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June 21, 2019

U.S. Securities and Exchange Commission  
Division of Investment Management  
100 F Street, N.E.  
Washington, DC 20549

Attention: Paul Cellupica

Re: Golub Capital Investment Corporation  
Golub Capital BDC, Inc.  
GC Advisors LLC  
Request for No-Action

Ladies and Gentlemen:

Golub Capital BDC, Inc., a Delaware corporation ("GBDC"), and Golub Capital Investment Corporation, a Maryland corporation ("GCIC" and, together with GBDC, the "Companies"), have each elected to be regulated as a business development company ("BDC") under the Investment Company Act of 1940, as amended (the "1940 Act"). GC Advisors LLC ("GC Advisors") is a Delaware limited liability company and a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and is the external investment adviser to each of the Companies.

On November 28, 2018, the Companies announced that they had entered into an agreement and plan of merger (the "Merger Agreement") providing for the merger (the "Merger") of GCIC into GBDC, whereby the stockholders of GCIC would receive shares of GBDC common stock (the "GBDC Common Stock") that trade on The Nasdaq Global Select Market (the "Nasdaq").<sup>1</sup>

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<sup>1</sup> See Form N-14 filed by GBDC on December 21, 2018 (the "Form N-14").

The Companies and GC Advisors respectfully request assurance that the staff of the Division of Investment Management (the “Staff”) of the Securities and Exchange Commission (“Commission”) will not recommend to the Commission enforcement action under Section 205 of the Advisers Act against GCIC, GC Advisors or GBDC, in its capacity as successor by merger to GCIC, if GCIC were to treat the Merger as a realization event for purposes of calculating GCIC’s “realized capital gains” under Section 205(b)(3) and pay certain capital gains performance fees to GC Advisors.

I. Background

A. GBDC

GBDC is an externally managed, closed-end, non-diversified management investment company that has elected to be regulated as a BDC under the 1940 Act. In addition, for U.S. federal income tax purposes, GBDC has elected to be treated as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended (the “Code”). Shares of GBDC Common Stock have been publicly traded on Nasdaq under the symbol “GBDC” since the initial public offering (“IPO”) of GBDC on April 14, 2010. As of June 20, 2019, the public float of GBDC Common Stock, excluding shares held by affiliates of GBDC, was approximately \$1.05 billion.

Shares of GBDC Common Stock have historically traded at a premium to net asset value (“NAV”) over the approximately nine-year period since the GBDC IPO. While shares of GBDC Common Stock have traded below NAV for short periods of time in the past,<sup>2</sup> they have traded at an average of an 11% premium to NAV since GBDC’s IPO and at an average 15% premium to NAV for the three-year period preceding announcement of the Merger.<sup>3</sup> For the 60 calendar days ending on June 20, 2019, the average volume of shares of GBDC Common Stock traded was approximately 196,000 shares per day, equivalent to average daily trading volume (“ADTV”) of

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<sup>2</sup> In the 27 completed fiscal quarters since July 1, 2012, shares of GBDC Common Stock have traded at a discount to NAV in only one quarter, the second quarter of the fiscal year ended September 30, 2016.

<sup>3</sup> Since the later of GBDC’s IPO or the respective BDC’s IPO, only GBDC and five other externally managed, publicly traded BDCs have traded at a sustained average premium to NAV.

approximately \$3.5 million based on an average closing price of \$17.87 for such 60 calendar day period.<sup>4</sup>

B. GCIC

GCIC is an externally managed, closed-end, non-diversified management investment company that has elected to be regulated as a BDC under the 1940 Act and has elected to be treated for U.S. federal income tax purposes as a RIC under the Code. GCIC was formed in September 2014 and commenced operations on December 31, 2014. Shares of GCIC Common Stock are not listed on any national securities exchange and do not otherwise trade. GCIC has raised its equity capital through the private placement of shares of its common stock (the “GCIC Common Stock”) to accredited investors in the United States under the exemption provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Regulation D promulgated thereunder.

C. Portfolio Overlap of the Companies

GBDC and GCIC have the same investment objectives and have substantially the same assets. As of March 31, 2019, 97.6% of GCIC’s investments at fair value overlapped with those of GBDC, and 98.3% of GBDC’s investments at fair value were also in GCIC’s portfolio. GBDC and GCIC use the same valuation procedures to value their respective portfolio investments on a quarterly basis. As a result, except for the small portion of their respective portfolios that do not overlap, both GBDC and GCIC hold the same portfolio company investments at the same fair values.

