



January 2, 2007

Ms. Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: *File No. S7-37-04, Reproposed Rule 2a-46(b)*

Dear Ms. Morris,

We are a closed-end, management investment company that has elected to be treated as a business development company under the Investment Company Act of 1940 (the "1940 Act"). We appreciate the opportunity to comment on re-proposed Rule 2a-46(b) under the 1940 Act, which updates the definition of eligible portfolio company. As further discussed below, we strongly recommend that the Commission adopt the \$250 million market capitalization standard for the purposes of defining an eligible portfolio company under the 1940 Act.

As a threshold matter, we believe that Congress intended the definition of an eligible portfolio company to be expansive rather than restrictive, and to describe the companies that would likely seek financing from business development companies ("BDCs"). We further believe that a sized-based standard is consistent with this intent, and is an appropriate and unambiguous indicator of which public companies have access to capital from traditional sources and which could benefit from financing by BDCs.

In re-proposing Rule 2a-46(b), the Commission raised for comment whether a market capitalization or public float standard is appropriate. We believe both alternatives are great extensions of the thinking that went into the drafting of the Small Business Investment Incentive Act of 1980 (the "SBIIA"), which provided for the formation of BDCs. Both market capitalization and public float of a public company are good measures for what defines a small or middle market business. While both proposals would be consistent with the intent of Congress in defining the types of companies that could benefit from BDC financing, we support market capitalization as the better measure.

A company's market capitalization can be easily calculated, and is based on information readily available from reliable third-party sources. In contrast, we believe that it is difficult to reliably ascertain a company's public float from third-party sources. We further believe that adding the complexity of determining affiliate ownership, as would be required under the public float alternative, is unnecessary for accomplishing the purpose of the re-proposed Rule. We submit that while both approaches are consistent



with the original intent of Congress to provide capital to small and middle market companies as well as developing companies and financially troubled businesses, we believe the market capitalization approach will avoid ambiguity and confusion as to which companies may qualify for such assistance.

We further believe that with respect to the level of market capitalization, a \$250 million market capitalization is the appropriate threshold. In our experience, companies with market capitalizations below \$250 million are generally not followed by analysts, have less liquid trading activity, and are owned by fewer institutional investors. As the supplementary information provided by the Commission pursuant to the repropose Rule points out, \$250 million is a level similar to what most market participants use to identify “microcap companies.” We agree with the commenters who have noted that these companies have less analyst coverage, institutional ownership and trading volume than companies at higher market capitalizations, and thus often have difficulty accessing traditional capital sources.

Fundamentally, our position is that a final rule that includes, within the parameters of Congress’ intent to provide financing to small and middle market companies, a broad definition of eligible portfolio company is in the best interest of BDC shareholders. We also believe it is in the best interest of shareholders of the public companies seeking BDC financing. Such shareholders will benefit if their company has a greater variety of financing options, as well as access to managerial assistance provided by BDCs.

In sum, the definition of eligible portfolio company should be a clear, objective and easily identifiable standard. Consistent with the information presented above and past Commission rulemakings, the use of a company’s market capitalization as a stand-alone benchmark, without reference to whether the company is listed on an exchange, would enable BDCs to continue to provide financial assistance to those small and developing companies that are in need of such assistance. We believe such financing is consistent with the intent of Congress at the time it enacted the SBIIA. We recommend that the Commission adopt the \$250 million market capitalization standard for the purposes of defining an eligible portfolio company under the 1940 Act. We further recommend that after the adoption of the standard, the Commission consider establishing a mechanism to adjust the standard to reflect changes in the capital structure of small public or microcap companies.



Respectfully Submitted,

Apollo Investment Corporation

A handwritten signature in cursive script that reads "Gordon Swartz".

Gordon Swartz  
Corporate Secretary