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October 7, 2013

The Honorable Mary Jo White  
Chairwoman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Commissioner White:

As an industry we formally request that the SEC modernize the regulatory burdens on Business Development Companies.

Business Development Companies (BDCs) were created by Congress in 1980 to encourage the establishment of public vehicles to increase the flow of capital to small, growing U.S. businesses, a critical component of the U.S. economy. BDCs make direct investments in smaller, developing American businesses thereby providing access to capital to the middle market that is not otherwise available through traditional funding sources such as banks or the public equity capital markets. Despite the critical role BDCs perform, current BDC regulation has made it extremely difficult for BDCs to deliver on their mission to fund small and medium sized small businesses starved of growth capital.

Rationalizing BDC regulations will support American jobs and foster economic growth by improving access to the public capital markets for BDCs to invest in emerging growth companies. By any standard, BDCs provide more disclosure and are subject to more regulation than other traditional public companies. The current restrictions on BDCs make the capital raising process for BDCs less flexible, less efficient, and more expensive than necessary— which ultimately reduces each BDC's ability to invest in growing U.S. businesses.

In late 2005, the SEC adopted final rules relating to Securities Offering Reform, which were the most sweeping liberalization and modernization of the registered offering process under the 1933 Act in decades. The majority of these updates did not apply to BDCs. At the time the rule revisions were implemented, the Commission promised to consider reforms for BDCs at a later date - this never happened. Consequently BDCs have been left behind on an uneven playing field with other public companies seeking to access the capital markets.

Despite this arcane regulatory framework, the number of BDCs operating today has more than doubled since Securities Offering Reform was enacted, and over that time the industry has invested billions of dollars into growing U.S. businesses, thus creating or supporting thousands of U.S. jobs. This alone demonstrates the significant demand for growth capital that BDCs are filling – but much more could be accomplished. With a modern regulatory framework, the BDC industry could further expand, fill the market demand, and provide billions more in growth capital to small and medium-sized businesses.

We formally ask the SEC to modernize the regulation of BDCs. The BDC industry respectfully requests the following:

- Include BDC regulatory modernization as a major agenda item of the SEC's Forum on Small Business Capital Formation this November and in future years.
- Take formal action to modernize how BDCs raise capital by making applicable to BDCs the rules that apply to traditional public companies, specifically:
  - Allow BDCs to incorporate already-filed information by reference into current registration statements with the Commission as other public companies do;
  - Allow BDCs to file automatic shelf registration statements and therefore be afforded ready access to the capital markets by permitting qualification for BDCs under the definition of "Well-Known Seasoned Issuer" (WKSI) as other public companies do;
  - Permit BDCs to release factual and forward-looking business information by using free-writing prospectuses, as other public companies do;
  - Allow BDCs to communicate with investors more freely during the preparation and filing periods for a registration statement, as other public companies do;
  - Allow broker-dealers and other providers of market research more flexibility to disseminate research, thereby providing more information to the market and shareholders;
  - Provide a safe harbor to BDCs for disseminating additional information during an offering, as other public companies do;
  - Allow a BDC to file a shelf registration statement for continuous or delayed offerings on the same form used by other public companies;
  - Synchronize BDC prospectus filing requirements with those of other public companies, which Congress contemplated in 1980 when the BDC model was created;
  - Provide regulatory parity by relieving BDCs of the requirement to provide written confirmations of sales, notifications of allocation, and deliveries of securities; and
  - Allow preferred stock to be treated as equity, not debt.
- We believe that BDCs should be permitted to own or acquire securities or other interests in registered investment advisers or other advisers to investment companies. This 1940 Act prohibition serves no obvious policy purpose. In fact, the Commission has routinely provided exemptive relief to BDCs to permit the ownership of investment advisers in the last several years. Formalization of this position would permit BDCs more flexibility in their business models and structures without changing the important policy protections of the 1940 Act.
- BDCs are significantly limited as to their use of borrowings such that they may not exceed a 1-to-1 debt to equity ratio. We believe there may be circumstances under which greater flexibility might be appropriate. The Commission should immediately engage the BDC industry to review and propose changes to the asset coverage ratio under which BDCs must operate, specifically focusing on the benefits of a modest reduction in such ratio and any appropriate market safeguards that should be required.

We ask for your prompt consideration of these matters. Please contact Brett Palmer, President, Small Business Investor Alliance, regarding the Commission's response to this letter. Mr. Palmer can be contacted by mail at 1100 H St., NW, Suite 610, Washington, DC 20005; by phone at (202) 628-5055; or by email at [bpalmer@sbia.org](mailto:bpalmer@sbia.org).

**Sincerely,**

**Curtis Hartman  
SBIA, BDC Committee Chairman  
Senior Managing Director and  
Chief Credit Officer  
Main Street Capital Corporation**

**Lawrence E. Golub  
Chief Executive Officer  
Golub Capital**

**Todd Huskinson  
Chief Financial Officer  
Stellus Capital Investment Corporation**

**Steven C. Lilly  
Chief Financial Officer  
Triangle Capital Corporation**

**Alvin Murstein  
Chairman and Chief Executive Officer  
Medallion Financial Corp.**

**Brook Taube  
Chairman and CEO  
Medley Capital Corporation**

**Steve Gardner  
President and CEO  
NGP Capital Resources Company**

**Howard Levkowitz  
Chairman and CEO  
TCP Capital Corp.**

**David Gladstone  
Chairman and CEO  
Gladstone Investment Corporation  
Gladstone Capital Corporation**

**Manuel A. Henriquez  
Chairman and CEO  
Hercules Technology Growth Capital, Inc.**

**Theodore L. Koenig  
Chairman and CEO  
Monroe Capital**

**B. Hagen Saville  
President and CEO  
MCG Capital Corporation**

**James K. Hunt  
Chairman and CEO  
THL Credit, Inc.**

**Bernard D. Berman  
President  
Fifth Street Finance Corp. and Fifth Street  
Senior Floating Rate Corp.**

**Timothy J. Keating  
Chairman and CEO  
Keating Capital, Inc.**

**Robert A. Hamwee  
President and CEO  
New Mountain Finance Corporation**

**Allen F. "Pete" Grum  
President and CEO  
Rand Capital Corporation**

**Douglas W. Jamison  
Chairman and CEO  
Harris & Harris Group, Inc.**

**Edward H. Ross  
Chairman and CEO  
Fidus Investment Corporation**

**Brian Chase  
Chief Financial Officer  
Garrison Capital Inc.**

**Art Penn  
Chief Executive Officer  
PennantPark Investment Corporation and  
PennantPark Floating Rate Capital**

**Nicholas Radesca  
Chief Financial Officer  
Business Development Corporation of  
America**

**Christian L. Oberbeck  
Chairman and CEO  
Saratoga Investment Corp.**

**Joseph B. Alala, III  
President and CEO  
Capitala Investment Advisors, LLC**

**cc:**

**The Honorable Luis A. Aguilar, U.S. Securities and Exchange Commissioner  
The Honorable Daniel M. Gallagher, U.S. Securities and Exchange Commissioner  
The Honorable Kara M. Stein, U.S. Securities and Exchange Commissioner  
The Honorable Michael S. Piwowar, U.S. Securities and Exchange Commissioner  
The Honorable Jeb Hensarling, Chairman, U.S. House Committee on Financial Services  
The Honorable Maxine Waters, Ranking Member, U.S. House Committee on Financial Services  
The Honorable Tim Johnson, Chairman, U.S. Senate Committee on Banking, Housing and  
Urban Development  
The Honorable Mike Crapo, Ranking Member, U.S. Senate Committee on Banking, Housing and  
Urban Development**