



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

March 28, 2013

Robert H. Rosenblum, Esq.
K&L Gates
1601 K Street, NW
Washington, DC 20006-1600

Re: AngelList LLC and AngelList Advisors LLC

Dear Mr. Rosenblum:

This is in response to your letter dated March 26, 2013, on behalf of AngelList LLC (“AngelList”).¹ Your letter seeks assurances from the staff of the Division of Trading and Markets (the “Staff”) that it will not recommend enforcement action against AngelList, AngelList Advisors LLC or any Lead Angel (as defined below) to the Securities and Exchange Commission (the “Commission”) under Section 15(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), if each of these parties engages in certain activities described below, without registering as a broker or dealer in accordance with Section 15(b) of the Exchange Act.²

Based on your letter, we understand the facts to be as follows:

AngelList Advisors LLC (“AngelList Advisors”) intends to form a limited liability company and register as an investment adviser either with the Commission or one or more states. AngelList Advisors will be a wholly-owned subsidiary of AngelList or its affiliate. AngelList Advisors proposes to establish a new angel investing platform (or part of its existing website) that will assist AngelList Advisors and accredited investors (“Investors”) in identifying companies that seek capital and in which one or more so-called “angel investors”³ intend to invest (each such company, a “Portfolio Company”). If AngelList Advisors identifies and approves of both a Portfolio Company and an angel investor (referred to hereinafter as a “Lead Angel”), then AngelList Advisors will form a separate investment vehicle (“Investment Vehicle”) for the sole purpose of investing in that Portfolio Company. You state that the Investment Vehicle will likely be structured as a limited liability company or limited partnership, and will be responsible for all organizational costs and expenses associated with its formation

¹ AngelList operates <http://angel.co> (“Website”), a website platform that permits companies seeking angel financing to meet and communicate with potential accredited investors, as defined in Rule 501 of Regulation D.

² The Staff has limited its relief to AngelList, AngelList Advisors and any Lead Angel.

³ Each angel investor is also an accredited investor.

and the investment in the Portfolio Company.⁴ You also state that AngelList Advisors will provide the initial capital required to pay such organizational costs and expenses.

AngelList Advisors will make the Investment Vehicle available to interested Investors through the AngelList Advisors platform. Each interested Investor will submit a non-binding request for information about the Portfolio Company, and will subsequently receive certain disclosure documents. If AngelList Advisors receives a sufficient amount of investment interest to proceed with the investment, AngelList Advisors will close the Investment Vehicle and collect a subscription agreement from each participating Investor. AngelList Advisors will be responsible for reviewing the completed subscription agreements and determining whether each potential Investor meets the applicable qualification criteria for the particular investment. Upon acceptance by both AngelList Advisors and the Portfolio Company of the subscription agreements, each Investor will be instructed to forward the capital contribution directly to a bank or other financial institution at which the Investment Vehicle maintains an account.

AngelList Advisors proposes to offer Investors two investment models in which to invest in an Investment Vehicle on its platform: one is called an “Angel Followed Deal” and the other is an “Angel Advised Deal.” In an Angel Followed Deal, the Lead Angel will not be required to take an active role with respect to advising the Investment Vehicle or the Portfolio Company, and may not even be aware that it is being “followed” by the other Investors. In an Angel Advised Deal, the Lead Angel will be aware that it is being followed; and will agree to take an active role in identifying the investment opportunity, leading negotiations with the Portfolio Company, and providing (or offering to provide) significant managerial assistance and financial guidance to the Portfolio Company. You represent that the Lead Angel will not provide investment advice to the Portfolio Company, AngelList Advisors or Investors, unless it is appropriately registered as an investment adviser with the Commission or a state securities authority, or is properly exempt from registration as an investment adviser.⁵

You state that AngelList Advisors will provide investment advice and administrative services to the Investment Vehicle. In particular, AngelList Advisors will determine whether to form an Investment Vehicle and seek investments in a particular Portfolio Company; determine, on behalf of the Investment Vehicle, when and on what terms to dispose of the Investment Vehicle’s investment in a Portfolio Company; exercise all voting rights with respect to a Portfolio Company; and decide on whether the Investment Vehicle should distribute cash and marketable securities to Investors and the Lead Angel (if applicable), subject to any lock-up agreements or similar restrictions. Under the Angel Advised Deals, AngelList Advisors may perform these services in consultation with the Lead Angel.

AngelList Advisors represents that it will not receive a commission or management fee as compensation for its advisory services, but will be entitled to receive compensation (*i.e.*, carried

⁴ You represent that each Investment Vehicle will be exempt from registration under the Investment Company Act of 1940 pursuant to Section 3(c)(1) or 3(c)(7) thereof.

