SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

Release No. IC-30268; File No. S7-07-11

RIN 3235-AL02

PURCHASE OF CERTAIN DEBT SECURITIES BY BUSINESS AND INDUSTRIAL DEVELOPMENT COMPANIES RELYING ON AN INVESTMENT COMPANY ACT EXEMPTION

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting a new rule under the Investment Company Act of 1940 ("Investment Company Act") to establish a standard of credit-worthiness in place of a statutory reference to credit ratings that the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") removes. The rule will establish the standard of credit quality that must be met by certain debt securities purchased by entities relying on the Investment Company Act exemption for business and industrial development companies.

DATE: Effective date: December 24, 2012.

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SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 6a-5 [17 CFR 270.6a-5] under the Investment Company Act.[1]

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[1] 15 U.S.C. 80a-1. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to

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I. BACKGROUND

The Dodd-Frank Act was enacted on July 21, 2010.[2] Section 939(c) of the Dodd-Frank Act removes a reference to credit ratings from section 6(a)(5) of the Investment Company Act and replaces it with a reference to "such standards of credit-worthiness as the Commission shall adopt."[3] To implement this mandate, last year the Commission proposed new rule 6a-5 under the Investment Company Act that would establish a credit-worthiness standard to replace the credit rating reference in section 6(a)(5) of that Act that the Dodd-Frank Act eliminates.[4] We

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Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

2 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

3 Section 939(c) of the Dodd-Frank Act (amending section 6(a)(5)(A)(iv)(I) of the Investment Company Act). This amendment to the Investment Company Act becomes effective on July 21, 2012. *See* section 939(g) of the Dodd-Frank Act.

4 *See* References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)] ("2011 Proposing Release"). In that release, we also proposed amendments to replace references to credit ratings in rules 2a-7 and 5b-3 under the Investment Company Act and Forms N-1A, N-2, N-3 and N-MFP under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a). Those proposed amendments would implement section 939A of the Dodd-Frank Act, which requires the Commission to review its regulations for any references to or requirements regarding credit ratings that require the use of an assessment of the credit-worthiness of a security or money market instrument, remove these references or requirements, and substitute in those regulations other standards of credit-worthiness that we determine to be appropriate. We intend to address the proposed amendments to rule 2a-7, rule 5b-3 and Forms N-1A, N-2, N-3 and N-MFP separately. Rule 3a-7 under the Investment Company Act also contains a reference to ratings. In August 2011, in a concept release soliciting comment on the treatment of asset-backed issuers under the Investment Company Act, we sought comment on the role, if any, that credit ratings should continue to play in the context of rule 3a-7. *See* Treatment of Asset-Backed Issuers under the Investment Company Act, Investment Company Act Release No. 29779 (Aug.

received one comment letter regarding proposed rule 6a-5, which we discuss below.[5] Today, we are adopting new rule 6a-5, which implements section 939(c) of the Dodd-Frank Act.

II. DISCUSSION

Business and industrial development companies ("BIDCOs") are companies that operate under state statutes that provide direct investment and loan financing, as well as managerial assistance, to state and local enterprises.[6] Because they invest in securities, BIDCOs frequently meet the definition of "investment company" under the Investment Company Act.[7] In 1996, the Investment Company Act was amended to add section 6(a)(5) to exempt these companies from most provisions of the Act subject to certain conditions.[8] The statutory exemption was premised on states having a strong interest in overseeing the structure and operations of these companies,

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31, 2011) [76 FR 55308 (Sept. 7, 2011)] at Section III.A.1.

5 The comment letters on the 2011 Proposing Release (File No. S7-07-11) are available at http://www.sec.gov/comments/s7-07-11/s70711.shtml. In addition, to facilitate public input on the Dodd-Frank Act, we provided a series of e-mail links, organized by topic on our website at http://www.sec.gov/spotlight/regreformcomments.shtml. The public comments we received in response to our solicitation for comment on Title IX of the Dodd-Frank Act (which includes sections 939 and 939A) are available on our website at http://www.sec.gov/comments/df-title-ix/credit-rating-agencies/credit-rating-agencies.shtml.

6 *See* Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 479, S. Rep. No. 103-166, at 11 (1993) ("1993 Senate Report").

7 For purposes of the Investment Company Act, an "investment company" means any issuer that: (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. 15 U.S.C. 80a-3(a)(1).

