Sydecar

June 21, 2022

The Honorable Pat Toomey
Ranking Member
Senate Banking, Housing and Urban Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Toomey:

I write this letter in support of the JOBS Act 4.0, which in large part addresses systemic issues that prevent widespread participation at the intersection of wealth creation and innovation: venture capital ("VC").

While the Jumpstart Our Business Startups (JOBS) Act of 2012 enacted a number of modifications to securities law that have increased retail participation in early-stage venture investing, it left significant areas of the venture capital landscape untouched. In the past decade, the landscape for venture investing has changed dramatically. Notably, participation in venture capital has increased substantially, but the regulatory environment that governs this channel of capital allocation has left many participants at the wayside.

The Emerging Venture Capitalist's Vantage Point

I hope to present a vantage point for your consideration: that of the early-stage venture capitalist. I feel well-prepared to do so, being an early-stage investor myself as well as the founder and CEO of Sydecar, Inc. ("Sydecar"), a platform built for this specific segment. In additional to professional investors, this group includes individuals in professional services, leaders of technology companies, and industry thought leaders, all who have access to investment opportunities in early-stage companies. It is often these individuals – the solo capitalists, angel syndicates and emerging managers (collectively, "emerging VCs") – who are the most helpful to, most interested in, and most diligent and passionate about companies that will shape our future. While emerging VCs might have the most coveted access to investment opportunities, they are not as prepared to understand and navigate the nuanced regulatory landscape created by the Securities Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

As you know, professional counsel is cost prohibitive, and it is only through counsel that many nuances of the law can be translated. For example, an emerging VC today may have an opportunity to invest in an early-stage company's offering of securities directly (e.g. "Preferred Stock"), as well as acquire an equal value of a very similar security (e.g. "Common Stock") from early employees of the same

company. If an emerging VC structures even the simplest investment vehicle to acquire these securities (a special purpose vehicle that is set up to acquire just this company's securities, and where participating investors have discretion over whether or not to deploy capital behind this investment opportunity (an "SPV")), the emerging VC may come up against restrictions set by the Investment Advisers Act and related rules. In this example, because the SPV acquired both "primary" securities from the company, and more notably, "secondary" securities from early employees, this SPV is no longer a "qualifying VC fund." This emerging VC has now set itself on a path of: (1) complying with complex and varying state rules and regulations (since the benefits of a federally qualified VC fund may not apply to this SPV across all states), and (2) potentially having to formally register as an Investment Adviser (an "RIA"), as the benefits of being an "exempt reporting adviser" may evaporate if this emerging VC is successful and the value of assets that it manages exceeds $150,000,000. While this may seem like a very high threshold, the value of an emerging company investment on paper may multiply quickly even though the realizable value of these investments may still be distant.

The above issues – whether an SPV or fund is a "qualifying VC fund" or an exempt "private fund" – would apply to any SPV or Fund with substantial exposure to anything other than a direct acquisition of equity securities from a private company. On the surface, this seems benign. In practice, this limits a number of fund (SPV) transactions that present massive opportunities for positive impact and wealth creation, including:

a. acquisitions of securities in "secondary" transactions (above example),
b. investments in venture capital funds or SPVs, and
c. investments in non-equity securities, such as private debt and blockchain-based "tokens."

How the JOBS Act 4.0 Decreases Complexity

The updates proposed in the JOBS Act 4.0 address many of the material limitations currently facing emerging VCs. The JOBS Act 4.0 proposal notably:

- Expands the definition of a "qualifying VC" investment to include secondaries and fund-of-fund investments, meaning that VCs employing these strategies can avoid having to register as an RIA.
- Allows any American to invest up to 10% of their income in private assets (as opposed to the current requirement of being an accredited investor).
- Increases the investor cap to 500 LPs for exempt private funds under $50M (as opposed to the current cap of 250 investors for a fund <$10M).
- Shifts the burden of verifying accreditation under Rule 506(c) "general solicitation" from the fund manager to the individual LPs. This would allow LPs participating in 506(c) deals to self-attest their accredited status (similar to the current 506(b) process), rather than require the GP to verify each investor's status.

Why This Matters

The updates proposed in the JOBS Acts 4.0 are timely, given recent shifts in the venture capital landscape. VC is no longer preserved for institutional GPs and LPs. At Sydecar, we believe the future of VC — and in many ways, the future of innovation — will be defined by a new generation of capital allocators, from solo-capitalists to emerging funds to individual angel investors. Regulation changes, along with proper tooling, is a necessary first step to empower private investors from a wider variety of backgrounds.

Sydecar aims to streamline venture capital transactions through the creation of new standards. As a former securities attorney, I understand that proposals such as the JOBS Act 4.0 and SEC rulemaking are instrumental in supporting the proliferation of compliant venture capital transactions. Clarity in the interpretation and application of sensible legislation enables compliance and much-needed transparency in otherwise opaque and illiquid markets. The JOBS Act 4.0 is a framework that will decrease unnecessary friction among market participants, FINRA, and the SEC, and we are excited to contribute to its adoption.

Our team is well-versed on the various rules that affect exempt offerings and fundraising by VC market participants today and is available to discuss the impact of the JOBS Act 4.0 and related legislative proposals on your constituents.

Sincerely,

Nik Talreja
CEO, Sydecar, Inc.