

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 33094; File No. 812-14765

TCW Direct Lending LLC, et al.;

May 9, 2018

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under sections 12(d)(1)(J), 57(c), 57(i) and 60 of Investment Company Act of 1940 (the “Act”) and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 12(d)(1)(A), 12(d)(1)(C), 57(a)(1), 57(a)(2) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Applicants: TCW Direct Lending LLC (the “Fund”), TCW Middle Market Lending Opportunities BDC, Inc. (the “Extension Fund”), and TCW Asset Management Company (the “Adviser”).

Summary of Application: Applicants seek an order to permit the Fund (i) to conduct an exchange offer pursuant to which investors in the Fund (“Unitholders”), including certain directors and officers of the Fund and employees of the Adviser (collectively, the “TCW Directors, Officers and Employees”), may elect to exchange all or a portion of their units in the Fund (“Units”) for an equivalent number of shares (“Shares”) in the Extension Fund (each such Unitholder, an “Electing Unitholder”), and (ii) to transfer to the Extension Fund a pro rata portion of the Fund’s assets and liabilities, including a pro rata portion of each of the Fund’s portfolio investments, in proportion to the percentage of Units tendered and accepted for exchange.

Filing Dates: The application was filed on April 20, 2017, and amended on October 16, 2017, May 3, 2018, and May 9, 2018.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 30, 2018 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to section 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-1090. The Applicants: c/o Adrian Rae Leipsic, Esq., and Adam E. Fleisher, Esq., Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations:

1. The Fund, a Delaware limited liability company, is a closed-end management investment company that has elected to be regulated as a business development company (“BDC”) under the Act. On April 18, 2014, the Fund filed a registration statement on Form 10 to register Units pursuant to section 12(g) of the Exchange Act of 1934 (the “Exchange Act”). The Fund commenced operations on September 19, 2014. The Fund operates as a direct lending company that seeks to generate risk-adjusted returns primarily through direct investments in senior secured loans made to middle-market companies or other companies that are engaged in various businesses.

2. The Fund conducted a private offering of its Units to investors in reliance on the exemption from registration provided by section 506 of Regulation D under the Securities Act of 1933 (the “Securities Act”). The Fund entered into subscription agreements with its Unitholders, pursuant to which the Unitholders made capital commitments to the Fund. The Units are not traded on an exchange and are not freely transferable.

3. The Extension Fund, a Delaware corporation and a wholly-owned subsidiary of the Fund, intends to elect to be regulated as a BDC. Applicants state that the Extension Fund will have investment objectives and investment policies that are substantially similar to the Fund's. Applicants state that the Extension Fund intends to conduct an initial public offering or listing of its Shares immediately following the completion of the Proposed Transactions.

4. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”). The Adviser serves as investment adviser to the Fund pursuant to an investment advisory agreement, and intends to serve as investment adviser to the Extension Fund.

5. Applicants state that the Fund’s legal interest in each of its existing portfolio investments is capable of being proportionally assigned or similarly transferred on a pro rata basis. Applicants further state that each of the credit agreements and loan documents governing the terms of the Fund’s assets, which primarily consist of loans and other private investments in middle market companies, permits an assignment, participation or similar transfer by the Fund without the need for the written consent of any administrative or collateral agent, borrower or other party.

6. Applicants state that the Fund’s limited liability company operating agreement (the “LLC Agreement”) provides that the Fund will be dissolved upon the expiration of its six-year term on September 19, 2020 (subject to any extensions of the term in accordance with the procedures set forth in the LLC Agreement), whereupon the Fund’s assets will be liquidated in an orderly manner, capital will be returned to the Unitholders, and the Fund will wind up. Applicants state that the Fund’s organizational documents do not permit the Fund to conduct an initial public offering of its Units, and the Fund has agreed that no Unitholder will be required to participate in a publicly traded vehicle without such Unitholder’s consent.

7. Applicants state that the Fund’s LLC Agreement provides for the ability of the Fund to engage in a “split-off” transaction, which, as described below and in greater detail in the application, would be implemented through the Exchange Offer, the Refinancing, the Contribution Transaction and the Share Issuance (each defined below, and, collectively, the “Proposed Transactions”). The costs and expenses of the Proposed Transactions will be borne by the Adviser.<sup>1</sup>

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<sup>1</sup> All costs and expenses relating to the organization and operation of the Extension Fund will be borne by the Extension Fund as fully disclosed to investors prior to their decision to participate in the Exchange Offer.

8. If the requested order is granted, the Applicants propose to conduct an exchange offer, pursuant to which each Unitholder may elect to exchange a number of Units for an equivalent number of Shares (the “Exchange Offer”). The Exchange Offer will be conducted as a private placement pursuant to Regulation D and made in compliance with rule 13e-4 under the Exchange Act and section 23(c)(2) of the Act.