8 15 U.S.C. 80a-6(a)(5); Pub. L. No. 104-290 § 501, 110 Stat. 3416, 3444 (1996). Section 6(a)(5)(B) provides that section 9 and, to the extent necessary to enforce section 9, sections 38 through 51, apply to a BIDCO as though the company were a registered investment company. Among other conditions to reliance on the exemption in section 6(a)(5), a BIDCO may not issue redeemable securities.

thus rendering regulation under the Investment Company Act largely duplicative and unnecessary.[9]

BIDCOs that seek to rely on the exemption in section 6(a)(5) are limited with respect to the types of securities issued by investment companies and companies exempt from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Investment Company Act ("private funds") that they may purchase. Specifically, section 6(a)(5)(A)(iv) prohibits these BIDCOs from purchasing securities issued by investment companies and private funds other than debt securities that are rated investment grade by at least one NRSRO and securities issued by registered open-end investment companies that invest at least 65 percent of their assets in investment grade securities or securities that the fund determines are comparable in quality.[10] This provision was intended to provide limited flexibility to invest capital not immediately needed for the company's long-term commitments.[11] Although the legislative history of the provision does not specifically explain why Congress restricted BIDCOs to acquiring "investment grade" debt of investment companies and private funds, as we noted in the 2011

[9] *See* 1993 Senate Report, *supra* note 6, at 19 (further stating that states are well positioned to monitor these companies and address the needs of resident investors). Prior to the addition of section 6(a)(5), the Commission had granted orders to exempt BIDCOs from regulation under the Act. *See*, *e.g.*, The Idaho Company, Investment Company Release Nos. 18926 (Sept. 3, 1992) (notice) and 18985 (Sept. 30, 1992) (order).

[10] 15 U.S.C. 80a-6(a)(5)(A), as in effect prior to July 21, 2012 (exempting any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business in that state if, among other things, the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term "investment company" under sections 3(c)(1) or 3(c)(7), other than (I) any debt security that is rated investment grade by not less than 1 nationally recognized statistical rating organization; or (II) any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

[11] *See* 1993 Senate Report, *supra* note 6, at 20.

Proposing Release, it may have been designed to limit BIDCOs to investing in debt securities of sufficiently high credit quality that they are likely to maintain a fairly stable market value and that could be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.[12]

As described above, section 939(c) of the Dodd-Frank Act eliminates the credit rating reference in section 6(a)(5)(A)(iv) of the Investment Company Act. Instead of limiting BIDCOs to purchasing debt securities issued by investment companies and private funds that are rated "investment grade," the amendment requires such debt securities to meet "such standards of credit-worthiness as the Commission shall adopt."

We do not understand that the statutory amendment was intended to change the standard of credit quality represented by an investment grade rating. Accordingly, we are adopting rule 6a-5, as proposed, to establish a standard of credit-worthiness designed to achieve the same degree of risk limitation as the credit rating it replaces. Rule 6a-5 deems a BIDCO to have met the requirements for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) if the board of directors or members of the company (or its or their delegate) determines, at the time of purchase, that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.[13] The board of directors or members of a BIDCO (or its or their

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[12] *See* 2011 Proposing Release, *supra* note 4, at Section II.D.

[13] Rule 6a-5. The standard for credit-worthiness that we are adopting in rule 6a-5 is similar to the standard that we adopted in rule 10f-3 under the Investment Company Act. Rule 10f-3 defines eligible municipal securities as securities that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either are subject to no greater than moderate credit risk or, if the issuer has been in operation for less than three years, the securities are subject to a minimal or low amount of credit risk. *See* rule 10f-3(a)(3).

delegate) would have to make this determination at the time of acquisition of the securities.[14] As a result of rule 6a-5, section 6(a)(5) of the Investment Company Act will also limit a BIDCO's investments in registered open-end funds to those funds that invest at least 65 percent of their assets in debt securities that meet our standard.[15]

The final rule does not, as one commenter suggested, include specific factors or tests that the board must apply in performing its credit analysis.[16] We believe that the new credit quality standards (that the debt security be subject to no greater than moderate credit risk and be sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time) are clear enough for a BIDCO's board or members (or its or their delegate) to understand the risks acceptable under the rule. We note that the number and scope of factors that may be appropriate to making a credit quality determination with respect to a security may vary significantly depending on the particular security. We are concerned that prescribing a list of specific factors in a rule today might function as a limit to the credit quality analysis that boards or members would undertake and may not address information that would be relevant to credit quality determinations regarding new types of debt securities that investment companies or private funds may issue and in which BIDCOs may invest in the future.[17]

The standard we are adopting is designed to limit BIDCOs to purchasing debt securities

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14 Rule 6a-5.

