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August 24, 2020

VIA ELECTRONIC MAIL (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Investment Management
100 F Street, N.E.
Washington, D.C. 20549

RE: Prospect Capital Corporation
Securities and Exchange Act of 1934 Rule 14a-8
Omission of Stockholder Proposal Submitted by Camilla C. Cane

Ladies and Gentlemen:

We are writing on behalf of Prospect Capital Corporation (the "Company"), in response to a letter, dated August 10, 2020 (the "Staff Response Letter"), from the staff of the Division of Investment Management (the "Staff") of the Securities and Exchange Commission (the "Commission"), in which the Staff indicated that it was unable to concur in the Company's view that, for the reasons stated in our letter dated June 23, 2020 (the "No Action Request"), the stockholder proposal and supporting statement (collectively, the "Proposal") purported to be submitted by Camilla Cane (the "Nominal Proponent"), but actually submitted by Mark S. Cane, the Nominal Proponent's husband, could be excluded from the Company's proxy materials for its 2020 annual meeting of stockholders (the "Proxy Materials"). This letter supplements our No Action Request.

We respectfully request that the Staff reconsider its response and confirm that it will not recommend enforcement action if the Company omits the Proposal from the Proxy Materials for the additional reasons set forth herein.[1] In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to imshareholderproposals@sec.gov. In accordance with Rule 14a-8(j)(1), a copy of this letter and its attachments are being sent simultaneously to the Nominal Proponent. We take this opportunity to inform the Nominal Proponent that if the Nominal Proponent elects to submit correspondence to the Commission or the Staff with respect to the Proposal or this letter, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D. We request that such copy be emailed to us at michael.hoffman@skadden.com and kenneth.burdon@skadden.com.

The Company intends to begin distribution of its definitive Proxy Materials on or after September 15, 2020. Accordingly, pursuant to Rule 14a-8(j), the No Action Request was submitted not less than 80 days before the Company currently intends to file its definitive Proxy Materials with the Commission.

ADDITIONAL BACKGROUND

In light of the Staff Response Letter, the Company sent to the Nominal Proponent a copy of its opposition statement in accordance with Rule 14a-8(m)(3)(ii). We understand that the Staff received a letter from the Nominal Proponent, dated August 19, 2020, in which the Nominal Proponent attempted to offer a rebuttal of the Company's opposition statement (the "Rebuttal Letter").

PROPOSAL

The text of the resolution contained in the Proposal is set forth below:

> Resolution - In order to improve PSEC's market competiveness, improve shareholder returns, and make PSEC more attractive as an investment to prospective new institutional and individual shareholders, shareholders request that our Board negotiates a fee and incentive structure with the Advisor as soon as possible that, at their discretion and in accord with their fiduciary obligation to shareholders, is comparable to what has become the competitive BDC industry norm.

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[1] The Company respectfully disagrees with the Staff's conclusion expressed in the Staff Response Letter. While the Company reserves all of its rights with respect to the Proposal, including, among others, the right to continue to challenge the validity or inclusion of the Proposal with the Staff and the Commission, the courts or otherwise, on any available grounds, the Company does not at this time intend to continue to press with the Staff the argument in the No Action Request with which the Staff was unable to concur.

BASES FOR EXCLUSION

The Company believes that the Proposal should be properly excluded from the Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal contains materially false and misleading statements.

ANALYSIS

1. The Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

Rule 14a-8(i)(7) states that a company may exclude a shareholder proposal if the proposal deals with a "matter relating to the company's ordinary business operations." The Commission's release accompanying the 1998 amendments to Rule 14a-8 explains that the term "ordinary business" is "rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). According to the Commission, the general underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." In the 1998 Release, the Commission explains that such underlying policy rests on two central considerations. The first relates to the subject matter of the proposal. The second consideration is the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." See Staff Legal Bulletin No. 14I (Nov. 1, 2017); Staff Legal Bulletin No. 14K (Oct. 16, 2019).

The Staff has concurred multiple times that a stockholder proposal that calls for a study of an investment company's advisory fee and/or the performance of the investment adviser may be excluded under Rule 14a-8(i)(7) because such proposal deals with a "matter relating to the conduct of the ordinary business operations" of the investment company. See Tri-Continental Corporation (March 4, 1996) ("Tri-Continental"); LMP Real Estate Income Fund, Inc. (March 25, 2015) ("LMP"). In Tri-Continental, the fund sought to exclude a proposal that requested that the company's board of directors study whether the investment adviser was providing the best possible portfolio management for the fund, suggested that such study identify other fund managers who have achieved better results, and if better management is identified in the study, to consider taking steps to replace the investment adviser. In granting the fund's no action request under Rule 14a-8(c)(7) (the predecessor to Rule 14a-8(i)(7)), the Staff wrote:

> Section 15(a) of the Investment Company Act of 1940 provides that advisory contracts can continue in effect for more than two years so long as the continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company. **Moreover, section 15(c) of the Act requires that the independent directors approve the advisory contracts and, in doing so, they must request and evaluate such information as may reasonably be necessary to evaluate the terms of any advisory contract. Thus, in the ordinary course of business, the Fund's Board of Directors is required to evaluate the same type of information suggested by the proponent.** [Emphasis added.]

