



May 1, 2019

*Via electronic submission to rule-comments@sec.gov*

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Release Nos. 33-10590; IC-33329; File No. S7-27-18; RIN 3235-AM29**

Dear Mr. Fields:

The Institute for Portfolio Alternatives (“IPA”) is pleased to submit the following comments in response to the U.S. Securities and Exchange Commission’s (the “Commission”) proposed rule and rule amendments relating to fund of funds arrangements (the “Proposed Rule”).

The IPA has an immediate interest in the proposed rule as it related to Business Development Companies (“BDCs”). For over 30 years the IPA has raised awareness of portfolio diversifying investment (PDI) products among stakeholders and market participants, including investment professionals, policymakers and the investing public. We support increased access to investment strategies with low correlation to the equity markets: lifecycle real estate investment trusts, net asset value REITs, BDCs, interval funds and direct participation programs. Through advocacy and industry-leading education, the IPA is committed to ensuring that all investors have access to real assets and the opportunity to effectively balance their investment portfolios.

BDCs are highly regulated<sup>1</sup> closed-end investment funds created by Congress in 1980 as part of the bipartisan Small Business Investment Incentive Act of 1980.<sup>2</sup> BDCs play an important role in providing capital to small and mid-sized companies that may not have access to traditional sources of capital. BDCs also provide individuals with private equity and debt investment opportunities historically available only to institutional or wealthy investors. Under the Investment Company Act of 1940, as amended, BDCs must also invest at least 70% of their total assets in the securities of “eligible portfolio companies,” defined as

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<sup>1</sup> Unlike other non-bank lenders, BDCs are governed by the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 (“1940 Act”). BDCs register their securities and provide extensive disclosures; file periodic and other reports, including proxy statements and Forms 10-K, 10-Q and 8-K; and comply with additional regulatory requirements under the 1940 Act. Non-traded BDCs are also subject to state oversight and regulation under state “blue sky” laws.

<sup>2</sup> Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477, 94 Stat. 2275 (1980); *see also* S. REP. NO. 96-958 (1980); H.R. REP. NO. 96-1341 (1980). The Act was approved by the U.S. House by a vote of 395-1 and by unanimous consent in the U.S. Senate.

private U.S. operating companies and public U.S. operating companies with a market capitalization of less than \$250 million.<sup>3</sup> Further, BDCs must offer managerial and other support to their portfolio companies.<sup>4</sup>

BDCs are an important source of capital and support to small and middle market U.S. companies. Today, there are approximately 41 non-listed BDCs managing \$32 billion of investments. Non-listed BDCs represent 44% of the entire BDC industry and manage 35% of all BDC assets. We appreciate that the Commission has recently proposed rulemaking to implement the Small Business Credit Availability Act of 2018, which allows BDCs to raise capital through additional borrowing and streamlined securities registration rules.

The IPA suggests the following recommendations relating to the Proposed Rule and the request for comments contained in the proposing release:

- the SEC should exempt BDCs from the definition of “Acquired Fund” under Forms N-1A, N-2, N-3, N-4 and N-6;
- the SEC should maintain the exclusion of private and foreign funds from eligibility under the Proposed Rule and should explicitly prohibit certain schemes designed to evade the 3% cap,
- the SEC should eliminate the “pass-through voting” option under the Proposed Rule and permit only “mirror voting;”
- the SEC should provide an exemption to the redemption limits under the Proposed Rule for transactions between affiliated funds, and
- the SEC should revise the three-tiered fund of funds limitation condition in the Proposed Rule to permit acquired BDCs to invest in private funds.

If the IPA may be of any assistance, please do not hesitate to contact me or Anya Coverman, IPA’s Senior Vice President, Government Affairs and General Counsel, at (202) 548-7190.

Sincerely,



Anthony Chereso  
President & CEO, Institute for Portfolio Alternatives

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<sup>3</sup> See 15 U.S.C. § 80a-2(a)(46), -54.

<sup>4</sup> *Id.* §80a-2(a)(48)(B).