

# CLEARY GOTTlieb STEEN & HAMILTON LLP

AMERICAS  
NEW YORK  
SAN FRANCISCO  
SÃO PAULO  
SILICON VALLEY  
WASHINGTON, D.C.

ASIA  
HONG KONG  
SEOUL

2112 Pennsylvania Avenue, NW  
Washington, DC 20037-3229  
T: +1 202 974 1500  
F: +1 202 974 1999  
clearygottlieb.com

EUROPE & MIDDLE EAST  
ABU DHABI  
BRUSSELS  
COLOGNE  
FRANKFURT  
LONDON  
MILAN  
PARIS  
ROME

John J. Mahon  
Partner  
T: 202.974.1926  
[jmahon@cgsgh.com](mailto:jmahon@cgsgh.com)

April 16, 2026

## VIA EMAIL

Mr. Daniele Marchesani, Esq.  
Office of Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Third Point Private Capital Income Fund (SEC File No. 000-56827)

Dear Mr. Marchesani:

We represent Third Point Private Capital Income Fund (the “*Fund*”), a closed-end management investment company formed on December 5, 2025, as a statutory trust under the laws of the State of Delaware. The Fund has filed a registration statement on Form 10 (the “*Form 10*”) to register its common shares of beneficial interest (“*Common Shares*”) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), and, prior to commencement of operations, intends to elect to be regulated as a business development company (a “*BDC*”) pursuant to Section 54 of the Investment Company Act of 1940, as amended (the “*1940 Act*”). Third Point Private Capital LLC (the “*Adviser*”), an affiliate of Third Point LLC (“*Third Point*”), will serve as investment adviser to the Fund.

On behalf of the Fund, we respectfully request your assurances that, for the reasons and under the circumstances described below, the Division of Investment Management (the “*Division*”) will not recommend enforcement action to the Securities and Exchange Commission (the “*Commission*”) against the Fund under Sections 18(a)(2)(A), (B), and (E) of the 1940 Act, as modified by Section 61(a) of the 1940 Act, if the Fund issues certain preferred shares (the “*Seed Shares*”) in the manner and with the terms as described herein to one or more affiliates of Third Point (each, a “*Seed Investor*”), and subsequently repurchases such Seed Shares pursuant to their terms. As described in more detail herein, while the Seed Shares will have a priority over any other class of shares as to the payment of dividends, we do not believe that the repurchase provisions for such Seed Shares should be considered an “involuntary liquidation

preference” within the meaning of Section 18 of the 1940 Act, and we do not believe that the issuance and repurchase of such Seed Shares in the manner contemplated below would provide a meaningful opportunity for abuse on the part of any Seed Investor. While the Fund intends to elect to be regulated as a BDC, we note that the no-action assurances requested in this letter could apply equally to a registered closed-end investment company that would be subject to Section 18(a) of the 1940 Act.

The Fund believes that the issuance and use of the Seed Shares in the manner contemplated below will have notable benefits both for the Fund and for its investors. The capital provided through the issuance of the Seed Shares will allow the Fund to commence operations and source and build a portfolio of investments more quickly than it otherwise could. At the same time, this allows prospective investors to avoid acquiring shares in a blind pool investment vehicle and instead deploy their capital toward the Fund’s investments more quickly. In addition, the Fund’s ability to issue Seed Shares will provide the Fund with a meaningful amount of available capital in a competitive marketplace for investment opportunities.

We understand that no BDC or registered closed-end investment company, including the Fund, will be entitled to rely on the requested no-action assurances under Section 18 if (i) it owned assets, or accepted investments, prior to the filing of its election to be regulated as a BDC under the 1940 Act or its registration as an investment company thereunder, as applicable; or (ii) it received assets as part of a reorganization involving another entity at, or around, the time of such election or registration.

## **Background**

### The Fund

The Fund’s investment objective is to seek to generate current income and, to a lesser extent, long-term capital appreciation. The Fund will seek to achieve its investment objective by investing primarily in senior secured loans to U.S.-domiciled, middle market private companies with a focus on originated transactions sourced through the network of the Adviser and its affiliates, including the relationships of the members of Third Point’s private credit team.

The Fund has filed a Form 10 to register its Common Shares under the Exchange Act and intends to elect to be regulated as a BDC under the 1940 Act prior to commencement of operations. The Fund will conduct a continuous offering of its Common Shares on a private placement basis (the “*Private Offering*”). It is contemplated that the Fund will have an indefinite life and the Fund has no present intention to list its Common Shares on any securities exchange.<sup>1</sup> In connection with the Private Offering, the Fund may accept subscriptions from investors that are either fully funded upon acceptance, or that contain capital commitments permitting the Fund to draw down capital from an investor over a specified period of time (each, a “*Capital Call Subscription*”). The Fund is expected to utilize Capital Call Subscriptions for subscriptions reflecting larger dollar amounts typically associated with institutional investors.

