Michelle H. Bronsted

[redacted]

July 29, 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
Stockholder Proposal Submitted by Michelle H. Bronsted

Ladies and Gentlemen:

This letter is in response to the letter sent to you on July 23, 2020, on behalf of Prospect Capital Corporation by their counsels Michael Hoffman and Kenneth Burdon, concerning the Stockholder Proposal I had submitted to Prospect Capital concerning the proposed declassification of Prospect Capital's Board of Directors.

In their letter they still refer to me as a "Nominal Proponent." I do not know how many times I have to tell Prospect Capital, Skadden, Arps, or your office that I am the proponent of the referenced proposed Prospect Capital Corp. Shareholder resolution but I will do it again. This is my proposal! I have met all of the statutory share ownership and duration requirements. My proposal was validly submitted according to SEC guidelines and Prospect Capital's Charter and By-laws. Again, it is my valid Stockholder Proposal.

In their letter they again appeal for my proposed resolution to be excluded, but now for the following reasons:

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- Rule 14a-8(e)(2) because the New Proposal was received after the deadline for submitting proposals; and

- Rule 14a-8(i)(3) because the New Proposal contains materially false and misleading statements.

I submitted my proposed resolution to the Secretary of Prospect Capital on May 8, 2020 and it was received on May 13 which met the submission deadline prescribed by Prospect. On May 27

the Secretary of Prospect sent me a deficiency letter related to my proposal that had only one alleged deficiency:

"we believe that you are a nominal proponent acting at the behest of Mr.Cane and that Mr. Cane in fact authored your proposal and arranged for your proposal
to be submitted to the Company along with his other proposals and is intending and authorized to direct the manner in which you will vote at the Annual Meeting, in violation of Rule 14a-8(c).

Again, this was the only alleged "deficiency" Prospect Capital related to me with regard to my resolution.

On June 2, 2020 I responded to this letter and on June 5 my response was received by Prospect's Secretary. In my response I insisted that my resolution is mine and that no one is authorized to direct the manner in which I vote at the annual meeting. I admitted that I had substantial assistance from my father, Mark Cane, through the complicated, extensive and confusing shareholder resolution process (and I have asked for and received his help with this letter to you) but that, "I sent you my proposal with my letter signed by me. I take full ownership for everything I submitted to you." (You have copies of all of this correspondence thanks to prior filings by Skadden Arps.)

On June 23, 2020 Mr. Michael Hoffman and Mr. Kenneth Burdon of Skadden Arps sent a request to you that my proposal be omitted because:

Rule 14a-8(i)(8) because the Proposal would improperly remove a director from office before his term expired and could otherwise affect the outcome of the election of directors at the Annual Meeting; and

Rule 14a-8(c) because the Nominal Proponent has submitted more than one shareholder proposal.

On June 26, 2020 I sent a letter to you responding these allegations. In it I insisted that I had submitted my resolution and that I understood that my father, Mark Cane, had withdrawn his proposed resolution so that even any allegation of "multiple proposals" would be moot. In addition, I acknowledged the validity of the first objection and submitted a slight modification of my proposed resolution to repair this legitimate and unintentional deficiency.

On July 23, 2020 Mr. Hoffman and Mr. Burdon sent you a new request to allow Prospect Capital to omit my proposed resolution from their 2020 proxy for the two new reasons cited above. The following is my rebuttal to their claims:

Claim #1

"The New Proposal should be properly excluded from the Proxy Materials pursuant to Rule 14a-8(e)(2) because the Company received the New Proposal at its principal executive office after the deadline for submitting proposals for the Annual Meeting pursuant to Rule 14a-8."