⁵ You indicate that no Lead Angel is or will be an employee or supervised person of AngelList Advisors.

interest), as described in each Investment Vehicle's offering documents. This compensation would be equal to a portion of the increase in value, if any, of the investment as calculated at the termination of the investment in the Investment Vehicle. Under the Angel Advised Deals, the Investment Vehicle will also provide the Lead Angel with compensation based on the overall profitability of the Investment Vehicle.⁶ You also state that AngelList Advisors may, upon distribution of the Investment Vehicle's assets, be entitled to recoup any initial expenses it paid in the formation of the Investment Vehicle.

Response:

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, the Staff will not recommend enforcement action against AngelList, AngelList Advisors or any Lead Angel to the Commission under Section 15(a) of the Exchange Act, if the parties engage in the activities described herein without registering as a broker or dealer in accordance with Section 15(b) of the Exchange Act.

In taking this position, we note in particular your representation that:

- AngelList Advisors will be a registered investment adviser with the Commission or one or more states.
- AngelList Advisors will provide investment advice and administrative services to the Investment Vehicle.
- AngelList Advisors will operate an internet-based platform that will be exclusively available to accredited investors.
- Investments in each Investment Vehicle will be offered and sold in compliance with Rule 506 of Regulation D.
- AngelList Advisors and any Lead Angel (if applicable), will receive compensation equal to a portion of the increase in value, if any, of the investment as calculated at the termination of the investment in the Investment Vehicle (*i.e.*, carried interest), and will not receive any transaction-based compensation.
- AngelList Advisors' and the Lead Angel's services are traditional advisory and consulting in nature.
- No officer, director or employee of AngelList Advisors or any Lead Angel will receive any transaction-based compensation in connection with interest in any Investment Vehicle or any Portfolio Company.
- The specific terms of any compensation to be paid to AngelList Advisors and/or any Lead Angel will be described in the relevant offering document.
- AngelList Advisors will disclose any conflict of interest that may arise between AngelList Advisors and the Lead Angel in the Angel Advised Deals due to a Lead Angel's direct financial involvement in the investment.

⁶ You indicate that under the Angel Followed Deals, the Lead Angel will not receive any additional compensation in respect of being "followed" by the Investment Vehicle.

Robert H. Rosenblum, Esq.

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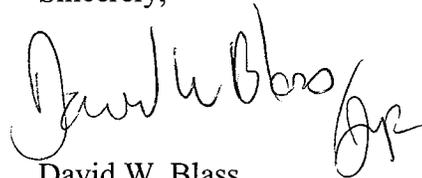
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- Neither AngelList Advisors nor any Lead Angel will handle any customer funds or securities.
- Neither AngelList Advisors nor any Lead Angel will solicit Investors, aside from the website itself.
- Neither AngelList Advisors nor any Lead Angel nor any principal, employee, board member, controlling shareholder or other persons associated with AngelList, AngelList Advisors or Lead Angels will be a person who is disqualified from membership in a self-regulatory organization under Section 3(a)(39) of the Exchange Act.

This position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation at any time the Staff determines that such modification or revocation is consistent with the public interest or the protection of investors. Furthermore, this response only expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call Joseph Furey, Assistant Chief Counsel; Timothy White, Special Counsel; or me at (202) 551-5550.

Sincerely,

A handwritten signature in cursive script, appearing to read "David W. Blass".

David W. Blass
Chief Counsel

March 26, 2013

David W. Blass, Esq.
Chief Counsel
Division of Trading and Markets
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: AngelList Advisors LLC

Dear Mr. Blass:

On behalf of AngelList LLC (“**AngelList**”), we request assurance from the staff of the Division of Trading and Markets (the “**Staff**”) that it will not recommend enforcement action against AngelList, AngelList Advisors LLC (“**AngelList Advisors**”) or any Lead Angel, Portfolio Company or Investment Vehicle (each as defined below, and together with AngelList, the “**Parties**”) to the Securities and Exchange Commission (the “**Commission**”) under Section 15(a)(1) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), if the Parties engage in the activities described below without registering as broker-dealers in accordance with Section 15(b) of the Exchange Act.

Background

AngelList Advisors is a to-be-formed limited liability company that intends to register as an investment adviser with either the Commission or one or more states. AngelList Advisors will be a wholly-owned subsidiary of AngelList or an affiliate of AngelList. AngelList was founded in 2010 to operate a website (<http://angel.co/>) (the “**Website**”) that permits companies seeking angel financing¹ (“**Companies**”) and potential investors (“**Investors**”), who are accredited investors, as defined in Rule 501 of Regulation D

¹ Angel financing is generally defined as investments made by affluent individuals (“**Angels**”) from their own funds to provide capital for business start-ups. In addition to providing seed capital, Angels typically provide management advice, access to business contact, and other services to assist the start-up companies in which they invest.

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(“**Accredited Investors**”), to meet and communicate with each other. AngelList is, in essence, a networking website for early stage companies and angel investors (as well as related professionals, such as lawyers and recruiters).

