April 14, 2017

Submitted electronically to ***submissions@banking.senate.gov***

The Honorable Michael Crapo
Chairman
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Request for Proposals to Foster Economic Growth

Dear Chairman Crapo and Ranking Member Brown,

FS Investments ("FS") appreciates the opportunity to respond to the Senate Banking Committee's request for proposals to promote economic growth. In this submission, we outline three modest proposals that FS believes will promote economic growth and enhance the ability of consumers, market participants and financial companies to responsibly participate in the economy in a more effective and efficient manner. Specifically, we are proposing three changes to the regulatory framework for business development companies ("BDCs") to reduce costs for investors in BDCs (primarily retail investors) and empower BDCs to provide more capital to job-creating small and mid-market U.S. companies.

In particular, FS proposes: (1) permitting a modest increase in leverage for BDCs; (2) implementing offering reforms to reduce unnecessary expenses for BDCs; and (3) allowing BDCs the flexibility to offer multiple classes of common stock to investors. The first two of these changes were previously included in the "Small Business Credit Availability Act" (H.R. 3868) from the 114th Congress, which was approved by the House Financial Services Committee in November of 2015 by a vote of 53-4. The third change would empower investors to select share classes and fee structures most appropriate for them, and allow BDCs to more fully comply with both the letter and the spirit of the Department of Labor's Conflict of Interest Rule ("Fiduciary Rule"), like mutual funds and real estate investment trusts ("REITs"), both of which are already permitted to offer multiple classes of common stock to investors.

All of these proposals are discussed in more detail below and suggested legislative text for these changes can be found in the Appendices to this letter.

FS INVESTMENTS

FS, founded as Franklin Square Capital Partners in Philadelphia, Pennsylvania in 2007, was established with a simple mission: democratize investing by providing individual investors access to the same asset classes, investment strategies and asset managers that were once available to only the wealthiest individual investors among us and the largest institutions, such as university endowments and pension funds. With this vision in mind, we took an underutilized investment vehicle called a business

development company and created the first-ever non-traded BDC when we launched our first fund, FS Investment Corporation ("FSIC"), in 2009. Since then, we have launched four additional non-traded BDCs, the industry's first non-listed closed-end fund and, most recently, an interval fund. We listed FSIC in 2014, becoming the first non-traded BDC to list on the New York Stock Exchange, creating a meaningful liquidity event for our investors and proving the investor benefits of the non-traded model. With over $17 billion in BDC assets under management in both traded and non-traded BDCs, FS now manages more BDC assets than any other firm in the country, has invested in portfolio companies across 39 states and has more than 200,000 investors residing in all 50 states.

BUSINESS DEVELOPMENT COMPANIES

In 1980, Congress enacted amendments to the Investment Company Act of 1940 ("1940 Act") with overwhelming bi-partisan support to authorize the creation of BDCs.[1] Congress' stated objective in creating this new type of closed-end fund was to encourage the establishment of a new capital vehicle to invest in, and increase the flow of capital to, small and midsized companies in the United States.[2] As such, the 1940 Act requires BDCs to invest at least 70% of their total assets in securities of "eligible portfolio companies," which are generally defined as private U.S. operating companies and public U.S. operating companies with market capitalizations of less than $250 million.[3] BDCs have, from their inception, been designed to foster economic growth.

In addition to helping fill a funding gap for small and middle market companies, BDCs also enable greater participation in the U.S. economy by providing individual investors a means of direct access to highly-regulated, transparent investment opportunities similar in their underlying investment strategies to the private equity and private debt investments typically available only to wealthy individuals and institutional investors.