15 Section 6(a)(5)(A)(iv)(II) (permitting a BIDCO to purchase any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) (*i.e.*, securities that meet the standards of credit-worthiness that the Commission adopts) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

16 *See* Better Markets Comment Letter (Apr. 25, 2011) ("Better Markets Comment Letter") (asserting that the proposed standard is vague and would undermine the reliability of a board's credit risk determinations and the board's accountability for such determinations).

17 We also agree with this commenter, who acknowledged that a reliable and objective shorthand measure of credit risk that could be incorporated into Commission regulations is currently unavailable. *See* Better Markets Comment Letter.

issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.[18] Debt securities (or their issuers) subject to a moderate level of credit risk would demonstrate at least average credit-worthiness relative to other similar debt issues (or issuers of similar debt).[19] Moderate credit risk would denote current low expectations of default risk associated with the security, with an adequate capacity for payment by the issuer of principal and interest.[20] In making their credit quality determinations, a BIDCO's board of directors or members (or its or their delegate) can also consider credit quality reports prepared by outside sources, including NRSRO ratings, that the BIDCO board or members conclude are credible and reliable for this purpose.

III. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 ("PRA") imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Rule 6a-5 does not create any new collections of information.

IV. ECONOMIC ANALYSIS

As discussed above, we are adopting a new rule to implement section 939(c) of the Dodd-Frank Act to replace a statutory reference to a credit rating with an alternative credit-worthiness standard. We considered the economic effects, including costs and benefits, of our proposed new rule in the 2011 Proposing Release and we discuss below the comment received related to our analysis.

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[18] *See supra* note 12 and accompanying text.

[19] *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28939 (Oct. 5, 2009) [74 FR 52358 (Oct. 9, 2009)] at n.86 (release adopting amendments to rule 10f-3).

[20] *Id*.

The Commission has discretion in adopting the alternative standard of credit-worthiness, and we undertake below to discuss the economic effects of the new rule that are within our discretion under the Dodd-Frank Act, in addition to the economic effects of removing rating references from statutory provisions, as mandated by the Dodd-Frank Act itself. The two types of costs and benefits may not be entirely separable to the extent that our discretion is exercised to realize the benefits intended by the Dodd-Frank Act. In evaluating the economic effects of new rule 6a-5, we compare section 6(a)(5) of the Investment Company Act, as currently in effect (which includes a reference to a rating), with the new rule we are adopting.

Rule 6a-5 establishes a credit-worthiness standard under section 6(a)(5)(A)(iv)(I) of the Investment Company Act. BIDCOs that seek to rely on the exemption in section 6(a)(5) of the Act are limited to investing in debt securities issued by investment companies and private funds if, at the time of purchase, the board of directors or members of the BIDCO (or its or their delegate) determines that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.

We anticipate that the adoption of rule 6a-5 may result in certain benefits. First, we do not understand that by amending section 6(a)(5), Congress intended to change the credit quality of the debt securities that BIDCOs may purchase and our rule is designed to establish a similar credit quality standard in order to achieve the same limitation on risk as the credit rating it replaces. In particular, the amended standard is designed to limit BIDCOs to purchasing debt securities issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities. Second, the subjective credit quality standard in amended rule 6a-5 may provide BIDCOs greater flexibility in determining the pool of eligible debt securities in which they may invest. Finally, the credit quality standard in new rule 6a-5 may further Congress' stated purpose of reducing reliance on ratings in the context of a BIDCO's purchase of certain debt securities.[21]

We also recognize that BIDCOs may incur some costs as a result of the adoption of new rule 6a-5. These may be internal costs or costs to consult outside legal counsel to evaluate whether changes to any policies and procedures the BIDCOs may have currently for acquiring debt securities issued by investment companies or private funds may be appropriate in light of the new rule. We expect that, although not required by the Investment Company Act, as a matter of good business practice, directors or members of most BIDCOs that do not currently have them may prepare policies and procedures to make the credit quality and liquidity determinations required by the new rule. Staff estimates that BIDCOs will incur the costs of preparing the procedures for making determinations of credit quality and liquidity under the rule once, and directors and members of BIDCOs (or their delegates) will be able to follow these procedures for purposes of making future determinations under the rule. Commission staff estimated in the 2011 Proposing Release that each BIDCO would incur, on average, an initial one-time cost of $1000 to prepare policies and procedures and an average of $1000 in annual costs for making credit determinations with respect to the acquisition of debt securities.[22] We received no

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21 *See* Report of the House of Representatives Financial Services Committee to Accompany H.R. 4173, H. Rep. No. 111-517, at 871 (2010).