AngelList assists Companies with their fundraising activities through the Website in two ways. First, AngelList makes standardized form documents (including Convertible Debt Agreements, Equity Purchase Agreements and Amended Articles of Incorporation for equity financings) available on the Website to facilitate the negotiation and documentation of investments in Companies by Investors. Second, in certain circumstances, AngelList has assisted companies in their fundraising activities by referring the Companies and Investors to SecondMarket, a registered broker-dealer, to complete the Investor’s investment. No investment transactions between Investors and Companies are effected on or through the Website, and AngelList presently receives no direct or indirect compensation from users of the Website, from the Companies seeking financing, or from the Investors on the Website. Furthermore, AngelList does not handle any customer funds or securities at any point in the investment process.

Rationale for Proposed Expansion

AngelList anticipates that a number of online platforms and similar enterprises will attempt to offer various accredited and non-accredited investors the opportunity to invest in angel and venture opportunities. AngelList, through AngelList Advisors, believes it can provide a valuable service to Companies and Investors in this marketplace by expanding the scope of the angel investing services that it provides. Further, AngelList believes that the structure it is proposing may provide certain important safeguards for new investors in the angel investing space, as described below.

AngelList and AngelList Advisors recognize that even experienced and sophisticated angel investors will not make money on most of their angel investments. This is the case even though angel investors generally have the opportunity to evaluate and invest in the most promising early stage investment opportunities, and despite the fact that the angel investor’s investment in the underlying Company may in many cases increase the chances of future fundraising opportunities by the Company. Sophisticated angel investors are able to increase the likelihood of a successful investment by offering the Companies in which they invest a variety of services, including introductions to other business or individuals who can assist the Company in developing or expanding their business, additional sources of capital, strategic planning, and similar services. In addition, in recognition of the inherent risks associated with early stage investing, sophisticated angel investors typically structure their investments

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with certain protective measures, including veto or control rights, board representation, anti-dilution provisions, and similar types of controls.

In light of the foregoing, AngelList believes that Accredited Investors who may be sophisticated in other types of investments, but who do not have significant angel or venture investing experience, would benefit greatly from essentially following, or co-investing alongside, a sophisticated, experienced angel investor. AngelList Advisors is therefore proposing to establish a new angel investing platform, separate from the current AngelList platform, to facilitate these investment activities.

Proposed AngelList Advisors Platform

AngelList Advisors proposes to structure its new angel investing platform as follows. AngelList Advisors will establish a separate website (or a portion of its existing website) that will assist AngelList Advisors and Investors in identifying Companies that are seeking capital (“**Portfolio Companies**”) and in which experienced and sophisticated angel investors (“**Lead Angels**”) intend to invest. Each Lead Angel will be subject to the diligence and approval of AngelList Advisors, and must generally be a well known, experienced venture capital investor with demonstrated experience investing in and working with start-up companies. Likewise, each Portfolio Company will be subject to AngelList Advisor’s diligence and approval process, and must meet certain established guidelines prior to being approved for investment. Such guidelines may include, without limitation: an analysis of the background and experience of the founders of the Portfolio Company; whether the proposed business involves a novel business or technology idea or concept; whether the proposed business plan or opportunities appear to have potential to reach a broad market; the likelihood that the business will be successful in light of anticipated competitors and competitions; and the likelihood that the Lead Angel will be able to add significant value and assistance to the Portfolio Company.

If the Lead Angel and Portfolio Company are both approved by AngelList Advisors, AngelList Advisors will form a separate investment vehicle (the “**Investment Vehicle**”) for the sole purpose of investing in the single Portfolio Company. Each Investment Vehicle will be exempt from registration under the Investment Company Act of 1940, as amended (the “**1940 Act**”) pursuant to Section 3(c)(1) or 3(c)(7) thereof.² AngelList Advisors anticipates

² Section 3(c)(1) provides an exclusion from the definition of investment company under the 1940 Act for a fund that is beneficially owned by not more than 100 investors and is not making a public offering of its securities. Section 3(c)(7) provides an exclusion from the definition of investment company under the 1940 Act for a fund that has only qualified purchasers as investors and is not making a public offering of its securities.

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that the Investment Vehicles will likely be structured as limited liability companies or limited partnerships. The Investment Vehicle will be responsible for all organizational costs and expenses associated with its formation and the investment in the Portfolio Company. AngelList Advisors will provide the initial capital required to pay such organizational costs and expenses.

Once the Investment Vehicle is formed, AngelList Advisors will make the potential investment available to interested Investors that participate on the AngelList Advisors Platform.³ AngelList Advisors will not solicit Investors to participate in the investment. Each interested Investor will submit, through the platform, a non-binding request for information (“**RFI**”) to AngelList Advisors specifying the Portfolio Company about which the Investor is seeking information and the investment amount the Investor is considering. In order to submit an RFI each Investor must: (i) complete a detailed questionnaire certifying that he or she is an Accredited Investor, a qualified client, and if necessary, a qualified purchaser; (ii) wait at least thirty days from the time he or she submits the questionnaire before he or she closes on the investment; (iii) execute an agreement with AngelList Advisors acknowledging the terms of use of the AngelList platform and restrictions relevant to the terms of the Investor’s participation; and (iv) if relevant, provide AngelList with any supplemental information that may be necessary to identify the type of investments in which the Investor might wish to participate.⁴

