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December 18, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Definition of Eligible Portfolio Company under the Investment Company Act of 1940; File Number S7-37-04

Dear Ms. Morris,

We are pleased to provide comments on the Securities and Exchange Commission's re-proposed rule on the definition of the term "eligible portfolio company" under the Investment Company Act of 1940.

We commend the Commission in adopting a Final Rule that: (a) defines eligible portfolio company to include all private companies and all public companies whose securities are not listed on an Exchange; and (b) confirms that business development companies ("BDCs") can make follow-on investments in companies that were eligible investments at the time of a BDC's initial investments in them but that do not meet the definition at the time of the follow-on investment. The adoption of these rules helps to provide more legal certainty regarding a BDC's permissible investments, such as follow-on investments, as well as to make a first step in updating the definition.

We are encouraged that the Commission is seeking comment on an additional definition of eligible portfolio company to include certain Exchange-listed companies.

In response to the request for comment regarding whether the final rule should use a public float or market capitalization test we believe that the Commission was correct in its Securities Offering Reform rulemaking that concluded that market capitalization could be used as an appropriate "proxy for whether the issuer has a demonstrated market following." [1] In adopting the threshold of $700 million or more in public float for a well-known seasoned issuer in the Securities Offering Reform final rule, the Commission noted that it "used market capitalization as a proxy for public float in evaluating this threshold and its implications."[2] Recent Congressional legislative action also referenced in the reproposed release also used a market capitalization standard. For purposes of simplicity, including ease of enforcement, we urge the Commission to adopt a final rule that uses a market capitalization standard.

[1] Securities Offering Reform, Final Rule, File No. S7-38-04, (August 3, 2005) [70 Federal Register 44727].
[2] Ibid.

We recommend that the Commission adopt "Alternative Two" and include companies whose market capitalization is $250 million or less. As explained in our February 17, 2006, comment letter ("February letter"), a market capitalization of $250 million or less would: be consistent with Congressional history and intent; allow capital markets to allocate credit more efficiently; help to ensure against artificial or regulatory barriers to capital for developing and financially troubled businesses; and be more consistent with other market-based determinations for companies that are not widely followed such as those included in micro- and small-capitalization stock fund indexes.

The legislative history of the Small Business Investment Incentive Act of 1980 ("SBIIA") stated that the Commission has broad authority to "expand the class of eligible portfolio companies..."[3] The legislative history further states that "The pool of such eligible portfolio companies under the Bill is very broad",[4] illustrating an expansive rather than a restrictive definition of eligible portfolio company intended by Congress. A $250 million market capitalization would be consistent with this legislative history and would modernize the eligible portfolio company definition in response to the 1998 Federal Reserve Board's changes in the margin rules.

A $250 million market capitalization standard would allow the efficient allocation of capital and help to ensure that regulations do not establish an artificial barrier to capital for developing and financially troubled businesses. Markets tend to rationalize the allocation of credit if not impeded by artificial constraints. Companies will access the least expensive sources of capital, and BDCs, as one source of providers of capital, will offer capital to those companies that provide the greatest return for the risk involved.

A $250 million market capitalization standard would be consistent with other market determinations for companies that are not widely followed. As noted in our February letter and attachments, market indexes for small capitalization stocks are often described by the indexes as generally covering a universe of companies with securities that are frequently illiquid and have little or no market following. While we agree that there is no one generally accepted definition of microcap or small issuers, market indexes help provide a guide as to the range of size of companies that may face problems accessing capital. For example, the market capitalization of companies included in the Russell Microcap Index ranges from a *minimum* of $20 million to a *median* market capitalization of $218 million. Small cap stock indexes ranged in market capitalization from a *minimum* of $25 million (Russell 2000 index) to a *median* of over $1 billion (Morningstar Small Value Index). A $250 million market cap standard would fall within the minimum and median market capitalization levels of micro- and small- cap stock indexes.

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[3] House of Representatives Report No. 1341, 96th Congress, 2d Session, p. 23 (1980), ("House Report").
[4] Ibid.

We commend the Commission for its efforts to modernize the definition of eligible portfolio company for the purposes of eligible BDC investments, including the recent rulemaking and the reproposal. We urge the Commission adopt a rule that would define an eligible portfolio company to include Exchange-listed companies with a market capitalization of $250 million or less.

Sincerely,

David A. Starr