D. The Merger

Subject to the satisfaction of certain closing conditions, including conditions related to Rule 17a-8 under the 1940 Act (“Rule 17a-8”), Section 23(b) of the 1940 Act and requisite approvals from the stockholders of each Company, GBDC, as the acquiring company, and GCIC, as the target company, are proposing to enter into the Merger to combine the two Companies. Each GCIC stockholder will be entitled to receive 0.865 shares of GBDC Common Stock for each share of GCIC Common Stock.<sup>5</sup> The value of the consideration that will be paid by GBDC to GCIC

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<sup>4</sup> Source: Yahoo! Finance. Historical data for GBDC, accessed on June 21, 2019.

<sup>5</sup> The share exchange ratio is subject to adjustment only if the respective number of outstanding shares of GBDC Common Stock or GCIC Common Stock increases or decreases prior to closing of the Merger as a result of a reclassification, recapitalization,

stockholders, including any premium over the NAV of GCIC Common Stock, will be calculated within 48 hours<sup>6</sup> of the closing of the Merger (the “Determination Date”) and, as described below, such determination will be subject to adjustment at closing to the extent that the market price of GBDC Common Stock changes from the Determination Date to the closing of the Merger. The Merger is intended to qualify as a “reorganization” within the meaning of Section 368(a) of the Code and is anticipated to be treated as a tax-free reorganization for U.S. federal income tax purposes.<sup>7</sup>

The combination of GBDC and GCIC would create the fourth largest externally managed, publicly traded BDC determined by assets on the basis of the fair value of the holdings of each Company as of March 31, 2019 and would approximately double GBDC’s pre-Merger market capitalization. The Companies expect the increased size and scale of the combined company to deliver a number of benefits to stockholders, including a material increase to ADTV that will provide additional liquidity to stockholders of the combined company and broader coverage by research analysts to attract the interest of more institutional investors.

*i. Rule 17a-8 Closing Condition*

Because the Merger contemplates the combination of affiliated BDCs, GC Advisors and the Companies will comply with Rule 17a-8, which exempts from Sections 17(a)(1) and (2) mergers of affiliated investment companies, subject to certain requirements.<sup>8</sup> Rule 17a-8 requires

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stock split, reverse stock split, split-up, combination or exchange of shares, or if a stock dividend or dividend payable in any other securities shall be authorized or declared, as described in further detail in the Form N-14.

<sup>6</sup> Excluding Sundays and holidays. *See* Section 23(b) of the 1940 Act.

<sup>7</sup> The Companies acknowledge that because the Merger is structured to be treated as a tax-free reorganization under the Code, it will not result in a sale of the GCIC assets for U.S. federal income tax purposes. The Merger is treated as an asset acquisition in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), Financial Accounting Standards Board Accounting Standards Codification Topic 805, *Business Combinations* (“ASC Topic 805”). The Merger is treated as an effective sale of GCIC and all of its assets and liabilities to GBDC.

<sup>8</sup> Section 57(i) of the 1940 Act provides that the rules and regulations under subsection (a) of Section 17 of the 1940 Act shall be deemed to apply to transactions subject to subsections (a) and (d) of Section 57 of the 1940 Act, which are the provisions analogous

the target company's board of directors to determine that the consideration to be received is not dilutive to the target company's stockholders. Prior to entering into the Merger Agreement, the board of directors of GCIC, including all of the directors of GCIC who are not interested persons of GCIC, as defined in the 1940 Act, unanimously determined that GCIC's existing stockholders would not be diluted as a result of the Merger. To comply with the requirement of Rule 17a-8 that GCIC stockholders not be diluted, the Merger Agreement includes a condition to closing that requires that the value of the consideration received by GCIC stockholders in exchange for each share of GCIC Common Stock is greater than or equal to the NAV of such share of GCIC Common Stock. Satisfaction of this closing condition is tested as of the Determination Date and such determination will be adjusted and retested at closing if the market price of GBDC Common Stock changes from the Determination Date to the closing of the Merger. The final determination of the GCIC Subordinated Liquidation Incentive Fee and GCIC's final distribution to its stockholders will be based on the market price of GBDC Common Stock as of the closing of the Merger. If, as of both the Determination Date and the closing of the Merger, shares of GBDC Common Stock do not continue to reflect the confidence of unaffiliated stockholders in GC Advisors' management of GBDC as a combined company such that the per share value of the Merger consideration were to fall below GCIC's NAV per share, the closing condition will not be satisfied, and the Merger will not close.

