

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

November 15, 2005.

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ROBERT U. FOSTER III
Chief of Staff

The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Proposed Rule: Definition of Eligible Portfolio Company under the Investment Company Act of 1940 (IC-26647; File No. S7-37-04)

Dear Chairman Cox:

We are writing to comment on the Securities and Exchange Commission's Proposed Rule: Definition of Eligible Portfolio Company under the Investment Company Act of 1940 (IC-26647). As you know, under the Small Business Investment Incentive Act of 1980 Congress authorized business development companies to invest in eligible portfolio companies, those small, developing, or financially troubled businesses needing access to capital. The definition of an eligible portfolio company, since it was tied to the Federal Reserve's margin rules, has since appreciably narrowed because of unrelated amendments to those margin rules.

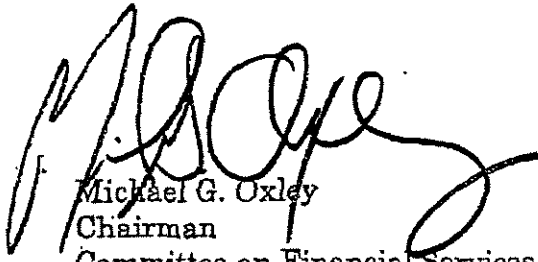
To restore congressional intent, the House has considered and overwhelmingly passed during the 108th and 109th Congresses legislation—The Increased Capital Access for Growing Business Act introduced by Congresswoman Kelly—that would lift many of these unintended restrictions on business development companies' permissible investments. Last November 2004, the Commission, noting that "issuers that would have been considered eligible portfolio companies in 1980 may no longer meet that definition," proposed the aforementioned rule to update the eligible portfolio company definition.

Although the Commission has not finalized the Proposed Rule, we urge you to consider the market capitalization standard alternative contemplated by the House-passed legislation. We note that the Commission uses market capitalization tests in several of its regulations. And recently the Commission's Advisory Committee on Smaller Public Companies recommended using a self-calibrating market capitalization test to determine the definition of a smaller public company.

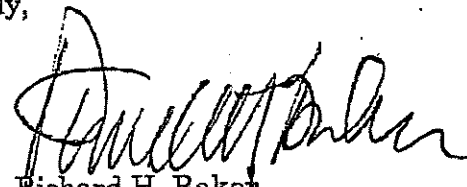
The Honorable Christopher Cox
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Thank you for your consideration of this important matter.

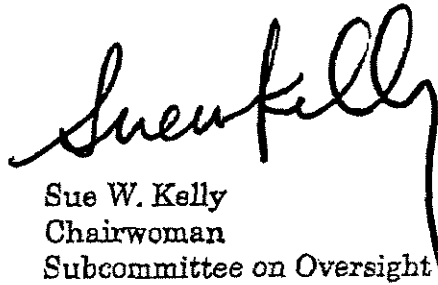
Yours truly,



Michael G. Oxley
Chairman
Committee on Financial Services



Richard H. Baker
Chairman
Subcommittee on Capital Markets, Insurance, and
Government Sponsored Enterprises



Sue W. Kelly
Chairwoman
Subcommittee on Oversight and Investigations

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