9. Applicants state that the Exchange Offer will not commence unless and until (1) the boards of the Fund and the Extension Fund (the “Fund Board” and the “Extension Fund Board”, and collectively, the “Boards”), including a “required majority” (as defined in section 57(o) of the Act (“Required Majority”)) of the directors of each Board, authorize and approve the Proposed Transactions, and make all necessary determinations, including among other things, that: (i) the Proposed Transactions are in the best interests of the Fund or the Extension Fund, as applicable, (ii) the interests of Unitholders who elect to remain invested in the Fund and the interests of the Electing Unitholders will not be diluted as a result of effecting the Proposed Transactions, and (iii) following the Proposed Transactions, all Unitholders, including the Electing Unitholders, will hold the same pro rata interest in the same underlying portfolio investments as immediately prior to the Exchange; (2) the Fund Board, including a Required Majority, approves the participation in the Exchange by any “remote” affiliate of the Fund, as described in Section 57(d) of the Act and as required under section 57(f) of the Act; and (3) the Extension Fund Board, including a Required Majority, and the Fund, in its capacity as initial shareholder of the Extension Fund, each approve the investment advisory agreement between the Extension Fund and the Adviser.

10. Applicants state that simultaneously with the Share Issuance (as defined below), the Fund will transfer to the Extension Fund a pro rata portion of each of the Fund’s assets and

liabilities, including each of the Fund's portfolio investments, in proportion to the percentage of Units tendered by Electing Unitholders and accepted for exchange (the "Contribution Transaction"). Applicants state that such computation will be objective and formulaic and determined solely on the basis of the percentage of Electing Unitholders, and will not be impacted by the valuation of the Fund's assets or any other factor that would impart an element of discretion. Applicants further state that material liabilities (other than those arising under the Fund's credit facility) will also be proportionally transferred or transferred on a pro rata basis by the Fund to the Extension Fund.

11. Applicants state that simultaneously with the Contribution Transaction, the Extension Fund will issue the applicable number of Shares to each Electing Unitholder in exchange for the corresponding number of Units accepted by the Fund from such Electing Unitholder in the Exchange Offer (the "Share Issuance").

12. Immediately prior to (and effectively contemporaneously with) the closing of the Exchange, the Contribution Transaction and the Share Issuance, (a) the Extension Fund will enter into a new credit facility and draw down an amount equal to the pro rata portion of the Fund's existing indebtedness immediately prior to the closing of the Exchange Offer attributable to the Units that have been validly tendered by Electing Unitholders and accepted for exchange, which amount will be distributed to the Fund and will be used to pay down the Fund's current outstanding senior secured revolving credit facility, and (b) the Fund will enter into a new credit facility to draw down an amount to pay down the remainder of its existing credit facility (together, the "Refinancing").

13. Applicants believe that the Proposed Transactions will result in a number of benefits to Unitholders. Applicants state that the Proposed Transactions will provide Unitholders

with the optionality that was negotiated for and was disclosed at the time of their investment in the Fund and will enable Unitholders to participate in the Extension Fund in a manner that promotes capital formation. Applicants state that the Proposed Transactions will position the Extension Fund to continue operations as a BDC with the goals of achieving greater economies of scale and completing an initial public offering or listing of its Shares. Applicants further state that by allowing the Unitholders to elect to participate in the Extension Fund, the Proposed Transactions will enable potential future retail investors to benefit from alignment with sophisticated institutional investors who elect to participate in the Extension Fund.

Legal Analysis:

Section 57(a)(1) and 57(a)(2) of the Act

1. The Applicants are requesting an exemption pursuant to section 57(c) from the provisions of sections 57(a)(1) and 57(a)(2), in order to permit the Applicants to effect the Contribution Transaction and the Share Issuance.
2. Sections 57(a)(1) provides that it shall be unlawful for any person who is related to a BDC in a manner described in section 57(b)<sup>2</sup>, acting as principal, to sell to such BDC, or to a company controlled by such BDC, any securities or other property unless such sale involves *solely* (emphasis added) (i) securities of which the buyer is the issuer or (ii) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities.
3. Section 57(a)(2) provides that it shall be unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, to purchase from such BDC,

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<sup>2</sup> Section 57(b) specifies the persons to whom the prohibitions of sections 57(a)(1), (a)(2) and (a)(4) apply.

or from a company controlled by such BDC, any securities or other property except for securities of which the seller is the issuer.

4. Rule 57b-1 does not exempt the Fund and the Extension Fund from being subject to the prohibitions of section 57(a).<sup>3</sup> In addition, the TCW Directors, Officers and Employees may be prohibited by section 57(a)(1) and (2) from participating in the Share Issuance as a result of tendering their Units in the Exchange.

5. Section 57(c) authorizes the Commission to issue an exemptive order if (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the BDC or its shareholders or partners on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of the BDC, as recited in the filings made by such company with the Commission under the Securities Act, its registration statement and reports filed under the Exchange Act, and its reports to shareholders or partners; and, and (iii) the proposed transaction is consistent with the general purposes of the Act.

