



March 27, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission (SEC)
100 F Street NE 20549

Dear Chairman Clayton:

The Small Business Investor Alliance (SBIA) is a national association that develops and advocates policies that benefit investment funds which finance small and mid-size domestic businesses. Our membership includes nearly 50 funds electing business development company (“BDC”) status under the Investment Company Act of 1940 (the “1940 Act”).

The economic stoppage caused by the pandemic and by government mandated shutdowns of business is unprecedented in American history and has hit our BDC memberships’ portfolio companies and their employees hard. Banking and other financial regulators have recognized this economic stoppage and have taken actions, both formal and informal, to provide regulatory relief.¹ This relief has focused on maintaining liquidity for small and medium-sized businesses, encouraging forbearance, not forcing foreclosures, and supporting the American workforce. The SEC has provided relief to the mutual fund industry and other investment vehicles.²

To date, the SEC and its Division of Investment Management has produced no industry-wide relief to BDCs, which are by statute designed and required to provide capital to American small and medium-sized businesses. BDCs are required to mark to market their assets on and as of March 31 – a date, saving a medical miracle, that appears to be when infections and deaths from the pandemic will be growing exponentially and when government mandated shutdowns of businesses will likely be expanding beyond the millions already forced to temporarily close. BDCs will be required to mark in a broken market for small and medium-sized business loans, which will severely impair their ability to satisfy the asset coverage requirements applicable to them under the 1940 Act. Without the SEC’s recognition of the pandemic’s effect on the market and regulatory adjustment, BDCs will have to cut off capital to existing portfolio companies, cease lending to new portfolio companies and, in some cases, harm shareholders by selling off assets at depressed valuations. In addition, their failure to satisfy these asset coverage requirements may limit their ability to pay the necessary minimum amount of dividends to their stockholders required by the Internal Revenue Code to maintain their status as regulated investment companies, including in accordance with the 80%/20% stock/cash dividend guidance issued by the Internal Revenue Service (“IRS”).

On behalf of the BDCs, the small businesses they serve, and their shareholders we ask for immediate temporary regulatory adjustments:

¹ <https://www.americanbanker.com/articles/fed-starts-emergency-program-to-aid-money-market-mutual-funds>

² <https://www.sec.gov/investment/investment-company-institute-031920-17a>

- Provide BDCs the flexibility to use the most recent quarter-end mark (December 31, 2019) for all assets that are not permanently impaired for purposes of the 1940 Act's asset coverage requirements through the later of September 30, 2020, or 60 days following the cessation of the government shutdowns. In the alternative, temporarily permit an asset coverage ratio of 125% through December 31, 2020.
- Provide blanket or expedited individual co-investment relief.
- 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 mandated by the 1940 Act.
- Provide relief to BDCs from the Acquired Fund Fees and Expenses (AFFE) rule, which would then lead to increased institutional ownership, more liquidity, and greater market oversight of BDCs as discussed in detail in our comment letter submitted to the SEC last year.
- Reaffirm the ability of BDCs to rely on a no-action letter issued to American Capital Strategies Ltd. (June 30, 2009) permitting them to pay dividends in accordance with the 80%/20% stock/cash dividend IRS guidance even if they fail to satisfy the 1940 Act's asset coverage requirements.

In summary, BDCs need reasonable, temporary regulatory accommodation to protect their shareholders and to fulfill their statutory mission to support small and medium-sized businesses. Without this requested relief, the temporary dislocation caused by the pandemic may result in permanent damage to the capital-starved portfolio companies of BDCs, notwithstanding the fact that most of these borrowers will be legally permitted to operate once this crisis subsides, assuming that they have access to sufficient capital to get through it.

Given the SEC's demonstrated willingness to provide relief to other funds and businesses grappling with an unprecedented crisis, we request this necessary relief for BDCs and the small businesses they serve. The survival of Main Street businesses and many American jobs hinges on the whether the SEC will act.

We thank you for your attention to this matter and stand ready to assist in any way that we can.

Sincerely,



Brett Palmer
President
Small Business Investor Alliance

Cc: Commissioner Hester Peirce
Cc: Commissioner Allison Herren Lee
Cc: Commissioner Elad Roisman
Cc: Dalia Blass, Director, Division of Investment Management