The Fund is expected to initiate a quarterly share repurchase program (the “*Liquidity Program*”) within two (2) years following commencement of operations, pursuant to which the Fund would be expected to offer to repurchase a certain amount of its outstanding Common Shares at a price equal to the net asset value of such Common Shares, through issuer tender offers conducted in accordance with Rule 13e-4 and Regulation 14E under the Exchange Act. The timing of the commencement of the Fund’s

---

<sup>1</sup> While the Fund has no present intention to undertake a listing on any securities exchange, the Board of Trustees of the Fund will retain the discretion to seek such a listing in the future if it determines market conditions are appropriate, subject to the Fund’s representations herein.

Liquidity Program will be subject to approval by the Fund's Board of Trustees (the "**Board**"), as will the amount of each quarterly repurchase offer conducted pursuant to the Liquidity Program.

### The Seed Investors

The Seed Investors are expected to include one or more persons that may be deemed to be affiliated persons of Third Point or the Fund within the scope of Section 2(a)(3) of the 1940 Act. The Seed Investor(s) will enter into subscription agreements with the Fund (the "**Seed Subscription Agreements**") pursuant to which such Seed Investor(s) currently intend to collectively subscribe to invest up to approximately \$240 million in the Fund, consisting of separate subscriptions to purchase approximately \$15 million in Common Shares and approximately \$225 million in Seed Shares, in each case subject to capital calls by the Fund.<sup>2</sup> When a Seed Investor enters into a Seed Subscription Agreement, the Seed Investor will be committing to invest the entire amount of capital in the Fund which is provided for in that Seed Subscription Agreement. When the Fund calls capital from a Seed Investor pursuant to a Seed Subscription Agreement, the Seed Investor will be contractually obligated to fund such investment promptly and acquire the underlying Common Shares or Seed Shares, as applicable. A Seed Investor will only purchase Seed Shares for cash.<sup>3</sup>

### The Seed Shares

The Seed Shares will be designated as a class of preferred shares but, except as expressly set forth herein, will have the same terms as the Fund's Common Shares. All Seed Shares will be issued at the same fixed price per Seed Share for cash, which will be equal to the initial offering price of the Fund's Common Shares (the "**Original Purchase Price**"). The Seed Shares will have the same voting rights as the Common Shares, except that, as required by the 1940 Act, for so long as any Seed Shares remain outstanding, the holders of such Seed Shares will have the exclusive right to elect two (2) trustees on the Fund's five (5) member Board of Trustees. The Fund intends to designate two (2) of its interested trustees to be subject to election by the holders of the Seed Shares. The Fund also will otherwise comply with the requirements of Section 18(a)(2)(C) of the 1940 Act.

Each Seed Share shall be entitled to receive a quarterly dividend equal to the greater of (i) a fixed percentage return based on the Original Purchase Price (the "**Floor Rate**") or (ii) the actual per-share cash distribution declared and paid on each of the Fund's Common Shares for the same period. In the case that the Common Shares receive a dividend more frequently than quarterly, each Seed Share will then be entitled to receive a dividend on the same schedule as the Common Shares. The Seed Shares are expected to indirectly bear the same fees and expenses as the Fund's Common Shares so long as the Fund's distribution rate for its Common Shares exceeds the Floor Rate. The dividends on the Seed Shares are cumulative.

Because each Seed Share is entitled to receive a quarterly dividend that may be greater than the actual per-share cash distribution declared and paid on each of the Fund's Common Shares, and the Fund will be contractually obligated to use subscription proceeds to repurchase outstanding Seed Shares as

---

<sup>2</sup> While we currently expect that the Seed Investor(s)' collective subscriptions will be for the amounts stated in this letter, prior to the time when a Seed Investor executes any subscription agreement, the dollar amounts of the subscriptions may change in the event that the Adviser deems a smaller or larger amount would be more appropriate in view of market feedback.

<sup>3</sup> The Fund will not acquire assets from an affiliated person within the scope of Section 2(a)(3) of the 1940 Act, or a affiliated persons of such persons, until any outstanding Seed Shares have been fully repurchased and no further Seed Shares will be issued, except for purchases permitted by Rule 17a-7 under the 1940 Act or Section 57(f) of the 1940 Act.

described below, the Seed Shares could be viewed as having priority over another class as to payment of dividends. Therefore, the Fund intends to treat the Seed Shares as senior securities which are stock, as contemplated in Section 18 of the 1940 Act.