Each Investor will have the right to withdraw an RFI at any time prior to the Investor's binding agreement to invest in the Investment Vehicle. Upon submission of an RFI, a potential Investor will receive the following information with respect to the Portfolio Company from AngelList Advisors electronically over the AngelList Advisors platform: (1) the private placement memorandum or similar offering document from the Portfolio Company; (2) a supplemental memorandum that provides pertinent information about the Investment Vehicle, AngelList Advisors, the Lead Angel (if applicable), the general risks of investing in angel and venture companies, and conflicts of interest in connection with the

³ AngelList Advisors will act as an investment adviser only with respect to the Investment Vehicle, and will not provide investment advice to the Investors.

⁴ We note that the RFI is non-binding, and the Investor does not provide any bank account or other information in connection with an RFI. However, AngelList Advisors reserves the right, at its sole discretion, to restrict an Investor’s participation in future offerings if the Investor has repeatedly submitted and withdrawn RFIs, or has otherwise significantly abused the RFI process.

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Investment Vehicle;⁵ and (3) any relevant addendum to the private placement memorandum reflecting the terms of the investment.

AngelList Advisors will not close on an Investment Vehicle for at least 3 business days following the later of the distribution of the supplemental memorandum or the addendum to the supplemental memorandum. An investment in an Investment Vehicle is illiquid; once the Investor invests in the Investment Vehicle he will not be permitted to redeem his interests. Like many private funds, an Investor will be permitted to transfer his interests only with the consent of AngelList Advisors or an affiliate.⁶

If AngelList Advisors receives a sufficient amount of investment interest (in the judgment of AngelList Advisors) to proceed with the investment, AngelList Advisors will close the Investment Vehicle and collect a Subscription Agreement from each participating Investor. AngelList Advisors will be responsible for reviewing the completed Subscription Agreements and determining whether each potential Investor meets the applicable qualification criteria for the particular investment. In addition, the Portfolio Company may review and approve each Investor before the Investor will be permitted to invest. Upon acceptance by AngelList Advisors and the Portfolio Company of his Subscription Agreement, each Investor will be instructed to forward his capital contribution directly to a bank or other financial institution at which the Investment Vehicle maintains an account. Such funds will then be contributed to the Portfolio Company. Neither the Lead Angel nor AngelList Advisors will handle Investor funds or securities.

Role of the Lead Angel

AngelList is proposing to establish two alternative investment models, both utilizing the process and procedures described above, to facilitate investments by Accredited Investors in deals that involve a Lead Angel. Each model is described in detail below:

⁵ In particular, AngelList Advisors will disclose that a conflict of interest may arise between AngelList Advisors and the Lead Angel in the Angel Advised Deals, as described in more detail below, due to the Lead Angel's direct financial involvement in the investment.

⁶ We note that AngelList Advisors does not currently intend to offer or facilitate a secondary market in interests of the Investment Vehicles. If AngelList Advisors does decide to maintain such a secondary market, it will do so through a registered broker-dealer, or through a platform that is exempt from broker-dealer registration.

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1. Angel Followed Deals

In the first proposed model, AngelList Advisors will structure an Investment Vehicle for Accredited Investors who wish to participate in a Portfolio Company in which a Lead Angel has also decided to invest.⁷ We note that there will be no privity of contract in this model between the Lead Angel and the Investment Vehicle or the Lead Angel and any investor.

In this model, the Investment Vehicle, and each of the Investors in the Investment Vehicle will participate in the Portfolio Company on the same terms as the Lead Angel. AngelList Advisors will not close a deal unless it is aware that a Lead Angel is participating in the same round of funding of the Portfolio Company. The participation of the Lead Angel provides AngelList Advisors and the Investors with the benefits of any negotiation and deal structuring that the Lead Angel has engaged in with the Portfolio Company, and an indication that the Lead Angel has a financial stake in the Portfolio Company and may consider providing operations advice to the Portfolio Company. However, the Lead Angel will not be required to take an active role with respect to advising the Investment Vehicle or the Portfolio Company, and may not even be aware that he is being “followed” by the other Investors. The Lead Angel may invest in the Portfolio Company either directly or through the Investment Vehicle. The Lead Angel will not receive any additional compensation in respect of being “followed” by the Investment Vehicle.

AngelList Advisors will provide investment advice and administrative services to the Investment Vehicle. In particular, AngelList Advisors will initially determine whether to form an Investment Vehicle and seek investments in a particular Portfolio Company, and will determine, on behalf of the Investment Vehicle, when and on what terms to dispose of the Investment Vehicle’s investment in Portfolio Company. AngelList Advisors will exercise all voting rights with respect to Portfolio Company, and will distribute all cash and marketable securities to the Investors promptly upon receipt from the Investment Vehicle, subject to any lock-up agreements or similar restrictions. Furthermore, AngelList Advisors will decide whether to distribute securities or sell those securities and distribute cash. AngelList Advisors will not receive a commission or management fee as compensation for its advisory services, but will be entitled to receive a carried interest as described in each Investment Vehicle’s offering documents. The carried interest would be equal to a portion of the increase in value, if any, of the investment as calculated at the termination of the investment.