BDCs are among the most highly-regulated investment vehicles in the marketplace and, because of the robust public disclosures required of BDCs under the securities laws, the activities and investment portfolios of BDCs are fully transparent to regulators, investors, portfolio companies and the general public. BDCs are regulated by the U.S. Securities and Exchange Commission ("SEC") under the 1940 Act, the Securities Act of 1933 (the "Securities Act"), and the Securities Exchange Act of 1934 (the "Exchange Act"). Advisers to BDCs are regulated by the SEC under the Investment Advisers Act of 1940. Broker-Dealers offering BDC securities are regulated by the SEC under the Exchange Act, and by the Financial Industry Regulatory Authority, Inc. ("FINRA") under the FINRA Rulebook. Moreover, unlike mutual funds, non-traded BDCs are subject to additional oversight by the securities regulators of 54 U.S. states and territories. Taken together, these and the various other regulations applicable to BDCs make BDCs, non-traded BDCs in particular, one of the most transparent and highly-regulated investment vehicles available to investors today.

---

[1] 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.
[2] *See* S. REP. NO. 96-958, at 1, 3 (1980).
[3] *See* 15 U.S.C. § 80a-2(a)(46) and 17 CFR 270.2a-46.

BDCs ARE KEY MIDDLE MARKET LENDERS

Because BDCs are statutorily required to invest at least 70% of their assets in small and midsize domestic operating companies, BDCs serve a crucial role in the U.S. economy. According to the National Center for the Middle Market, the 200,000 businesses comprising the U.S. middle market employ nearly 48 million Americans, one-third of all U.S. jobs.[4] The middle market's $10 trillion in annual revenue last year accounted for 33% of America's private sector gross domestic product.[5] Employment growth at middle market firms consistently outpaced that of large corporations and small businesses over the past five years and is estimated to be responsible for three out of five net new private-sector jobs.[6]

Middle market firms have become the new engines of the U.S. economy. While large and small firms shed millions of jobs during the Great Recession, the middle market added 2.2 million jobs across industry sectors and U.S. geographies.[7] According to a report by American Express and Dun & Bradstreet, middle market firms created 2.1 million of the 2.3 million net new jobs added to the U.S. economy between 2008 and 2014.[8] Middle market firms experienced a 4.4% expansion in employment, versus a 1.6% expansion at big business and a 0.9% decline in small business employment over the same period.[9]

The middle market continued to shine in 2016. Over the last year, the middle market led both the large and small business segments in revenue growth and employment growth.[10] In the coming year, 33% of middle market respondents expect to add more jobs and 65% will seek to increase investment in their businesses.[11] Despite increasing demand for growth capital, bank lending to the middle market has not kept pace following the financial crisis. To fuel the continued growth of this critical segment of our economy, middle market firms have increasingly turned to BDCs. Since 2008, the value of BDC loans in the marketplace has more than tripled.[12] Currently, BDCs have over $85 billion in outstanding loans, primarily to middle market firms.[13]

BDCs are playing a vital role in providing capital to middle market companies in spite of a regulatory regime which has been in place, and largely unchanged, since the early 1980s. FS believes the modest regulatory changes discussed in detail below will help BDCs provide greater access to capital to small and mid-market U.S. companies and grow our economy without diluting the extensive investor protections associated with BDCs.

POLICY PROPOSALS

FS hopes the Committee will consider three modest, common sense legislative changes designed to enable BDCs to provide even more capital to small and middle market U.S. companies, and do so in a

---

[4] National Center for the Middle Market; 4Q 2016 Middle Market Indicator. "Middle Market" defined as U.S. firms with annual revenue ranging from $10 million to $1 billion.
[5] *Id*.
[6] *Id*. "Five years of MMI data consistently show the middle market producing jobs one-and-a-half or two times faster than either big or small business."
[7] *Id*.
[8] Middle Market Power Index, April 2015, American Express Global Corporate Payments and Dun & Bradstreet.
[9] *Id*.
[10] 4Q 2016 Middle Market Indicator.
[11] *Id*.
[12] Small Business Investor Alliance: BDC Modernization Agenda, with data from Wells Fargo Securities, LLC.
[13] *Id*.