6. The Applicants submit that the request for an exemption from the provisions of section 57(a)(1) and (a)(2) meets the standards for an order set forth in section 57(c). First, Applicants state that the terms of the Contribution Transaction, including the consideration to be paid or received, are fair and reasonable and involve no element of overreaching, since the transfer by the Fund of a pro rata portion of each of its assets and liabilities to the Extension Fund will be determined solely on the basis of the percentage of Electing Unitholders, which is

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<sup>3</sup> Rule 57b-1 exempts certain persons otherwise related to a BDC in a manner described in section 57(b)(2) from being subject to the prohibitions of section 57(a). Specifically, this rule states that the provisions of section 57(a) shall not apply to any person: (a) *solely because* that person is directly or indirectly controlled by a BDC; or (b) *solely because* that person is directly or indirectly controlling, controlled by, or under common control with, a person described in (a) of the rule or is an officer, director, partner, copartner, or employee of a person described in (a) of the rule (emphasis added).

purely an objective and formulaic exercise. Second, the Applicants state that the Contribution Transaction and the Share Issuance are consistent with the stated investment policies of the Fund as fully disclosed to Unitholders. Finally, the Applicants submit that the Boards, including a Required Majority of each, will have approved and authorized, as well as made all required determinations with respect to, the Proposed Transactions.

Section 57(a)(4) and Rule 17d-1, as made applicable to BDCs by Section 57(i) of the Act

7. The Applicants are also requesting an Order pursuant to section 57(i) and rule 17d-1, to permit certain joint transactions that may be otherwise prohibited by Section 57(a)(4) and rule 17d-1.

8. Section 57(a)(4) makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC or a company controlled by such BDC is a joint or a joint and several participant. Section 57(i) provides that the rules under section 17(d) applicable to registered closed-end investment companies are deemed to apply to transactions subject to section 57(a). In relevant part, rule 17d-1 prohibits any person who is related to a BDC in a manner described in section 57(b), acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which the BDC or a company controlled by such BDC is a participant, unless an application has been filed with the Commission and an order has been granted.

9. The Fund and the Extension Fund may be viewed as affiliated persons of each other in a manner described in section 57(b). Considered together, the Proposed Transactions will require a considerable degree of coordination among the Fund, the Extension Fund and the Adviser that may indicate the existence of a “joint arrangement” as described in rule 17d-1.

Further, certain TCW Directors, Officers and Employees who have invested in the Fund are affiliated persons of the Fund pursuant to section 57(b).

10. Rule 17d-1(b) provides that in determining whether to grant such an order, the Commission will consider whether the participation of the investment company in the joint transaction “is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.”

11. The Applicants submit that the request for an order under section 57(a)(4) and rule 17d-1 meets the standards set forth to rule 17d-1 for the same reasons as discussed above with respect to the request for exemption from sections 57(a)(1) and (a)(2). The Applicants state that TCW Directors, Officers and Employees will participate in the Exchange pursuant to the same terms and documentation as all other Unitholders, and the Proposed Transactions will not place any of the Fund, the Extension Fund or existing Unitholders of the Fund in a position less advantageous than that of any other of such persons. The Applicants further submit that the terms of the investment advisory agreement between the Extension Fund and the Adviser will be comprehensively disclosed to all Unitholders in the Offer to Exchange, the Fund and the Extension Fund will pay comparable management fees in respect of overlapping investments transferred by the Fund to the Extension Fund, and each Unitholder who wishes to remain invested in the Fund will be subject to the Fund’s existing fee structure without any modification. Sections 12(d)(1)(A) and 12(d)(1)(C), as made applicable to BDCs by Section 60 of the Act

12. The Applicants are requesting an exemption pursuant to section 12(d)(1)(J) from the provisions of section 12(d)(1)(A) and section 12(d)(1)(C), to permit the Applicants to effect the Proposed Transactions.

13. Sections 12(d)(1)(A) and 12(d)(1)(C) are made applicable to BDCs by section 60 to the same extent as if they were registered closed-end investment companies. The Proposed Transactions may be viewed as violating sections 12(d)(1)(A)<sup>4</sup> and 12(d)(1)(C)<sup>5</sup> because prior to the Exchange, the Fund will own 100% of the newly issued Shares of the Extension Fund, even though such ownership will exist for only a momentary period of time.

14. The Applicants submit that the requested exemption from sections 12(d)(1)(A) and 12(d)(1)(C) meets the standards set forth in section 12(d)(1)(J). Section 12(d)(1)(J) provides that “the Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this subsection, if and to the extent that such exemption is consistent with the public interest and the protection of investors.”

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<sup>4</sup> Section 12(d)(1)(A) provides that no registered investment company (“acquiring company”) may acquire securities of any other investment company (“acquired company”) if such securities represent more than 3% of the acquired company’s outstanding voting stock or more than 5% of the acquiring company’s total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company’s total assets.

<sup>5</sup> Section 12(d)(1)(C) provides that no investment company (“acquiring company”) may acquire any securities issued by a registered closed-end investment company, if the acquiring company owns more than 10% of the total outstanding voting stock of such closed-end company.

15. The Applicants state that the Proposed Transactions are consistent with the public interest in that they are intended to result in a benefit to non-electing Unitholders, Electing Unitholders and potential future investors in the Extension Fund. The Applicants also state that the Proposed Transactions are consistent with investor protection because the momentary holding by the Fund of Shares of the Existing Fund does not raise any of the concerns that Sections 12(d)(1)(A) and (C) were intended to address.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman  
Assistant Secretary