My Response

As indicated above, my proposed resolution was submitted in time and this was never contested before. When, on June 23, Mr. Hoffman and Mr. Burdon pointed out the issue about how my resolution could improperly remove a director from office before his term expired I saw that as something that was not related to the substance of the resolution. Therefore I edited the resolution to repair this deficiency. This was **not** the submission of a **new resolution** which would be affected by the time deadline they reference. Rather, the modification I made is minor in nature and does not alter the substance of the proposal. On July 13, 2001, the SEC published Staff Legal Bulletin No. 14 (https://www.sec.gov/interps/legal/cfslb14.htm) in which it stated the following"

"There is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. However, we have a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. We adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected. In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects."

Again, I did not submit a "New Proposal." It was a slightly modified resolution.

In this same above cited SEC publication the following was stated, specifically related to this circumstance:

"If implementing the proposal would disqualify directors previously elected from completing their terms on the board or disqualify nominees for directors at the upcoming shareholder meeting, we may permit the shareholder to revise the proposal so that it will not affect the unexpired terms of directors elected to the board at or prior to the upcoming shareholder meeting."

I note that Mr. Hoffman and Mr. Burdon did not object to the substance of my slightly modified resolution in their July 23 letter to you and I believe it would remedy the objection they raised. Therefore I ask that, consistent with past practice, the SEC reject the claim that what I submitted was a "New Proposal" and accept, and require Prospect Capital Corp. to accept, the correction I made to a relatively minor defect in this circumstance.

Claim #2

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

Specifically, they stated the following:

"Here, the New Proposal presents a materially false and misleading characterization of the Company's corporate governance structure. First, it attempts to require the Company to compare

itself to companies that are not its peers. The supporting statement contains the following materially misleading statements:

- "Dr. Nili pointed out that through the year 2015, 'The percentage of (S&P 500) boards serving one year terms has risen every year and currently stands at ninety-three percent, more than double what it was a decade ago (forty percent).'"
- "Support for the trend away from classified or staggered boards is further illustrated by the fact that, in its 2019 voting guidelines . . ."
- "In order to improve director accountability to shareholders and help make Prospect Capital *comparable with general industry standards* regarding board terms . . ." [Emphasis added.]

These statements are materially misleading because they imply that the S&P 500 is an appropriate comparison group for the Company for purposes of evaluating the Company's board structure and suggest that the Company is an outlier as compared to prevailing trends and "general industry standards." The New Proposal is silent with respect to the Company's unique structure as a business development company ("BDC") and the Nominal Proponent omits that there are **no** listed BDCs in the S&P 500. In contrast to the boards of S&P 500 companies, an overwhelming majority of the boards of listed BDCs—approximately 90%—are classified.6 Accordingly, as compared to other listed BDCs, which is the most relevant and appropriate comparison group for evaluating the Company's corporate governance structure, the Company's board structure is consistent with general industry standards and trends for closed-end funds, including BDCs. The New Proposal, however, grossly oversimplifies the corporate governance practices of publicly traded companies, making no distinction between closed-end funds, including BDCs, and operating companies. As discussed at length in the ICI Report, classified boards provide closed-end funds and their shareholders with important benefits, including, among other benefits:

- long-term stability and continuity to pursue the fund's stated investment objectives and ensure they are aligned with the expectations of the fund's long-term investors;
- protection against investors with short-term objectives that are contrary to the fund's investment objectives;
- director independence from both management and activist shareholders;
- a committed board with experienced directors; and
- better succession planning.

Not surprisingly, closed-end funds recognize the benefits and protections that a classified board structure provides to a fund and its shareholders, and a majority of closed-end funds, including BDCs (as noted above), have classified boards given their unique position of not running an operating business but rather overseeing the management of shareholders' money in order to achieve a desired investment objective through a particular investment strategy to which shareholders have sought exposure. This classified board structure is also expressly acknowledged and permitted under Section 16(a) of the 1940 Act: "Nothing herein shall, however, preclude a registered investment company from dividing its directors into classes if its charter, certificate of incorporation, articles of association, by-laws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes . . ." Because the New Proposal is premised on a materially false and misleading characterization of the Company's corporate governance structure, in a clear attempt

by the Nominal Proponent to discredit the Company's board of directors, the Company believes that the New Proposal is excludable under Rule 14a-8(i)(3)."

