



[How Startup America Can Make Life Better For Startups \(Installment 2\)](#)

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Now that we have a great national initiative called Startup America, the point of which is to help startups, I am going to start writing more about how I think the law ought to be changed to help startups, in the hopes that someone in Washington, D.C. will listen and actually push to adopt some of what I am suggesting.

Yesterday, I blogged that the Internal Revenue Code ought to be changed to fix Section 83(b) elections—to reverse the presumption when no tax would be owed and deem them filed—to remove the burden of filing these forms within 30 days of founders entering into vesting stock repurchase agreements. In tax lawyer speak, to reverse the Alves case.

Today, I want to suggest that the Congress or SEC remove the prohibition on general solicitation in Regulation D.

If you are not familiar with this prohibition, if you are selling securities in an all accredited investor offering, then:

“neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

1. Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and
2. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;”

The rule goes on to say that the mere filing of a Form D with the SEC, as required, is not general solicitation—despite the fact that the media follows and reports on these filings publicly now that they are done electronically. It is funny, but one of the pieces of advice I regularly give my startups in the middle of a financing round is: “We are going to file the Form D as required; the media is going to call you to ask about your offering—you cannot talk to the media about your securities offering while it is ongoing. So, don’t talk to them.”



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In addition, one of the ancillary consequences of the prohibition on general solicitation is that it causes many startups to want to hire intermediaries in their offerings—to introduce them to potential investors. I would argue that this is not a good unintended consequence of the prohibition on general solicitation (and I know that in general securities regulators don't like this practice).

Dear Startup America Team—please make life better for startups and repeal the prohibition on general solicitation in Regulation D. These rules no longer make sense in the day and age of the Internet, and the current SEC rules recognize this but do not fix the problem.

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