Similarly, in LMP, another on-point no action precedent under Rule 14a-8(i)(7), the Staff granted the fund's no action request by concurring with the omission of a proposal requesting that management provide certain specific performance and fee information to the fund's board of directors on an annual basis, with continual updates on a quarterly basis, in connection with the board's evaluation of the investment advisory contract. In reaching its decision to support the fund's position, the Staff noted that "[t]here appears to be some basis for your view that the Proposal may be omitted from the Fund's proxy materials pursuant to Rule 14a-8(i)(7) under the Securities Exchange Act, as relating to the Fund's ordinary business."

Similar to the precedent proposals in Tri-Continental and LMP in which the Staff granted the funds' no action requests, in each case under Rule 14a-8(i)(7) (or its predecessor), the Proposal here by the Nominal Proponent requests that the Company's board of directors (the "Board of Directors") negotiate a new fee and incentive structure with the Company's investment adviser (the "Investment Adviser"), "that is comparable to what has become the competitive BDC industry norm." The Proposal, in essence, calls for a study of the Company's current fee arrangement in light of specific comparative information, something that the Board of Directors does every year as "ordinary business" and as part of the required Section 15(c) process under the Investment Company Act of 1940 (the "1940 Act") and applicable federal case law[2] and therefore clearly relates to the Company's ordinary business, as the Staff indicated in Tri-Continental. In addition, the supporting statement emphasizes the Proposal's primary focus on industry norms and industry performance as measured by shareholder total returns. The Commission has consistently recognized that stockholder proposals requesting the preparation of a report or a study of a particular matter involving the conduct of ordinary business are excludable under Rule 14a-8(i)(7). See Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Exchange Act Release No. 34-20091 (August 16, 1983) ("Henceforth, the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)." [predecessor to Rule 14a-8(i)(7)]).

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[2] See Gartenberg v. Merrill Lynch Asset Management, Inc., 694 F.2d 923 (2d Cir. 1982), cert. denied, 461 U.S. 906 (1983); Jones v. Harris Associates L.P., 559 U.S. 335 (2010).

Section 15(c) of the 1940 Act (made applicable to business development companies ("BDCs") by Section 59 of the 1940 Act) instructs that "[i]t shall be the duty of the directors of a registered investment company to request and evaluate . . . such information as may reasonably be necessary to evaluate the terms of any [investment advisory contract]." Accordingly, on an annual ordinary business basis, the Board of Directors, in accordance with applicable federal case law,[3] invests considerable time to reviewing whether the terms of the Company's investment advisory agreement are fair and reasonable in light of the services provided by the Investment Adviser. Specifically, the Board of Directors conducts its own independent research and inquiry and focuses on information it receives from management relating to, among other things:

- the nature, quality and extent of the advisory and other services provided to the Company by the Investment Adviser;
- the services to be performed and the personnel performing such services under the investment advisory agreement;
- the investment performance of the Company compared to other BDCs;
- the Company's historical and projected operating expenses, including the expense ratio of the Company and other BDCs;
- the track record information of the Company and the Investment Adviser;
- the Company's fees compared to other BDCs, including, as previously disclosed since the Company's initial public offering in 2004, "comparative data with respect to advisory fees or expense ratios paid by other business development companies with similar investment objectives";
- the work the Investment Adviser does on administrative and legal matters for which the Investment Adviser is not compensated;
- the profitability of the Investment Adviser; and
- the circumstances at the Company and in the BDC industry that affected potential economies of scale and the appropriateness of fee breakpoints, including maximum deal sizes and "research and development" investments in new and growing origination strategies.

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[3] See id.

By requiring annual review of advisory agreements, Congress made the review a part of each investment company's ordinary business operations.

Although the stated purpose of the Proposal is to improve the Company's market competitiveness and shareholder returns, the Proposal is no more than an attempt to micromanage the duly elected Board of Directors and to impose the Nominal Proponent's specific judgment onto the Board of Directors in the exercise of the statutory duties of the Board of Directors to annually review the terms of the Company's investment advisory agreement as part of the Company's ordinary business operations. Moreover, the type of information and criteria highlighted in the Proposal is underinclusive relative to the substantial amounts of information presented to and used by the Board of Directors as part of its comprehensive annual ordinary business review, and such limited information would be insufficient to enable the Board of Directors to satisfy its obligations under Section 15(c).[4] In fact, the information identified by the Nominal Proponent forms only one subset of the information provided to and considered by the Board of Directors. Because the Company already has in place an effective and comprehensive Section 15(c) process, the Proposal imposes additional costs and duplicative work on the Company and the Board of Directors for no meaningful reason.

