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# THE FINANCIAL SERVICES ROUNDTABLE

*Impacting Policy. Impacting People.*



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December 19, 2005

The Honorable Christopher Cox  
Chairman  
Securities & Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

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OFFICE OF THE SECRETARY

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CHAIRMAN

Dear Chairman Cox:

On behalf of the Financial Services Roundtable, I am writing to comment on the Securities and Exchange Commission's proposed rulemaking, release Number IC-26647, to amend the definition of eligible portfolio companies for business development companies. I urge you to resolve the matter without further delay by considering the market capitalization standard alternative contemplated by the current pending legislation S. 1396, The Increased Capital Access for Growing Business Act. H.R. 436, a companion measure, has already passed the House of Representatives unanimously.

As you know, the Small Business Investment Incentive Act of 1980 created business development companies (BDCs) and defined the companies in which BDCs could invest by using a Federal Reserve definition related to marginability. As markets have evolved over the last 25 years and vastly more securities are now deemed to be marginable, the universe of eligible portfolio companies for BDCs has appreciably narrowed, thus limiting many smaller companies' access to capital. It was never the intent of such margin rule amendments to limit other market participants' access to capital. It is for this reason that we strongly believe that the definition of an eligible portfolio company should be restored to reflect original Congressional intent. Indeed, the House has considered and overwhelmingly passed during both the 108<sup>th</sup> and 109<sup>th</sup> Congresses identical legislation to that which is now being proposed in the Senate.

The Securities and Exchange Commission's proposed rulemaking on this issue, which has been in process for more than a year, does not go far enough to restore the universe of eligible portfolio companies for BDCs.

At the time BDCs were created, the legislative history of the original 1980 amendments suggests that nearly two thirds of all public companies would have been eligible for BDC financing. The legislation's proposed \$250 million market capitalization would more closely approximate the arena of eligible portfolio companies for BDCs. In fact, many would argue that the definition of "small cap" would likely be much larger than the proposed \$250 million.

If you require any additional information or have questions, please feel free to call me or Irving Daniels at 202-289-4322

Best regards,

A handwritten signature in cursive script that reads "Richard M. Whiting".

Richard Whiting  
General Counsel and Executive Director

cc: Paul S. Atkins, Commissioner  
Roel C. Campos, Commissioner  
Cynthia A. Glassman, Commissioner  
Annette L. Nazareth, Commissioner