

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

File No. 57-37-04

DAVID CHAVERN
VICE PRESIDENT AND
CHIEF OF STAFF

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December 13, 2005

The Honorable Christopher Cox
Chairman
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

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OFFICE OF THE
CHAIRMAN

Dear Chairman Cox:

We are writing to comment on the Securities and Exchange Commission's proposed rulemaking to amend the definition of eligible portfolio companies for business development companies. We urge you to resolve the matter without further delay by considering the market capitalization standard alternative contemplated by the current pending legislation, H.R. 436, *The Increased Capital Access for Growing Business Act*. Companion legislation has now been introduced in the Senate, S. 1396, by Senators Allen and Santorum. H.R. 436, a companion measure, has already passed the House of Representatives unanimously.

As you know, the Small Business Investment Incentive Act of 1980 created business development companies (BDCs) and defined the companies in which BDCs could invest by using a Federal Reserve definition related to marginability. As markets have evolved over the last 25 years and vastly more securities are now deemed to be marginable, the universe of eligible portfolio companies for BDCs has appreciably narrowed, thus limiting many smaller companies' access to capital. It was never the intent of such margin rule amendments to limit other market participants' access to capital. It is for this reason that we strongly believe that the definition of an eligible portfolio company should be restored to reflect original Congressional intent. Indeed, the House has considered and overwhelmingly passed during both the 108th and 109th Congresses identical legislation to that which is now being proposed in the Senate.

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The Securities and Exchange Commission's proposed rulemaking on this issue, which has been in process for more than a year, does not go far enough to restore the universe of eligible portfolio companies for BDCs. We urge you to resolve the matter without further delay by considering the market capitalization standard alternative contemplated by the current pending legislation.

At the time BDCs were created, the legislative history suggests that nearly two thirds of all public companies would have been eligible for BDC financing. The legislation's proposed \$250 million market capitalization would more closely approximate the arena of eligible portfolio companies for BDCs. In fact, many would argue that the definition of "small cap" would likely be much larger than the proposed \$250 million benchmark, but it is our understanding that the industry is comfortable with the proposed size standard.

We appreciate your thoughtful consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Chavern". The signature is stylized with a large, sweeping initial "D" that loops back under the rest of the name.

David Chavern

cc: Paul S. Atkins, Commissioner
Roel C. Campos, Commissioner
Cynthia A. Glassman, Commissioner
Annette L. Nazareth, Commissioner