⁷ AngelList Advisors will have several means of identifying a Portfolio Company in which a Lead Angel intends to invest, but will generally do so through information available through the AngelList Website.

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The specific terms of the carried interest for each investment would be described in the relevant offering document. AngelList Advisors may also, upon distribution of the Investment Vehicle's assets, be entitled to recoup any initial expenses paid in the formation of the Investment Vehicle.

2. Angel Advised Deals

In the second proposed model, the Lead Angel will take an active role in identifying the investment opportunity, leading negotiations with the Portfolio Company, and working with and providing assistance to the Portfolio Company on an ongoing basis. To implement this model, AngelList Advisors and the Lead Angel will enter into an agreement (the "**Angel Agreement**") pursuant to which the Lead Angel will agree to certain terms with respect to its investment in the Portfolio Company. In particular, the Lead Angel must agree to invest in the Portfolio Company through the Investment Vehicle in which the Investors participate, make at least 50% of the investment opportunity in the Portfolio Company available to other Investors through the Investment Vehicle, and personally invest in at least 20% of the investment opportunity.⁸

In addition, pursuant to the Angel Agreement, the Lead Angel will agree to lead negotiations with respect to the terms and structure of the Investment Vehicle's investment in the Portfolio Company, and offer to provide significant managerial assistance to the Portfolio Company for a minimum period after the investment is made.⁹ To fulfill its obligations under the Angel Agreement, the Lead Angel will be required to offer to provide, and, if accepted, to so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of the Portfolio Company through monitoring of Portfolio Company operations, selective participation in board and management meetings, consulting with and advising a Portfolio Company's officers or other organizational or financial guidance.

To entice the Lead Angels to share investment opportunities with other Investors, and to act on their behalf in identifying, negotiating with, and working with early stage companies, AngelList believes that it is necessary to offer such Lead Angels an economic incentive in the form of a carried interest comparable to the carried interest they might

⁸ A separate Investment Vehicle will be created for investment in each Portfolio Company.

⁹ The Lead Angel will agree that it will not provide advisory services to the Portfolio Company, AngelList Advisors or Investors, unless he is appropriately registered as an investment adviser with the Commission or a state securities authority, or is properly exempt from registration as an investment adviser. No Lead Angel is or will be an employee or supervised person of AngelList Advisors.

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receive if they instead managed a venture capital or similar fund. Accordingly, AngelList Advisors will structure the Investment Vehicles to provide AngelList Advisors and the Lead Angels, or entities that they control, with a carried interest based on the overall profitability of the Investment Vehicle.

Similar to the first model described above, AngelList Advisors will provide investment advice and administrative services to the Investment Vehicle pursuant to an agreement. In particular, AngelList Advisors will initially determine whether to form an Investment Vehicle and seek investments in a particular Portfolio Company, and will determine, on behalf of the Investment Vehicle and in consultation with the Lead Angel, when and on what terms to dispose of the Investment Vehicle's investment in Portfolio Company. AngelList Advisors will exercise all voting rights with respect to Portfolio Company, and will distribute all cash and marketable securities to the Lead Angel and Investors promptly upon receipt from the Investment Vehicle, subject to any lock-up agreements or similar restrictions. Furthermore, AngelList Advisors will decide whether to distribute securities or sell those securities and distribute cash. We note that AngelList Advisors may consult with the Lead Angel on any of these matters. AngelList Advisors will not receive a commission or management fee as compensation for its advisory services, but will be entitled to receive a carried interest as described in each Investment Vehicle's offering documents. AngelList Advisors may also, upon distribution of the Investment Vehicle's assets, be entitled to recoup any initial expenses paid in the formation of the Investment Vehicle.

AngelList, AngelList Advisors and the Lead Angels Should Not Be Required to Register as a Broker or Dealer

Applicable Law

Section 15(a)(1) of the Exchange Act requires any "broker" or "dealer" that makes use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security) to register with the Commission. Therefore, neither AngelList Advisors nor any Lead Angel is required to register with the Commission under the Exchange Act unless it is deemed to be a "broker" or "dealer." Section 3(a)(4)(A) of the Exchange Act defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others. A "dealer" is defined in Section 3(a)(5)(A) of the Exchange Act as "any person engaged in the business of buying and selling securities [...] for such person's own account through a broker or otherwise."