The Fund's portfolio positions will be valued by the Adviser as the Fund's valuation designee under Rule 2a-5. Such valuations will be performed in accordance with the Fund's valuation policy and the Adviser's valuation policies and procedures. For so long as any Seed Shares remain outstanding, the Fund's Audit Committee will also implement a separate process to review and approve such valuations periodically, and no less frequently than quarterly.

The Seed Shares shall not have any liquidation preference relative to the Common Shares. Upon any liquidation of the Fund, each Seed Share shall be entitled to receive the lesser of (i) its Original Purchase Price and (ii) the per-share amount distributed to each of the Fund's Common Shares.

If any Seed Shares remain outstanding on the date that is thirty-six (36) months after their initial issuance, the Fund will cease offering new Common Shares, cease originating new investments other than pursuant to existing contractual or follow-on commitments and thereafter proceed to distribute proceeds from the disposition of existing portfolio investments until the Fund has been fully liquidated. Furthermore, the Fund does not presently intend to seek a listing of its shares on any national securities exchange, and will not seek such a listing (i) prior to the twenty-four (24) month anniversary of the initial issuance of any Seed Shares, or (ii) while any Seed Shares remain outstanding.

#### Seed Share Commitment and Repurchase Mechanics

The Fund does not expect to draw down any commitments to purchase Seed Shares until the Seed Investors' commitments to purchase Common Shares under the Seed Subscription Agreements have been fully funded. Once Seed Shares have been issued, the Fund will be contractually obligated to apply at least 50% of the net proceeds from any subsequent subscriptions for Common Shares made in cash (the "**Repurchase Allocation**") to repurchase any outstanding Seed Shares. Such repurchases will be made at a price per share equal to the Original Purchase Price. In addition, each Seed Share that is repurchased will be entitled to receive an amount equal to accrued but unpaid dividends, calculated at the Floor Rate through the date of such repurchase. The Fund shall not otherwise repurchase any of the Seed Shares.

To the extent that not all Seed Shares committed by the Seed Investor have been issued at any given time, and the Repurchase Allocation exceeds the amount necessary to repurchase all outstanding Seed Shares, the unused portion of such Repurchase Allocation will reduce, on a dollar-for-dollar basis, the unfunded portion of the Seed Investors' commitments to purchase Seed Shares. In practical terms, \$450 million of net proceeds from subsequent Common Share commitments would be sufficient to repurchase all Seed Shares issued under the Seed Investor's \$225 million Seed Share commitment and to extinguish any unfunded portion of that commitment.

### **Legal Analysis**

#### Section 18 (as modified by Section 61(a) for BDCs)

Section 18(a)(2) of the 1940 Act provides that a registered closed-end investment company may not issue any class of senior security representing stock unless, among other things: (i) immediately after issuance, it will have an "asset coverage of at least 200 percent"; (ii) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer) or any other distribution where the stock does not have asset coverage of at least 200 percent after deducting the amount of such dividend or distribution when declared; and (iii) it will have "complete priority over any other class

as to distribution of assets and payment of dividends, which dividends shall be cumulative.” Section 61(a) of the 1940 Act, in turn, makes Section 18 applicable to a BDC such as the Fund to the same extent as if it were a registered closed-end investment company, except as specified therein. The Fund has elected to be subject to the 150 percent asset coverage requirement permitted under Section 61(a)(2) of the 1940 Act, including with respect to the issuance of senior securities which are stock, such as the Seed Shares.

Section 18(h) defines the “asset coverage” of a class of senior security representing stock as the ratio of the value of the issuer’s total assets, less all liabilities and indebtedness not represented by senior securities, to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate amount of senior securities representing stock. For senior securities representing stock, Section 18(h) specifies that the relevant amount is the “involuntary liquidation preference,” meaning the amount to which such securities would be entitled to receive upon involuntary liquidation in preference to junior securities.

Given the absence of a liquidation preference for the Seed Shares over the Common Shares, and the lack of any additional voting rights for the Seed Shares, the Seed Shares could be viewed as not having any priority over the Common Shares as required by Section 18(a)(2)(E). However, we note that if the quarterly distribution for the Common Shares were to fall below the Floor Rate, the Seed Shares would have a preference with respect to that difference.