22 *See* 2011 Proposing Release, supra note 4, at n.112. Staff does not have reliable data and is not aware of any databases that compile information regarding the number of existing BIDCOs. Moreover, we received no data from commenters. We note that some state regulators disclose the number of BIDCOs registered in the state on the regulators' websites. Of those that do, the number of registered BIDCOs ranges from one to 10. *See*, *e.g.*, Louisiana Office of Financial Institutions at http://www.ofi.state.la.us/ (listing 10 BIDCOs in a directory of active BIDCOs); California Department of Financial Institutions at http://www.dfi.ca.gov/directory/bidco.asp (listing one BIDCO in a directory of BIDCOs). We estimate that each BIDCO would incur on

comments on those estimates. We note however, that under rule 6a-5, in evaluating whether debt securities issued by investment companies and private funds present moderate credit risk, boards of directors and members of BIDCOs (or its or their delegates) can consider credit quality determinations prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for purposes of making these determinations, and we anticipate that many BIDCOs that invest cash in these types of debt securities will continue to do so. We expect that the ability to consider outside assessments will help minimize the burden on BIDCOs and contribute to a BIDCO's ability to make consistent and reliable credit quality determinations. Nevertheless, we recognize that some BIDCO boards or members may choose to hire consultants to assist in developing procedures and to make or oversee the determinations. Staff estimated in the 2011 Proposing Release that the cost to hire such consultants would be, on average, $8000 for each BIDCO.[23] We received no comments on this estimate.

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average a one-time burden of 4 hours for a senior business analyst (under board or member delegation) to develop policies and procedures for evaluating credit and liquidity risk (4 hours x $237 per hour = $948). The staff estimates that the internal cost for time spent by a senior business analyst is $237 per hour. This estimate, as well as other internal time cost estimates made in this analysis, are derived from SIFMA's Management and Professional Earnings in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Commission staff believes that additional costs incurred by boards or members for review of procedures would be incorporated into BIDCOs' overall board or member costs and would not add any particular costs. In addition, Commission staff estimates that a BIDCO board or member is likely to delegate the credit risk determinations, and that such determinations would take on average 1 hour of a senior business analyst's time (at $237 per hour) to evaluate the credit quality for each of an average of four investment company or private fund debt securities that a BIDCO would purchase each year (4 hours x $237 per hour) for a total cost of $948 per year. Staff has calculated these estimates using an internal cost estimate for a business analyst's time that is updated from the one used in calculating the estimates in the 2011 Proposing Release.

[23] *See* 2011 Proposing Release, *supra* note 4, at n.114 and accompanying text. Staff estimates that a BIDCO may need up to 16 hours of consulting advice to assist in developing procedures and to make or oversee the proposed determinations. Staff estimates that this advice would cost a BIDCO $500 per hour based on an understanding of the rates typically charged by outside consulting firms resulting in an average cost of $8000 for each BIDCO.

Adopting a new credit quality standard in place of the ratings requirement in section 6(a)(5)(A)(iv) of the Investment Company Act may result in other costs for BIDCOs and their investors. The minimum rating requirement in section 6(a)(5)(A)(iv) of the Act, before it was amended by the Dodd-Frank Act, established an objective standard that is easy to apply and may have limited BIDCOs from investing in securities that posed greater credit risks. The new rule instead requires BIDCO boards or members to assess credit quality by applying a subjective standard. We acknowledge that a BIDCO could invest in lower quality debt securities that it determines meets the standard in new rule 6a-5, and that it may be difficult for the Commission to challenge the determination of a BIDCO's directors or members (or their delegates). In addition, because credit quality assessments could differ across BIDCOs, the range of risk of investments may be broader than it is currently. We do not, however, believe that the new rule is likely to lead BIDCOs to invest in riskier securities because the standard we are adopting is very similar to the standard articulated by the rating agencies for investment grade securities.[24]