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According to the Commission and the Staff, factors indicating that a person is “engaged in the business” of being a broker-dealer include, among others: the receipt of transaction-related compensation¹⁰; holding oneself out as a broker, such as by executing trades or by assisting in settling securities transactions; and participating in the securities business with some degree of regularity.¹¹ The Staff puts a particularly heavy emphasis on the receipt of transaction-based compensation as a significant indication of a person being “engaged in the business” of a broker.¹²

Neither AngelList Advisors nor the Lead Angel Will Receive Transaction-Based Compensation

Courts have held and the Staff has routinely stated that having a “salesman’s stake” in a securities transaction is a hallmark of “broker” activity.¹³ A “salesman’s stake” is typically present when a person receives commissions or other compensation based, directly or indirectly, on the size, value or completion of any securities transactions (“**Transaction-Based Compensation**”).¹⁴ Because the receipt of Transaction-Based Compensation can lead to high pressure sales tactics, the Staff has stated that any person who receives such

¹⁰ See *Persons Deemed Not To Be Brokers*, Exchange Act Release No. 22172 (June 27, 1985) (noting that “the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities”).

¹¹ BondGlobe, Inc., SEC No-Action Letter (pub. avail. Feb. 6, 2001) (“**BondGlobe**”).

¹² BondGlobe; Brumberg, Mackey & Wall, P.L.C., SEC No-Action Letter (pub. avail. May 17, 2010) (“**BMW**”).

¹³ See, e.g., BMW.

¹⁴ See *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003); *SEC v. Margolin*, 1992 WL 279735 (S.D.N.Y. Sept. 30, 1992); BondGlobe, Inc., SEC No-Action Letter (pub. avail. Feb. 6, 2001); Progressive Technology Inc., SEC No-Action Letter (pub. avail. Oct. 11, 2000); BD Advantage, Inc., SEC No-Action Letter (pub. avail. Oct. 11, 2000); Transfer Online, Inc., SEC No-Action Letter (pub. avail. May 13, 2000); MuniAuction, Inc., SEC No-Action Letter (pub. avail. Mar. 13, 2000); BMW; Wolff Juall Investments, LLC, SEC No-Action Letter (pub. avail. May 17, 2005); Birchtree Financial Services, Inc., SEC No-Action Letter (pub. avail. Sept. 22, 1998); Vanasco, Wayne & Genelly, SEC No-Action Letter (pub. avail. Feb. 17, 1999); see also SEC, Staff Study on Investment Advisers and Broker-Dealers (Jan. 2011), available at www.sec.gov/news/studies/2011/913studyfinal.pdf, at 10–11 (“Generally, the compensation in a broker-dealer relationship is transaction-based and is earned through commissions, mark-ups, mark-downs, sales loads or similar fees on specific transactions”); *Persons Deemed Not To Be Brokers*, Exchange Act Release No. 22172 (June 27, 1985) (noting that “the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities”).

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compensation must register as a broker-dealer and operate pursuant to the customer protection standards governing broker-dealers and their associated persons.¹⁵

The Staff has routinely cited the presence or absence of Transaction-Based Compensation in denying or granting no-action relief from the registration requirements of Section 15 of the Exchange Act. For example, the Staff granted no-action relief to an investment adviser that did not receive Transaction-Based Compensation in connection with executing customer transactions in no-load mutual funds,¹⁶ but denied relief to an investment adviser that received a “consulting fee” that was contingent upon sales of securities.¹⁷ Likewise, the Staff has granted relief to payroll processing companies that receive flat, pre-determined administrative fees,¹⁸ but denied relief to “personal services companies” formed by registered representatives of broker-dealers to receive commissions earned by the registered representatives.¹⁹ The Staff has also indicated that registration as a broker-dealer may be required where a party merely introduces an issuer to a purchaser and accepts Transaction-Based Compensation.²⁰

Neither AngelList Advisors nor the Lead Angels will receive any Transaction-Based Compensation, and therefore will have no “salesman’s stake” in any securities transactions. Rather, the only compensation to be paid to AngelList Advisors or the Lead Angels will be a carried interest tied exclusively to the overall profitability of the Portfolio Companies.²¹ This compensation structure provides an incentive for AngelList Advisors and the Lead Angels to identify profitable investment opportunities and seek to increase their value, not to

¹⁵ 1st Global, Inc., No-Action Letter (pub. avail. May 7, 2001); BMW (denying no-action request where a law firm would be compensated for providing introductions to investors upon the closing of a financing based upon a percentage of the amounts raised).

¹⁶ McGovern Advisory Group, Inc., SEC No-Action Letter (pub. avail. Sept. 8, 1984).

¹⁷ Boston Advisory Group, SEC No-Action Letter (pub. avail. Oct. 2, 1980).

¹⁸ *See, e.g.*, ADP TotalSource, Inc., SEC No-Action Letter (pub. avail. Nov. 28, 2007); eEmployers Solutions, Inc., SEC No-Action Letter (pub. avail. Dec. 3, 2007); Investacorp Group, Inc., Investacorp, Inc., SEC No-Action Letter (pub. avail. Sept. 26, 2003).

¹⁹ *See, e.g.*, Wolff Juall Investments, LLC, SEC No-Action Letter (pub. avail. May 17, 2005); Vanasco, Wayne & Genelly, SEC No-Action Letter (pub. avail. Feb. 17, 1999); Birchtree Financial Services, Inc., SEC No-Action Letter (pub. avail. Sept. 22, 1998).