*ii. Section 23(b) Closing Condition*

Per the Merger Agreement, GBDC plans to issue 0.865<sup>9</sup> shares of GBDC Common Stock in exchange for each share of GCIC Common Stock. Section 23(b) of the 1940 Act prohibits an acquiring BDC from issuing its common stock at a price below the current NAV per share. As a result, the Merger Agreement requires that, as of the Determination Date, the NAV of the shares of GBDC Common Stock to be issued in exchange for shares of GCIC Common Stock in the Merger be less than or equal to the NAV of the acquired GCIC Common Stock. If, as of the Determination Date, the NAV of the shares of GBDC Common Stock issued as consideration in the Merger is greater than the NAV of the GCIC Common Stock that are exchanged, then the closing condition is not satisfied, GBDC will be unable to comply with Section 23(b) of the 1940 Act and the Merger will not close.

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to Section 17 of the 1940 Act for a BDC. The Commission has acknowledged the applicability of Rule 17a-8 to BDCs. *See* footnotes 9 and 27 of Release No. IC-26520, July 27, 2004.

<sup>9</sup> *See supra* note 5.

E. GCIC Capital Gain Performance Fees

GCIC's investment advisory agreement with GC Advisors (the "GCIC IAA")<sup>10</sup> describes the calculation and payment terms for two separate capital gains performance fees: the GCIC Capital Gain Incentive Fee and the GCIC Subordinated Liquidation Incentive Fee (the "GCIC Performance Fees"), which compensation was negotiated and agreed with the GCIC stockholders, all of whom are accredited investors. Both fees will be borne exclusively by the GCIC stockholders, who agreed to the fees as part of their investment in GCIC and who could also choose to reject payment of the fees at this time by voting against the Merger. GBDC stockholders will not be charged any capital gain performance fees as a result of the Merger and will not directly or indirectly pay any of the GCIC Performance Fees.

The GCIC Capital Gain Incentive Fee is intended to compensate GC Advisors for realizing gains on the increase in value of GCIC's investments at the time of such realization. The GCIC Capital Gain Incentive Fee equals (a) 15.0%, net of waivers, multiplied by GCIC's Capital Gain Incentive Fee Base<sup>11</sup>, if any, calculated in arrears as of the end of each calendar year (or upon termination of the GCIC IAA, as of the termination date), commencing with the calendar year ending December 31, 2015, less (b) the aggregate amount of any previously paid GCIC Capital Gain Incentive Fees.

The GCIC Subordinated Liquidation Incentive Fee is intended to compensate GC Advisors for the capital appreciation of GCIC in the form of the premium realized by GCIC stockholders in excess of GCIC's NAV at the time of such realization. The GCIC Subordinated Liquidation Fee is calculated on the premium to NAV realized in a merger in the same manner, albeit at a lower rate of 10%, as if GCIC were to sell its portfolio for cash at a premium and distribute the net proceeds to its stockholders in a liquidating distribution.<sup>12</sup> To the extent that the closing market

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<sup>10</sup> See Form 10-12G filed by GCIC on September 15, 2016.

<sup>11</sup> GCIC's "Capital Gain Incentive Fee Base" equals (1) the sum of (A) GCIC's realized capital gains, if any, on a cumulative positive basis from December 31, 2014 through the end of each calendar year or as of the date of termination of the GCIC IAA, (B) all realized capital losses on a cumulative basis and (C) all unrealized capital depreciation on a cumulative basis, less (2) GCIC's unamortized deferred debt issuance costs as of the date of calculation, if and to the extent such costs exceed all unrealized capital appreciation on a cumulative basis.

