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SUBCOMMITTEE ON DOMESTIC AND  
INTERNATIONAL MONETARY POLICY,  
TRADE AND TECHNOLOGY

# Congress of the United States

## House of Representatives

Washington, DC 20515

NYDIA M. VELÁZQUEZ

12TH DISTRICT, NEW YORK

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November 14, 2005

Chairman Christopher Cox  
U.S. Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Cox:

I am writing to bring to your attention an important matter relating to small and growing business capital formation. Enclosed you will find the comment letter that Congresswoman Sue Kelly and I submitted in response to the Commission's proposed rule (File No. S7-37-04) regarding the definition of eligible portfolio company under the Investment Company Act of 1940.

The definition of eligible portfolio company is currently tied to Federal Reserve margin rules, which have changed dramatically over the years. The unintended result is a significantly smaller universe of public companies in which BDCs may provide financing.

The House unanimously passed legislation (HR 3170 and HR 436, in the 108<sup>th</sup> and 109<sup>th</sup> Congresses, respectively) that would resolve the current legal uncertainty and return the definition of an eligible portfolio company to reflect the original intent of Congress. The legislation would retain the ability of the Commission to adjust the definition as conditions warrant. Companion legislation (S.1396) is pending in the Senate.

I urge the Commission to make certain that the regulations regarding eligible BDC investments are clarified as soon as possible so BDCs can continue to make capital available to small and growing businesses. The Commission's proposed rule was published over one year ago, and no final action on a revised rule has been taken. I understand that key SEC staff positions have yet to be filled, making it difficult for quick action to be taken by the Commission. Therefore, if possible, I respectfully suggest that the Commission encourage the Senate to approve the House-passed legislation to provide much needed certainty and clarity.

Thank you for your attention to this important matter that will help small and growing businesses access capital. I look forward to working with you to bring about certainty for BDCs and their shareholders, and many small and growing businesses.

Sincerely,

  
Nydia Velázquez  
Member of Congress

Enclosure

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