Based on the foregoing factors, the Company believes that the Proposal concerns the Company's ordinary business operations and would not be appropriate for a shareholder vote. The Company respectfully requests the Staff's concurrence with the Company's view that the Proposal may be excluded from the Proxy Materials because it involves a matter of ordinary business pursuant to Rule 14a-8(i)(7).

2. The Company may exclude the Proposal pursuant to Rule 14a-8(i)(3) because the Proposal contains materially false and misleading statements.

Rule 14a-8(i)(3) permits a company to omit a shareholder proposal and related supporting statement from its proxy materials if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." See Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). Specifically, Rule 14a-9(a) prohibits any statement that is "false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." In SLB 14B, the Staff acknowledged that companies have relied on Rule 14a-8(i)(3) to exclude statements included in a supporting statement, even if the balance of the proposal and the supporting statement may not be excluded, and indicated that "reliance on [R]ule 14a-8(i)(3) to exclude or modify a statement may be appropriate where . . . the company demonstrates objectively that a factual statement is materially false or misleading."

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[4] See id.

Consistent with SLB 14B, the Staff has permitted companies to exclude one or more statements from a proposal's supporting statement, as well as entire stockholder proposals, under Rule 14a-8(i)(3) where those statements were materially false or misleading. See, e.g., Rite Aid Corp. (Mar. 13, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a sentence included in the supporting statement falsely claiming, among other things, that the Commission supported the proposal); Bob Evans Farms, Inc. (June 26, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that the proposal had received "tremendous shareholder support"); Piper Jaffray Cos. (Feb. 24, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that management had demonstrated a disregard for shareholders' interests).

The Staff has also concurred that a company may properly exclude entire shareholder proposals and supporting statements where they contain false and misleading statements or omit material facts necessary to make such statements not false and misleading. See Entergy Corp. (Feb. 14, 2007) (permitting the exclusion of the entire proposal which contained false and misleading statements relating to management and the board); The Swiss Helvetia Fund, Inc. (April 3, 2001) (permitting exclusion of entire proposal due to unsupported statements insinuating that directors may have violated, or may choose to violate, their fiduciary duties); and General Magic, Inc. (May 1, 2000) (permitting exclusion of proposal relating to change of name of company which contained false and misleading statements). Additionally, SLB 14B provides that the Staff "may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules." As discussed below, the Company believes that the entire Proposal should be excluded pursuant to Rule 14a-8(i)(3) as materially false and misleading in violation of Rule 14a-9.

In the Rebuttal Letter, the Nominal Proponent has already conceded that the Proposal contained numerous material errors and misstatements, including the following:

- "I say generally because I must admit that my support statement is wrong where it states that my source of stock price information for PSEC was the PSEC 10Ks. 10Ks were mentioned previously and that source reference was accidentally cited again. It was the Yahoo Finance Web Site."

- "In addition, I agree with the Company that it is wrong where my statement says Prospect's calendar year 2019 total return was 6.3%."

- "I also see that another error in my support statement related to comparative performance. My statement says that for the 5 year period ending 12/31/19 the WEBDCI return averaged 7.9% compared to 3.5% for PSEC. There is a typographical error in that sentence because that was calculated for performance for the prior 3 year, not 5 year period and the intention was to utilize data for the last 3 year period."

- "There is another issue with my proposed support statement. It relates to the link used (and cited in my submission) to obtain comparative WBDCI data."

- "My support statement says, 'The "standard" fee/incentive structure which used to be basically 2%/20% has evolved into one that is basically 1.5%/17.5%, and 1.5%/15% in many cases, with more shareholder friendly total return hurdles and look-backs.' I agree that the adoption of 17.5% and 15% income and capital gains incentive fees has not come as fast as 1.5% and 1.0% base fees . . ."