Although the Seed Shares will be designated as a class of preferred shares, and thus will be treated as senior securities which are stock for purposes of Section 18(a)(2), as modified by Section 61(a), they carry no involuntary liquidation preference over the Fund’s Common Shares. Specifically, upon liquidation, the Seed Shares will participate on no better than a *pari passu* basis with the Fund’s Common Shares, with each Seed Share only entitled to receive the lesser of (i) its Original Purchase Price and (ii) the per-share amount distributed with respect to each Common Share. Accordingly, in the event of a liquidation of the Fund, the Seed Shares would never be entitled to receive more than, and may receive less than, each Common Share. Accordingly, the Seed Shares do not carry any “involuntary liquidation preference” within the meaning of Section 18(h). The “aggregate amount” attributable to the Seed Shares is thus zero and their issuance should not reduce the Fund’s asset coverage.

The conditional repurchase obligation associated with the Seed Shares should also not be viewed as the equivalent of a liquidation preference under Section 18(h). That obligation requires the Fund to apply the Repurchase Allocation to repurchase Seed Shares only when, and to the extent that, new capital is raised. Repurchases occur at the Original Purchase Price, together with accrued but unpaid distributions calculated at the Floor Rate through the repurchase date, but with no right to net asset value, appreciation or any premium. Moreover, such repurchases are limited to the net proceeds of new subscriptions and do not apply in the event of liquidation.

Furthermore, the Seed Shares do not raise the types of concerns that prompted Congress to adopt Section 18 of the 1940 Act. In a report on investment companies, the Commission discussed the common features of “preference stock,” noting:

*The feature common to all varieties of preference stocks is a claim of priority on earnings. Two other characteristics are of almost universal occurrence among preferred stocks and of general occurrence among Class A stocks in the investment company field, namely: (a) a preferential lien on the assets of the company in the case of liquidation or dissolution of the business; and (b) the*

*requirement that all lapsed dividend payments be paid before any dividends can be declared on the residual common stock.*<sup>4</sup>

The Seed Shares, although designated as a class of preferred shares, exhibit none of the characteristics highlighted in the Commission's statement, with the exception of the Floor Rate. In particular, so long as the distribution rate on the Fund's Common Shares remains above the Floor Rate, the Seed Shares will have no claim of priority on earnings, nor require that any unpaid dividends be satisfied before dividends may be declared on the Common Shares.

The policy considerations reflected in Section 1(b) of the 1940 Act likewise are not implicated. Section 1(b)(7) cautions against "excessive borrowing and the issuance of excessive amounts of senior securities" that heighten the speculative character of common equity, and Section 1(b)(8) warns of risks when investment companies operate "without adequate assets or reserves." The Seed Shares raise neither concern, as they are repurchased on a limited basis only in connection with new capital and impose no ongoing repayment obligation. Section 1(b)(2) further addresses the risk that investment companies may be managed in the interest of one class of security holders over another. The Seed Shares do not implicate this concern, as they generally vote *pari passu* with Common Shares, with only the limited right required by Section 18(a)(2)(C), to elect two (2) trustees while any Seed Shares remain outstanding.

Accordingly, the Seed Shares do not resemble the "preference stock" or "excessive borrowing" that Section 18 was intended to address and are consistent with the broader policies expressed in Section 1(b) of the 1940 Act.

For these reasons, and consistent with both the text and underlying policy of Section 18, we believe that the Fund should not be required to include any portion of the Original Purchase Price of the Seed Shares when calculating its asset coverage under Section 18(a)(2) under the 1940 Act, as modified by Section 61(a), given that the Seed Shares do not carry any involuntary liquidation preference with respect to the Fund's Common Shares. Accordingly, the issuance of the Seed Shares by the Fund should not reduce the Fund's asset coverage or otherwise cause the Fund to fail to comply with Section 18(a)(2), as modified by Section 61(a).

## **Conclusion**

For the reasons discussed in this letter, the Fund respectfully requests the Staff of the Division of Investment Management confirm that it will not recommend enforcement action against the Fund to the Commission for violations of Section 18(a)(2)(A), (B), and (E) of the 1940 Act, as modified by Section 61(a) of the 1940 Act, if the Fund issues the Seed Shares in the manner and with the terms as described above to the Seed Investors, and subsequently repurchases such Seed Shares pursuant to their terms.

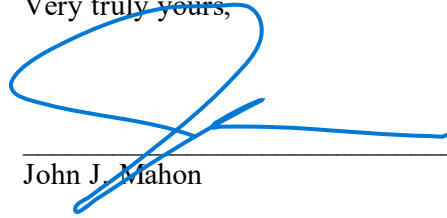
---

<sup>4</sup> See Securities and Exchange Commission, Report on the Study of Investment Trusts and Investment Companies: Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies (1940).

\* \* \*

Please feel free to contact me by phone at (202) 974-1926 or by email at [jmahon@cgsh.com](mailto:jmahon@cgsh.com) if you need additional information or would like to discuss these matters further.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John J. Mahon", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

John J. Mahon