²⁰ Dominion Resources, Inc., SEC No-Action Letter (pub. avail. March 7, 2000); BMW.

²¹ AngelList Advisors may also receive reimbursement for documented expenses upon liquidation of an Investment Vehicle. Because this reimbursement is not based, directly or indirectly, on the size, value or completion of any securities transactions, it should not be deemed Transaction-Based Compensation.

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sell securities. In addition, the carried interest represents compensation for the bona fide and valuable services and advice AngelList Advisors and the Lead Angel provide to the Investment Vehicles and Portfolio Companies. As such, it represents a classic form of investment adviser compensation that is more appropriately regulated under the Advisers Act and applicable state investment adviser regulations.

The Proposed AngelList Advisors Platform and Managed Account Structure Comply with Prior Commission Guidance

Under both of the proposed investment models: (1) AngelList Advisors will operate an internet based platform that will be exclusively available to Accredited Investors who are interested in investing in early stage Companies; (2) all such investments will be offered and sold in compliance with Rule 506 of Regulation D;²² (3) neither AngelList Advisors nor any Lead Angel will receive any transaction-based compensation; (4) neither AngelList Advisors nor any Lead Angel will handle any customer funds or securities; and (5) neither AngelList Advisors nor any Lead Angel will be a person who is disqualified from membership in a self-regulatory organization under Section 3(a)(39) of the Exchange Act.

Both proposed investment models comply with prior Commission guidance regarding broker-dealer registration requirements for operators of web-based platforms. For example, in Angel Capital Electronic Network, the Divisions of Market Regulation (now Trading and Markets) and Investment Management granted no-action relief to the operator of a website designed to list small private companies that were seeking capital in private transactions, and to permit accredited investors to view those companies and their offering materials.²³ In granting this relief, the Staff noted in particular that Angel Capital would not provide advice about the merits of a particular opportunity or venture, receive any compensation contingent upon the outcome or completion of any securities transaction, participate in any negotiations, directly assist investors with the completion of any transaction, handle funds or securities involved in completing a transaction, or hold themselves out as providing any securities-related services other than a listing or matching service.²⁴

While AngelList Advisors is proposing to provide advice about the merits of particular investment opportunities in its capacity as an investment adviser (and accordingly

²³ Angel Capital Electronic Network, SEC No Action Letter (pub. avail. Oct. 25, 1996) (“**Angel Capital**”). See also Internet Capital Corp., SEC No Action Letter (pub. avail. Dec. 24, 1997).

²⁴ Angel Capital.

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is not seeing no-action relief from its potential registration requirement under the Advisers Act), AngelList Advisors meets all of the criteria on which the Staff granted relief to Angel Capital from the obligation to register as a broker-dealer. In particular, AngelList Advisor will not: (1) receive any compensation contingent upon the outcome or completion of any securities transaction; (2) participate in any negotiations between Companies and Investors; (2) directly assist Investors with the completion of any transaction; (3) handle funds or securities involved in completing a transaction; or (4) hold itself out as providing any securities-related services other than a listing or matching service.

Distribution of Investment Vehicle Interests is Not Broker-Dealer Activity

AngelList Advisors' activities with respect to the Investment Vehicles do not implicate the broker-dealer regulatory objectives of the Exchange Act, and therefore should not trigger a broker-dealer registration requirement. Other than making information regarding potential investment opportunities available via the Website, AngelList Advisors will not engage in any selling efforts with respect to interests in the Investment Vehicles. AngelList Advisors will not have a sales staff, or any employees dedicated to the promotion or distribution of Investment Vehicle interests. Further, AngelList Advisors will not provide recommendations to potential Investors regarding any available investment opportunities.

AngelList Advisors' activities with respect to the qualification and approval of Investors should not be deemed a solicitation for any securities transaction. In particular, AngelList Advisors is proposing to impose a thirty day waiting period from the time a potential Investor submits an RFI and questionnaire until he or she closes on an investment. Consistent with the Staff's guidance in *Lamp Technologies Inc.*,²⁵ this waiting period is designed to ensure that Investors do not join the AngelList Advisors platform to invest in a particular Investment Vehicle, and accordingly is sufficient to ensure that AngelList Advisors' qualification of the potential Investor is not deemed to be a solicitation of an investment in the applicable Investment Vehicle.

AngelList Advisors' role with respect to any securities transactions is purely to facilitate, rather than solicit, an investment in an Investment Vehicle. Rather than actively marketing Investment Vehicle interests to potential Investors (a typical broker-dealer activity), the AngelList platform is designed to permit Investors to follow Lead Angels, on an unsolicited basis, and invest in Portfolio Companies that the Lead Angels have determined to be attractive investment opportunities. AngelList Advisors' sole role will be to provide

²⁵ Lamp Technologies Inc., SEC No-Action Letter (pub. avail. May 29, 1997).

