



April 6, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Dear Chairman Clayton:

The American Investment Council (the “AIC”) is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes, and distributes information about the private equity and private credit industry and its contributions to the U.S. and global economy. Established in 2007, and formerly known as the Private Equity Growth Capital Council, the AIC is based in Washington, D.C. The AIC’s members are the world’s leading private equity and private credit firms, united by their commitment to growing and strengthening the businesses in which they invest.¹ Many of our members manage funds that elect to be regulated as “business development companies” (“BDCs”) under the Investment Company Act of 1940 (the “Investment Company Act”).

As you know, the economic disruption resulting from the COVID-19 outbreak is creating significant pressure on small and mid-sized businesses, including in particular BDC portfolio companies as well as BDCs. BDCs lend and provide capital to American businesses and, by design, play an important role in small and mid-sized business creation and capital formation and can be a positive force in any solution to bring stability to the American economy. That positive role is severely and materially compromised, however, as a result of current regulation that imposes valuation requirements on BDCs that have the effect of prohibiting BDCs from providing financial support to the very American businesses that require capital now more than ever.

We request that the Securities and Exchange Commission (“SEC”) consider providing temporary regulatory relief to allow BDCs to continue to provide capital to new and existing portfolio companies in light of current market conditions by permitting alternative valuation and/or asset coverage approaches. In particular, and consistent with similar requests of which we are aware, we request that the SEC:

¹ For further information about the AIC and its members, please visit our website at <http://www.investmentcouncil.org>.

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- Temporarily permit BDCs to maintain a reduced asset coverage ratio of 125% through December 31, 2020;
- Permit BDCs to maintain an asset coverage ratio below 200% to allow the payment of dividends necessary to maintain “regulated investment company” (RIC) status under the Internal Revenue Code of 1986, as amended;
- Provide blanket or expedited individual co-investment relief to permit BDCs and other pooled investment vehicles that have common or affiliated managers to jointly provide financial support to BDC portfolio companies;
- Provide exemptive or interpretive relief under Section 17(a) and Section 17(d) of the Investment Company Act to allow BDCs to sell assets to affiliated persons consistent with the SEC’s temporary relief provided to open-end registered investment companies;²
- Exempt the issuance of preferred stock by BDCs to qualified institutional buyers and institutional accredited investors from the asset coverage, board representation, and other similar requirements currently required by the Investment Company Act; and
- Provide relief to publicly-traded, listed BDCs from the Acquired Fund Fees and Expenses (AFFE) rule.³

In recent weeks, the SEC has provided various relief to funds registered under the Investment Company Act that will assist those funds in responding to the current economic crisis. SEC action in the manner requested above will aid BDCs and their portfolio companies consistent with the SEC relief provided to date and is critical to capital formation and the continued economic viability of small and mid-sized American businesses.

We thank you for considering this request.

Respectfully submitted,



Jason Mulvihill
Chief Operating Officer & General Counsel
American Investment Council

² See Investment Company Institute, SEC No-Action Letter (March 26, 2020).

³ See comment letter of the Small Business Investor Alliance (SBIA) on Fund of Funds Arrangements, SEC Release Nos. 33-10590, IC-33329 (December 19, 2019), dated April 30, 2019 (available at <https://www.sec.gov/comments/s7-27-18/s72718-5431570-184653.pdf>).