<sup>12</sup> The GCIC Subordinated Liquidation Incentive Fee is calculated based on the proceeds from a "liquidation," which is defined in the GCIC IAA to include a merger for consideration in

price of GBDC Common Stock on the Nasdaq as of the closing of the Merger results in GBDC paying consideration to GCIC stockholders that results in a premium to the NAV per share of GCIC Common Stock, GCIC is contractually obligated under the GCIC IAA to pay to GC Advisors the GCIC Subordinated Liquidation Incentive Fee in an amount equal to 10% (net of waivers) of such premium. The GCIC Subordinated Liquidation Incentive Fee, therefore, provides for a capital gains performance fee payable to GC Advisors with respect to the premium to NAV, if any, obtained by GCIC stockholders upon their receipt of GBDC Common Stock with a market value as of the closing of the Merger in excess of GCIC's NAV.<sup>13</sup>

## II. Discussion

Section 205(a)(1) of the Advisers Act prohibits an investment adviser from entering into any advisory contract that provides for compensation to the adviser on the basis of a share of capital

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excess of "Adjusted Capital." In the case of the Merger, Adjusted Capital equals GCIC's NAV as of the closing of the Merger.

<sup>13</sup> As disclosed in the Form N-14, the anticipated purchase premium to be realized by GCIC stockholders would be 7.05% based on the NAV of GCIC Common Stock as of September 30, 2018 and the closing market price of GBDC Common Stock of \$18.57 on November 26, 2018, the last trading day prior to execution of the Merger Agreement. The Companies respectfully submit that the amount of the GCIC Subordinated Liquidation Fee contractually payable under the GCIC IAA, if any, will be calculated based on the market price per share of GBDC Common Stock and the NAV per share of GCIC Common Stock as of the closing of the Merger. As described above, GBDC and GCIC will calculate their respective NAV per Share as of the Determination Date in accordance with the requirements of the Merger Agreement and Section 23(b) of the 1940 Act (which, in the case of GCIC, will include an initial determination of the GCIC Subordinated Liquidation Incentive Fee and GCIC's final distribution based on the market price of GBDC Common Stock as of such date). Such determinations will be adjusted and retested at closing if the market price of GBDC Common Stock changes from the Determination Date to the closing of the Merger such that the final determination of the GCIC Subordinated Liquidation Incentive Fee payable and GCIC's final distribution to its stockholders will be based on the market price of GBDC Common Stock as of the closing of the Merger. The market price of GBDC Common Stock as of the closing of the Merger will also be used by GBDC for purposes of determining the purchase premium, if any, that is allocated to the cost basis of the former assets of GCIC at the combined company in accordance with ASC Topic 805.

gains upon or capital appreciation of a client's funds. Section 205(b)(3) provides an exception from the general prohibition on a client paying its adviser a fee based on the capital appreciation of the client's account. The exception applies to "realized capital gains upon the funds of the business development company over a specified period." The Companies and GC Advisors submit that this Merger, in light of its specific facts and circumstances, is a realization event for purposes of Section 205(b)(3) of the Advisers Act. Thus, the Companies and GC Advisors believe that each of the GCIC Capital Gain Incentive Fee and the GCIC Subordinated Liquidation Incentive Fee is compensation based upon realized capital appreciation of GCIC that is consistent with Section 205 of the Advisers Act.

The Companies and GC Advisors respectfully submit that the Congressional intent behind adopting Section 205(b)(3) of the Advisers Act was to foster capital raising and to "remove burdens on venture capital activities that might create unnecessary disincentives to the legitimate provision of capital to small businesses."<sup>14</sup> The Companies and GC Advisors believe that the purpose of Section 205(b)(3), which permits BDCs to pay capital gains-based incentive fees to their investment advisers, was to permit investment advisers to BDCs to receive a portion of the capital gains earned by the funds they manage, consistent with traditional practice in the private fund industry (thereby eliminating historical disincentives to managers forming registered funds focused on providing capital to small, growing businesses). Accordingly, the payment of the GCIC Performance Fees is consistent with Congressional intent to create incentives to provide capital to small businesses and appropriately rewards GC Advisors for the financial performance of GCIC from its inception through the closing of the Merger, in a manner consistent with the terms of an investment advisory agreement that was negotiated with and agreed to by GCIC investors.