The sheer number of materially false and misleading statements identified above (as conceded by the Nominal Proponent) would materially mislead shareholders as to the context of the Proposal. The errors identified by the Nominal Proponent are not at all "minor defects," as characterized by the Nominal Proponent in the Rebuttal Letter, but go to the core of the Nominal Proponent's rationale for the Proposal. These misstatements are directly related to the Nominal Proponent's allegations with respect to the Company's investment performance and fee structure, which form the entire basis for her rationale that the Board of Directors should study different fee arrangements. Moreover, the total return information contained in the Proposal is stale and misleading and should not be relied upon as an accurate depiction of the Company's performance. First, as noted above, the Nominal Proponent concedes that the data provided in the Proposal for the Company's calendar year 2019 total return was inaccurate (underreporting the Company's calendar year 2019 total return by 750 basis points). Second, the Nominal Proponent selectively focuses on three time periods ending with an older end date of December 31, 2019 to support her position that the Company underperforms the Wilshire BDC Index. This is materially misleading because more recent data, which was available to the Nominal Proponent at the time of her submission of the Proposal,[5] clearly demonstrates that the Company, on a market price total return basis (market price appreciation plus dividends), has outperformed the Wilshire BDC Index annually by 1.2% and 0.1% for the 1-year and 5-year periods ending April 30, 2020, respectively. In order to provide a full comparison of the Company's market price total return performance against the index selected by the Nominal Proponent, the Company prepared the below chart, which shows the since index inception market price total returns. The Company has outperformed the Wilshire BDC Index on this basis annually by 0.8% since inception, which the Nominal Proponent neglected to include.

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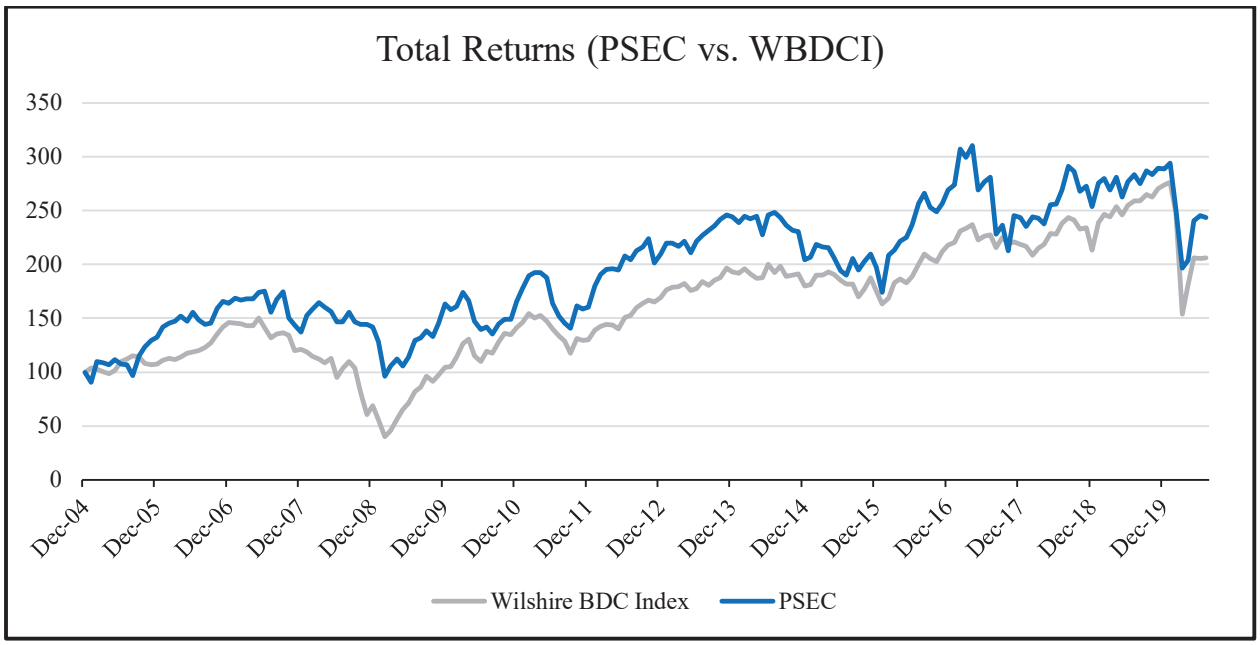
[5] The Company received the Proposal, which was accompanied by a cover letter dated May 8, 2020, by mail on May 18, 2020.



Accordingly, the Company believes that the entire Proposal should be excluded as materially false and misleading in violation of Rule 14a-9.

The Company respectfully requests that the Staff concur that the entire Proposal is excludable from the Proxy Materials under Rule 14a-8(i)(3). If the Staff does not concur with the Company's view that the entire Proposal may be excluded, at a minimum, the Company requests confirmation that it may exclude the statements relating to the errors referenced above pursuant to Rule 14a-8(i)(3).

* * *

CONCLUSION

We respectfully request expedited review of this supplemental letter, as the Company is scheduled to begin distributing its definitive Proxy Materials on or after September 11, 2020. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response.

If you have any questions regarding this letter, please do not hesitate to contact the undersigned at (212) 735-3406 (Mr. Hoffman) or (617) 573-4836 (Mr. Burdon).

Michael K. Hoffman Kenneth E. Burdon

cc: Kristin Van Dask,
Prospect Capital Corporation