My Response

I do not believe my supporting statement contains false or misleading statements for the following numerous reasons including the following:

1. My support statement for my proposed resolution does not attempt "to require the Company to compare itself to companies that are not its peers." It simply explains that publically held corporations are evolving away from classified boards.
2. The reference I made to Dr. Nili's research was a statement of fact. I did not falsely state that Prospect Capital is a member of the S&P 500. The validity of Dr. Nili's research is not questioned. Practices of companies in the S&P 500 are frequently considered a benchmark for corporations for issues ranging from valuation to social citizenship to good governance. The fact is that Corporate America, as illustrated by the migration of S&P 500 companies, has evolved from classified to declassified Boards. Again, this is a fact related to a significant factor in corporate governance. It is neither false nor misleading.
3. The second bullet point mentioned the statement I made concerning the voting recommendations of Institutional Shareholder Services (ISS). What I stated is fact. With what I included in the support of my resolution I showed that ISS recommends that resolutions related to the declassification of Boards be uniformly supported. This is a blanket ISS recommendation and does not differentiate across industry classifications. There is nothing false or misleading in my statement related to this.
4. The third bullet point took exception with my comments about improvement of director accountability and helping to make Prospect Capital comparable with general industry standards. Dr. Nili's research, as well as the ISS recommendation, are reflections of general corporate trends for publicly traded companies. I did not make any statement impugning Prospect Capital's Board. There was and is no attempt in my supporting statement to "discredit the Company's Board of Directors" and any such allegation is an attempt to silence a legitimate shareholder and take away a treasured shareholder right.
5. The fact that only 5 of 50 listed BDCs have declassified Boards does not mean that a declassified Prospect Capital Board would not improve director accountability to shareholders. Common sense dictates that anyone would be more accountable to anyone who more frequently evaluates their performance, and more frequently votes for or against them, for an office. A director in any corporation will be held more accountable for performance if he or she is subjected to annual election instead of once every three years. This should not be an issue as long as the performance of a corporation justifies continued board support from the owner shareholders to whom the entire board (both affiliated and independent members) is accountable.
6. Mr. Hoffman and Mr. Burdon cite a study by the Investment Company Institute stating support for classified boards for "Closed End Funds." Prospect Capital is not a "Closed End Fund." It is a publically traded Business Development Company (BDC). Just because a minority of BDC's currently have declassified boards doesn't mean a declassified board is in the best interest of Prospect Capital or BDC shareholders in

general, or that it is choice BDCs will continue to make, or that it is an election shareholders of BDCs will continue to support. For example, regarding changing industry practices, standard practice in the BDC industry has been for externally managed BDCs, such as Prospect Capital, to have a 20/2 fee and compensation / incentive structure for their manager without performance look-backs. Many externally managed, publically traded, BDCs aside from Prospect Capital have evolved to a more investor/shareholder friendly advisory fee structure for their manager as BlackRock TCP Capital Corp. pointed out on page 14 of a presentation to their investors (https://s23.q4cdn.com/834201599/files/doc_financials/2020/q1/BlackRock-TCP-Capital-Corp.-First-Quarter-2020-Investor-Presentation-(1).pdf). Corporate governance practices evolve with the competitive market also.