Upon the closing of the Merger, GCIC stockholders will be able to effectively realize the capital gain that is the basis for the calculation of the GCIC Performance Fees. GCIC stockholders will receive unrestricted, publicly traded shares of GBDC Common Stock in exchange for privately issued shares of GCIC. Accordingly, GCIC stockholders will have the opportunity to sell their shares of GBDC Common Stock in a deep, liquid market immediately after the closing of the Merger, and realize the value that they will be receiving as consideration in the Merger, including any purchase premium received in exchange for GCIC shares.<sup>15</sup> Since the Merger will not close

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<sup>14</sup> See House Report No. 1341, 96<sup>th</sup> Cong., 2d Sess., 21-22 (1980). The Small Business Investment Incentive Act of 1980 amended the Advisers Act to include Section 205(b)(3).

<sup>15</sup> In addition, GCIC stockholders who do not desire immediate liquidity will have the opportunity to receive their consideration in a tax free transaction and retain the option to

until after the Companies receive the requisite stockholder approvals, the market trading price of GBDC Common Stock will incorporate and reflect the views of unaffiliated GBDC investors as to the perceived likelihood of any selling pressure on shares of GBDC Common Stock from GCIC stockholders desiring immediate liquidity upon closing of the Merger. As of June 21, 2019, it has been six months and 24 days since public announcement of the Merger, unaffiliated GBDC investors are expected to have sufficient time to analyze the Merger and to reflect their views of the combined company in the market price of GBDC Common Stock.<sup>16</sup> Furthermore, since announcement of the Merger Agreement, officers of the Companies and GC Advisors have held numerous public conference calls with stockholders and research analysts discussing the Merger and responding to questions about the transaction. Any decrease in the trading price for shares of GBDC Common Stock from the announcement of the Merger to the closing of the Merger<sup>17</sup> would have the effect of reducing or eliminating the GCIC Subordinated Liquidation Incentive Fee.

Further, the substantial overlap of investments between the GBDC and GCIC portfolios limits the ability of GC Advisors to manipulate the calculation of the GCIC Performance Fees because the overlapping portfolio securities have the same valuations. The Companies and GC Advisors believe the consistent premium to NAV valuation ascribed to shares of GBDC Common Stock in the active trading market described above reflects the market's confidence in GBDC and

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continue to hold an investment in a vehicle with the same investment adviser and the same investment philosophy to which they have grown accustomed.

<sup>16</sup> The Companies respectfully submit that in each of two precedent mergers of BDCs of a similar scale to the Merger, the closing market price for the acquiring company's publicly traded common stock was above the closing market price as of the closing of the merger for each of the 30-day, 45-day 60-day, 90-day and 120-day periods following the closing of the respective transaction. Ares Capital Corporation's ("ARCC") acquisition of American Capital, Ltd. closed 7 months and 11 days after announcement and FS Investment Corporation's ("FSIC") acquisition of Corporate Capital Trust, Inc. closed 4 months and 26 days after announcement, and the market price of each of ARCC and FSIC underperformed in comparison to an index of 38 other externally managed, publicly traded BDCs for the period following the announcement of the proposed merger to the closing of each respective transaction.

<sup>17</sup> See *supra* Note 13.

its investment valuations as well as, by extension, the valuations of the overwhelming majority of GCIC's investments by GCIC.<sup>18</sup>

Finally, the Companies and GC Advisors note that the terms of the Merger as well as the applicable 1940 Act requirements provide appropriate safeguards to more generally protect the interest of stockholders of both Companies. The effective price floor and cap established by Rule 17a-8 and Section 23(b) of the 1940 Act ensure that the Merger does not result in dilution to shareholders of either Company.

III. Conclusion

As a result of the factors described above, the Companies respectfully submit that it is appropriate to deem the Merger a realization event for purposes of calculating "realized capital gains" under Section 205(b)(3) of the Advisers Act.

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<sup>18</sup> With respect to the small portion of the Companies' respective portfolios that do not overlap, the board of directors of each Company has reviewed those investments, including their valuation, in detail in evaluating the Merger Agreement.

If you have any questions or if you require additional information, please do not hesitate to contact the undersigned by telephone at (617) 728-7120 (or by email at [thomas.friedmann@dechert.com](mailto:thomas.friedmann@dechert.com)), Eric S. Siegel at (215) 994-2757 (or at email at [eric.siegel@dechert.com](mailto:eric.siegel@dechert.com)) or Matthew J. Carter at (202) 261-3395 (or by email at [matthew.carter@dechert.com](mailto:matthew.carter@dechert.com)).

Sincerely,



Thomas J. Friedmann

cc: Daniele Marchesani  
Trace Rakestraw  
Asen Parachkevov  
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