As part of our economic analysis, we considered alternatives to the standard that we are adopting in rule 6a-5. In particular, we considered including specific factors or tests that a fund board must apply in performing its credit analysis in the rule. As noted above, we believe that this alternative could function as a limit to a fund's credit quality analysis[25] and thus might result in a less effective credit quality determination than a BIDCO would perform under the credit

24 *See* Moody's Investor Service, Ratings Symbols and Definitions (June 2012), http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004, at 5 ("Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics."); FitchRatings, Definitions of Ratings and Other Forms of Opinion (Apr. 2012), http://www.fitchratings.com/web_content/ratings/fitch_ratings_definitions_and_scales.pdf, at 12 ("'BBB' ratings indicate that expectations of credit risk are currently low. The capacity for payment of financial commitments is considered adequate but adverse business or economic conditions are more likely to impair this capacity.") The term "investment grade" is generally used to describe the categories 'BBB' (or comparable) or above. *See id.*, at 6.

25 *See supra* paragraph accompanying note 17.

quality standard in the new rule, which could result in investments that expose the BIDCO to greater risk.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with section 4(a) of the Regulatory Flexibility Act regarding new rule 6a-5, which we are adopting today to give effect to provisions of the Dodd-Frank Act.[26] We prepared an Initial Regulatory Flexibility Analysis ("IRFA") in conjunction with the 2011 Proposing Release in March 2011.[27]

A. Need for and Objectives of the Rule and Form Amendments and New Rule

As described more fully in Sections I and II of this Release, the Commission is adopting new rule 6a-5 to set forth a standard of credit-worthiness for purposes of section 6(a)(5)(A)(iv) of the Investment Company Act, as anticipated by section 939(c) the Dodd Frank Act, which eliminates the investment grade standard from section 6(a)(5) of the Investment Company Act.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA. In particular, we sought comment on how many small entities would be subject to the proposed new rule and whether the effect of the proposed new rule on small entities subject to it would be economically significant. None of the comment letters we received specifically addressed the IRFA. None of the comment letters specifically addressed the effect of the new rule on small BIDCOs.

C. Small Entities Subject to the Rule and Form Amendments and New Rule

New rule 6a-5 under the Investment Company Act would affect BIDCOs, including entities that are considered to be a small business or small organization (collectively, "small

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26 5 U.S.C. 604(a).

27 *See* 2011 Proposing Release, *supra* note 4, at Section VIII.

entity") for purposes of the Regulatory Flexibility Act. Under the standards adopted by the Small Business Administration, small entities in the financial investment industry include entities with $7 million or less in annual receipts.[28] We do not have any data and are not aware of any databases that compile information regarding how many BIDCOs would be small entities under this definition. We also did not receive any comments from BIDCOs.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 6a-5 imposes no reporting, recordkeeping or other compliance requirements.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. In connection with the new rule, the Commission considered the following alternatives: (i) establishing different compliance standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) use of performance rather than design standards; and (iv) exempting small entities from all or part of the requirements.

We believe that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, is not appropriate or consistent with investor protection or section 939(c) of the Dodd-Frank Act, which rule 6a-5 implements. With respect to rule 6a-5, we believe that special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may create a risk that those BIDCOs could acquire debt securities that are not of sufficiently high credit quality that they would be likely to maintain a fairly stable market value or be liquidated easily, as we believe may have been

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[28] 13 CFR 121.201.

intended for the BIDCO to support its long-term commitments. Further consolidation or simplification of rule 6a-5 for BIDCOs that are small entities is inconsistent with the Commission's goals of fostering investor protection. Finally, rule 6a-5 uses performance rather than design standards for determining the credit quality of specific debt securities.

STATUTORY AUTHORITY

The Commission is adopting new rule 6a-5 under the authority set forth in section 38(a) of the Investment Company Act [15 U.S.C. 80a-37(a)] and section 939 of the Dodd-Frank Act, to be codified at section 6(a)(5)(A)(iv)(I) of the Investment Company Act [15 U.S.C. 80a-6(a)(5)(A)(iv)(I)].

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULE

PART 270--RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is revised to add a sub-authority in numerical order to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq*., 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

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Section 270.6a-5 is also issued under 15 U.S.C. 80a-6(a)(5)(A)(iv)(I).

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2. Section 270.6a-5 is added to read as follows:

§ 270.6a-5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Act.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a-6(a)(5)(A)), a company shall be deemed to have met the requirement for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: November 19, 2012