7. Mr. Hoffman and Mr. Burdon cite "director independence from both management and activist shareholders" as a reason for a classified board. I did not enter the historic Prospect Capital shareholder return performance or true "director independence" territory in the support statement for my proposed resolution but I could have raised the question as to how truly independent Prospect Capital's "independent directors" really are. All three have been in office for more than 10 years and one of them, Mr. Eugene Stark, was a former Prospect Capital chief financial officer (https://generalamericaninvestors.com/about/team) which Prospect Capital did not reveal to shareholders on page 12 of its 2019 annual meeting proxy statement. (https://d18rn0p25nwr6d.cloudfront.net/CIK-0001287032/83bbc4d8-1c9c-48d1-882c-ad1fa84d000d.html)
8. There is a long respected adage that says one should "eat your own cooking." On page 23 of Prospect Capital's 2019 10-K , (http://d18rn0p25nwr6d.cloudfront.net/CIK-0001287032/8b7f4a57-f249-4e86-9d8d-ca064880a260.html)in the section **Regulation as a Business Development Company** and subsection *Election of Directors*, Prospect Capital states the following:

   "Prospect Capital Management believes that directors have a duty to respond to stockholder actions that have received significant stockholder support. **Prospect Capital Management may withhold votes for directors that fail to act on key issues such as failure to implement proposals to declassify boards**, failure to implement a majority vote requirement, failure to submit a rights plan to a stockholder vote and failure to act on tender offers where a majority of stockholders have tendered their shares." (Emphasis added)

   On page 24, in the section *Proposals affecting the rights of stockholders*, this same 10-K states,

   "Prospect Capital Management will generally **vote in favor of proposals that give stockholders a greater voice in the affairs of the company and oppose any measure that seeks to limit those rights.** However, when analyzing such proposals, Prospect Capital Management will weigh the financial impact of the proposal against the impairment of the rights of stockholders." (Emphasis added)

   Prospect Capital is absolutely right when it withholds support for directors who fail to act on key issues such as a "failure to implement proposals to declassify boards." It is absolutely right when it supports proposals that give shareholders a greater voice or when

it opposes measures that seek to limit shareholder rights. It should not obstruct a proposal brought to its own shareholders for it to eat its own cooking associated with an action for itself that would "give stockholders a greater voice in the affairs of the company" with annual elections for all board members. Prospect Capital shareholders deserve a voice and an actionable opportunity to exercise their rights on this issue. Why work so strenuously to "limit those rights?" Short of ramifications related to inferior shareholder return performance, there should not be a lot to fear from annual elections for all board members.

In my opinion, if there were ever an industry that needed more director independence and shareholder tools such as annual board elections to keep directors on their toes and accountable to "non-affiliated" shareholders it is the externally managed BDC industry. For the above stated reasons I ask that the SEC deny the claim that "The Company may exclude the New Proposal pursuant to Rule 14a-8(i)(3) because the New Proposal contains materially false and misleading statements," and require that Prospect Capital Corp. include my statement of support for my resolution as I have written it.

Finally, on September 15, 2004 the SEC issued Staff Legal Bulletin 14B (CF) (https://www.sec.gov/interps/legal/cfslb14b. htm) and in it stated the following:

"Clarification of our views regarding the application of rule 14a-8(i)(3)
Accordingly, we are clarifying our views with regard to the application of rule 14a-8(i)(3). Specifically, because the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;

- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;

- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or

- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

Our approach to rule 14a-8(i)(3) no-action requests
As we noted in SLB No. 14, there is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. We have had, however, a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. We adopted this practice to deal with

proposals that comply generally with the substantive requirements of rule 14a-8, but contain some minor defects that could be corrected easily."

I believe the supporting statement related to my proposed resolution fits within the framework of this SEC rule 14a-8 guidance and therefore it would not be appropriate for Prospect Capital to exclude either my supporting statement language and/or my entire proposal for the reasons stated above. If the SEC disagrees with me I ask that I be allowed the benefit of a no-action response that would permit me to make minor-in-nature revision(s) to my supporting statement to correct any possible minor defect(s) that could be easily corrected.

Thank you for your continued service to our Country and for what you do to protect the interests of shareholders like me.

[redacted]

Michelle H. Bronsted

Cc: Kristin Van Dask – Prospect Capital Corporation
Michael Hoffman – Skadden, Arps
Kenneth Burdon – Skadden, Arps