The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
I00 F Street, NE
Washington, DC 20549

Dear Chairman Clayton:

Business Development Companies (BDCs), formally request the SEC make and support reforms that will enhance capital access and market efficiency to middle market and lower middle market private businesses. As an industry, we collectively believe that regulation should promote a healthy and robust capital market for small and medium-sized businesses.

BDCs were created by Congress in 1980 to encourage the establishment of public vehicles to increase the flow of capital to smaller, growing U.S. businesses, a critical component of the U.S. economy. BDCs make direct investments in small and middle market, developing U.S. businesses thereby providing access to capital that is not readily available to these businesses through traditional funding sources such as banks or the capital markets. By law, BDCs are required to invest 70 percent of their assets in U.S. private and small cap businesses. Despite the critical role BDCs perform, current BDC regulation has not been updated in decades, which, makes it unnecessarily cumbersome for BDCs to deliver on their mission to fund and develop U.S. businesses.

Modernizing and updating BDC regulations will support American jobs and foster economic growth by improving access to the public capital markets for BDCs to invest in growing companies. By any standard, BDCs provide more disclosure and are subject to more regulation than banks or other financing companies. The current restrictions on BDCs make the capital raising process for BDCs less flexible, less efficient, and more expensive than necessary, which ultimately reduces each BDC's ability to invest in growing U.S. businesses. This is a problem for all BDCs and an even more acute problem for smaller BDCs that often provide capital to even smaller businesses.

Despite a cumbersome regulatory framework, which generally treats BDCs more onerously than operating companies and even other investment companies, the number of BDCs operating today has more than doubled since 2005, and over that time the industry has invested billions of dollars into growing U.S. businesses, thus creating or supporting tens of thousands of U.S. jobs. This alone demonstrates the significant demand for growth capital that BDCs are filling, but much more could be accomplished. With a modern regulatory framework consistent with that afforded to other operating companies, the BDC industry could further expand and provide billions of dollars more in growth capital to small- and medium-sized businesses. We formally ask the SEC to support and implement improvements to the regulation of BDCs consistent with H.R. 4267, the Small Business Credit Availability Act as reported by the Committee on Financial Services by a vote of 58-2 on November 15th, 2017. The BDC industry respectfully requests the following:

1100 H Street, N.W. Suite 1200 Washington, D.C. 20005 (202) 628-5055 SBIA.org

Institute Offering Reforms Available to Other Operating Companies

- Apply the rules that apply to public operating companies to BDCs. Given that BDCs are: 1) subject to *all* of the same disclosure and filing requirements under the Securities Exchange Act of 1934 (the Exchange Act) as are public operating companies that have a class of securities registered under the Exchange Act, and 2) conduct registered offerings under the Securities Act of 1933 in the same manner as other Exchange Act registrants that file registration statements on Forms S-1 or S-3, BDCs should be subject to the same offering rules as operating companies. Please see Exhibit "A" attached for the list of proposed offering reforms.
- Failing to provide BDCs the same offering reforms currently available to other corporate forms is not an effective use of the time and resources of either the SEC or issuers in the BDC sector.

Permit the Option for Increased Leverage

- Support the option for BDCs to use a 2:1 maximum regulatory leverage ratio (debt to equity) instead of the 1:1 ratio in place since 1980.
- 2:1 leverage is consistent with the level permitted by Small Business Investment Companies (licensed by the Small Business Administration), and significantly less than the leverage of deposit-taking banks and other financial vehicles,
- Allowing a modest increase in the maximum regulatory leverage ratio to 2:1 would enable BDCs to provide significantly more capital in support of small and mid-sized private businesses,
- Allowing a modest increase in leverage could reduce the risk in portfolios, as BDCs can invest in lower yielding, lower risk investments (more first lien positions) and still generate valuable returns to their shareholders

Exempt BDCs from the Acquired Fund Fees and Expenses Rule ("AFFE")

- AFFE has had a massive negative impact on the BDC industry -- reducing liquidity, reducing institutional ownership, harming investors, and constraining the ability of BDCs to raise capital. When the AFFE was originally released for public comment in 2003, the BDC market was nascent, with only 5 significantly sized BDCs existing and none being mature enough to comment on the proposed. As the SEC has full authority to address these unintended consequences (without Congressional involvement) we request you issue an FAQ exempting BDCs from the AFFE.
- The SEC previously issued an FAQ exempting REITs and CLOs from the AFFE. The fee and expense structures for REITs are similar to that of BDCs. There is no sound policy rationale for treating REITs and BDCs differently for purposes of the AFFE – both should be excluded because they function like operating companies, not traditional investment vehicles that were at the heart of the SEC's policy rationale for the requirement.
- Notably, in 2014, the AFFE had the unintended consequence of causing S&P, Russell and other entities that manage various market indices to exclude BDCs from eligibility because the requires registered funds to include the operating expenses of BDCs in which they hold investments in the funds' fee disclosure. As a result, many institutional investors (registered funds) that previously held shares in BDCs liquidated their holdings and exited the sector as a way of avoiding the distortive disclosure requirement imposed under the AFFE.
- The AFFE as currently applied has therefore removed a critical retail investor protection by discouraging institutional investors, with their enhanced ability to provide analysis and active

shareholder oversight. Further, there is far less institutional research that is available to retail investors because of the disincentive the AFFE creates for institutional investment.

SBIA recommends that the SEC immediately use its existing authorities to make the necessary regulatory or guidance changes to limit these and other adverse impacts of the AFFE rule on BDCs. We look forward to working with you, the Commissioners and staff in the days ahead in promoting the growth of small- and medium-sized businesses by reforming the regulatory structure of BDCs.

Sincerely,

Tonnie Wybensinger

Executive Director, BDC Council
Small Business Investor Alliance

Ian Simmonds

Chair, BDC Council
Small Business Investor Alliance

Apollo Capital Management, L.P.

Ares Capital Corporation

Capital Southwest

Capitala Finance Group

CION Investment

Fidus Investment Corporation

FS Investments

Garrison Capital Inc

Gladstone Capital

Gladstone Investment Corporation

Great Elm Capital Group

Harvest Capital Credit Corporation

Hercules Capital

Horizon Technology Finance

Main Street Capital Corporation

Medley Capital Corporation

Monroe Capital Corporation

MVC Capital, Inc.

Newtek Business Services Corporation

OFS Capital Corporation

PennantPark Investment Corp

Rand Capital

Saratoga Investment Corporation

Sierra Income Corporation

Stellus Capital Investment Corp

TCP Capital Corp.

THL Credit

TPG Specialty Lending, Inc.

Triangle Capital Corporation

Triple Point Capital

Triple Point Venture Growth BDC Corp

Exhibit A

Examples of Broadly Available Offering Reforms Currently Denied to BDCs

- Allow BDCs to incorporate already-filed information by reference into current registration statements with the Commission as other public operating companies do;
- Allow BDCs to file automatic shelf registration statements and therefore be afforded ready access to the capital markets by permitting qualification for BDCs under the definition of "Well-Known Seasoned Issuer'' (WKSI) as other public operating companies do;
- Permit BDCs to rely on the communications safe harbors available to public operating companies to release factual and forward-looking business information during an offering;
- Allow BDCs to communicate with investors more freely through the use of free-writing prospectuses during the preparation and filing periods for a registration statement, as other public operating companies do;
- Provide BDCs with a safe harbor that would allow broker-dealers more flexibility to disseminate research about them during an offering, as other public companies are able to rely on; and
- Provide regulatory parity by permitting BDCs to use the "access equals delivery" model for final prospectus delivery.