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investment advice to the Investment Vehicles regarding the selection of a Portfolio Company and Lead Angel, the terms, structure and ultimate disposition of the Investment Vehicle's investment in the Portfolio Company, and related matters, and to facilitate investments by the Lead Angel and other Investors. Like many other private fund managers, AngelList Advisors' offer of interests in the Investment Vehicles is a necessary adjunct to its provision of investment advice to the Investment Vehicles, and in the absence of Transaction-Based Compensation, should not be regulated as broker-dealer activity or require registration with the Commission as a broker-dealer.

Neither AngelList Advisors nor the Lead Angel Engages in Other "Broker" Functions

In the absence of Transaction-Based Compensation, courts and the Commission have historically required a significant level of participation in securities transactions on a regular basis before finding that broker registration is required.²⁶ Regularity of participation has been demonstrated by such factors as the dollar amount of securities sold and the extent to which advertisement and investor solicitation was used.²⁷ Additional factors courts and the Commission consider in determining whether a person is "engaged in the business" include holding oneself out as a broker (e.g., executing trades or assisting in settling securities transactions), locating issuers, solicit new clients, and act as a customers' agent in structuring or negotiating transactions,²⁸ and soliciting securities transactions.²⁹

Neither AngelList Advisors nor any Lead Angel will regularly participate in effecting transactions in securities or perform any of the additional functions discussed above. Rather, AngelList Advisors is in the business of providing investment advice to the Investment Vehicles, and the Lead Angels will participate in the Investment Vehicles for their own proprietary investment purposes. Further, AngelList Advisors will post available investment opportunities on the Website, but will not solicit Investors or engage in any other marketing or promotional activities with respect to Investment Vehicles. Finally, neither AngelList Advisors nor any Lead Angel will hold itself out to the public as a broker in any way.

²⁶ *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 415 (D. Mass.), *aff'd*, 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977) ("Massachusetts Financial Services").

²⁷ *Massachusetts Financial Services*. See also *SEC v. Nat'l Executive Planners, Ltd.*, 503 F. Supp 1066, 1073 (M.D.N.C. 1980); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12 (D.D.C 1998).

²⁸ See PRA Securities Advisers, L.P., SEC No-Action Letter (pub. avail. Mar. 3, 1993).

²⁹ BondGlobe.

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As the foregoing discussion illustrates, the significant level of participation required to compensate for the lack of Transaction-Based Compensation is not present with respect to AngelList Advisors' or the Lead Angels' roles in the AngelList angel investing platform. Therefore, neither AngelList Advisors nor any Lead Angel should be deemed to be "engaged in the business" of effecting transactions in securities.

We acknowledge that AngelList Advisors will not be able to avail itself of the safe harbor from registration as a broker-dealer provided by Rule 3a4-1 under the Exchange Act (the "**Issuer's Exemption**"). In particular, while AngelList Advisors' employees will be "associated persons" of the issuers (*i.e.*, Companies) and will not receive Transaction-Based Compensation, such employees will likely be involved in selling the securities of more than one issuer in any twelve month period. However, we note that the Issuer's Exemption is a non-exclusive safe harbor, and failure to comply with its provisions does not create a broker-dealer registration requirement. For the reasons set forth in this letter, AngelList Advisors and its employees should not be required to register as brokers or dealers notwithstanding the unavailability of the Issuer's Exemption.

Neither AngelList Advisors Nor Any Lead Angel is a Dealer

To fall within the definition of "dealer" under the Exchange Act, a person must be "engaged in the business" of buying and selling securities for such person's own account.³⁰ As described above, because neither AngelList Advisors nor the Lead Angels receive Transaction-Based Compensation, neither is "engaged in the business" as such phrase has been interpreted by the Commission and the Staff. Further, the Lead Angels will purchase and hold securities issued by the Investment Vehicles for their proprietary investment purposes, and generally will not be permitted to transfer such interests to any other person. Finally, AngelList Advisors will not maintain a proprietary brokerage account or an inventory of Investment Vehicle securities, and therefore cannot and will not buy or sell such securities "for its own account." Based on the foregoing, it is clear that neither AngelList Advisors nor any Lead Angel is within the Exchange Act definition of "dealer," and is therefore not required to register as such with the Commission.

Conclusion and Request for Relief

In light of the foregoing, we respectfully request assurances from the Staff that it will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act if the Parties engage in the activities described herein without registering as

³⁰ See Exchange Act Section 3(a)(5)(A).

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broker-dealers in accordance with Section 15(b) of the Exchange Act. Please contact the undersigned at (202) 778- 9464, Kenneth G. Juster at (617) 261-3296, or Caitlin E. Gildea at (617) 951-9114, with any questions or comments regarding this letter.

Very truly yours,

Handwritten signature of Robert H. Rosenblum in cursive, with the initials 'CEG' written at the end of the signature.

Robert H. Rosenblum

cc: Naval Ravikant
Kevin Laws
AngelList LLC