consider Zak Normandin, a father of three who lives in Brooklyn, New York. Three years ago, dissatisfied with the unhealthy snack food options available on the market for his children, Zak created a new company to deliver organic, healthy snack foods for children. Today, Little Duck Organics is a rapidly growing small business, with sales expected to increase seven fold this year. Little Duck has hundreds of thousands of consumers across the country, many of whom are passionate about the company, but Zak has no way to inform them about a capital raise. These consumers, many of whom are investors, would surely want at least the opportunity to learn more about Zak's company and his vision for a suite of products delivering healthy, organic food to children of all ages. Yet, under current regulations, Zak's fundraising process was limited to closed door conversations with existing “angel” investors.

Mr. Chairman, our current system is one that rewards entrenched investors, an insular network of institutions and individuals that favors private investor access more than the creation and growth of new businesses, but with modern technology and this Act, this is going to change.

Why Changing the Rules Matters

Lifting the ban on general solicitation is the most important part of the JOBS Act for small businesses. The ban on general solicitation creates an inefficient market for start-ups to raise capital. By

limiting the information available to market participants, the ban imposes a cost on both companies and investors involved in each transaction. Investors must spend time developing relationships and networking to gain access to 'deal flow' they may not otherwise ever find, let alone gain access to.

This market is inefficient and investors lack choice and access. First, participation is limited. Today, less than 5 percent of accredited investors participate in the market. To be sure, "angel" investing is a high risk, potentially illiquid investment, which requires investor education and knowledge. However, given historically strong returns for the asset class, it is likely that many more Americans would participate, in at least limited ways, if given the opportunity. Especially after the performance of the public markets over the past few years.

"Angel" investing provides investors with a direct connection to the business they are funding. "Angels" often report this direct connection to helping a young company get off the ground and credit building a new business as an important motivation for their investment decision. Increasingly, there are other motivations including, social and environmental impact, community development, and even job creation. Impact investing is a rapidly growing investment class and one that will benefit tremendously once the ban on general solicitation is lifted and communities of interest can more openly develop, share, and vet investment opportunities.

Second, investing is highly concentrated by both geography and industry. The lion's share of investment goes to technology and health care start-ups and just three regions – California, New York and New England – account for approximately 50 percent of all investments. In other U.S. capital markets, capital flows to where it receives the highest returns. But not in Angel investing, because without the means of open communication, the "angel" investing market is highly fragmented and inefficient.

Sectors and geographies outside of this historical focus traditionally receive little attention. For example, consumer products spending is a full 20 percent of the American economy, yet represents only 4 percent of the "angel" investing market. These are the sectors, and companies, that will benefit the most from lifting the ban on general solicitation. To be clear: Lifting the ban on general solicitation is *not* about funding the next high tech company in Silicon Valley. Those markets exist already within decades-old, robust networks of investors and venture capitalists. This is about spurring entrepreneurship and unlocking small business growth opportunities in every corner of America—including in cities and towns that many of today's entrenched investors would not likely consider. But, like Little Duck Organics and Episencial, we know they're not uncommon at all. Today thousands of small businesses just like them are waiting to connect with investors who want to participate directly in our national recovery by backing a young company and receiving a stake in the business in return. We just need to open the doors and make it happen.

Investor Protections are Critical

Of course, investor protection is also essential. But, importantly, we can open access and protect companies and investors at the same time. As an industry participant, I strongly support SEC and FINRA oversight and regulations that protect investors while providing for a more efficient flow of capital. If fraudulent investment schemes are permitted to prey upon unsophisticated investors, we all lose.

The best protection against fraud is transparency and accountability. Transparency is a natural antiseptic to fraud. Like most illicit activity, fraud thrives in the shadows, where victims are isolated from information and choice. At CircleUp, we advocate greater transparency in the marketplace – with an open flow of information to and between investors. Importantly, when the ban on general solicitation is lifted, issuers will still be, and should be, subject to the antifraud provisions under the federal securities laws. We believe having the capital raised in public will reduce, not increase, the rate of fraud, as the public nature of the solicitations can help investor protection groups, regulators and the investors themselves detect fraudulent activity.

In addition to creating transparency, investor education is also critically important. Private placement investments are often high-risk, illiquid investments. Investors should be aware of the risks involved with making these investments and should be provided with education, guidance, and tools to help them manage these risks. We believe investment networks – both the offline “angel” groups across the country and online communities such as CircleUp – can be a valuable addition. We believe it is good business for these communities to help with investor education and thereby distinguish themselves from others in the market.

I believe the provisional rules promulgated by the SEC find the right balance for investor protections and market efficiency. I support the use of a broker dealer, or other third party verifier, to ensure investor accreditation. As intended, broker dealer involvement in a private placement transaction provides additional assurances against fraud.

Urge Swift Implementation

The SEC has put forth a workable set of rules to increase the capital available for small businesses by lifting the ban on general solicitation. The Staff has worked to balance the rules for companies like CircleUp, who are working to connect investors and small businesses across the country. When adopted, the rules will increase the amount of information available to prospective investors. The time is now to implement these rules, fulfilling the mandate enacted with broad, bipartisan support in Congress and the President’s approval.

Mr. Chairman, Ranking Members, and Members of the Committee, I want to thank you again for this opportunity to appear before you, and I would be pleased to respond to any questions that you may have.