manner that could increase returns and decrease risk for investors, all while maintaining the strong regulatory regime and transparency that separates BDCs from other non-bank lenders in the marketplace. The Great Recession changed many dynamics in the capital markets, as have new and more robust regulatory requirements. Small and mid-size U.S. businesses have struggled to access previously available sources of capital. Several non-bank lenders have emerged as significant providers of capital, but none as transparent and heavily regulated as BDCs. FS believes that the small changes we propose, if enacted into law, would allow BDCs to play an even greater role in supporting the capital markets and more effectively fill the existing capital void that has hampered businesses and job growth.

As indicated above, the first two proposals we support, increased leverage and offering reform, were part of the "Small Business Credit Availability Act" (H.R. 3868) in the 114th Congress, which received strong, bi-partisan support in the House Financial Services Committee. FS considers the leverage increase and offering reform provisions to be the core of BDC modernization legislation and these proposals enjoy broad support in the BDC industry.

I. Expanding Access to Capital for BDCs

The first proposal FS recommends would increase the capital available for BDCs to invest in small and mid-market companies. Section 3(a)(2) of the "Small Business Credit Availability Act" would have accomplished this by amending Section 61 of the 1940 Act to decrease the asset coverage ratio requirement applicable to BDCs from the current 200% to 150%. This change would effectively raise the leverage limit for BDCs from the current 1:1 debt-to-equity ratio to just a 2:1 debt-to-equity ratio, thereby increasing capital provided through BDCs and broadening the universe of potential borrowers that can access capital from a BDC.

It is important to note that this change in BDC leverage would not be automatic. Before any BDC could exceed 1:1 leverage, certain shareholder friendly conditions would have to be met. First, prior to adopting a leverage increase above 1:1, a BDC must: (1) receive the approval of a majority of its disinterested directors (board members), in which case the leverage increase would become effective one year after such approval ("cooling off" period); or (2) receive the approval of more than 50% of the votes cast by shareholders, in which case the leverage increase would become effective immediately.

In addition to the board approval requirements, any non-traded BDC that wishes to exceed 1:1 leverage must obtain approval by a majority of its shareholders or offer 100% liquidity to its shareholders during the one year "cooling off" period. All BDCs exceeding 1:1 leverage would also be required to file a Current Report on Form 8-K disclosing the effective date of such increased leverage approval as well as information relating to the BDC's outstanding senior securities and asset coverage ratio. Finally, the same disclosure, along with the principal risk factors associated with any increased leverage, must also be included in a BDC's periodic filings under the Exchange Act.

The legislative language to implement these reforms is included in Appendix A of this document. This language is identical to the language in Section 3(a)(2) of H.R. 3868 that was approved by the House Financial Services Committee in 2015.

Relative to other lenders in the marketplace, a 2:1 debt-to-equity ratio is conservative. Banks are currently levered in the high single digits and non-bank asset-based commercial lenders and hedge funds can employ as much leverage as the market will bear, far exceeding bank leverage ratios in many cases. Aside from these elevated levels of leverage, traditional banks, hedge funds and many other non-bank

lenders provide far less transparency than BDCs do through their required filings and disclosures. In addition, this proposed change would apply to BDCs the same leverage ratio as that for Small Business Investment Companies ("SBICs") but, unlike SBICs, without putting any taxpayer dollars at risk through government guarantees. It is with this backdrop that we see the proposal to allow BDCs to go to 2:1 debt-to-equity ratio as a responsible, modest update to BDC law that would benefit small and mid-market borrowers through greater financing alternatives and a reduced cost of capital that will also benefit shareholders by enabling BDCs to construct more conservative, diversified portfolios. Finally, given the transparency required of BDCs in their SEC disclosure documents, which would be further enhanced by the suggested legislation, shareholders will be clearly informed of the amount of leverage that BDCs can incur and any potential risks to them associated with such leverage.

This modest change to the asset coverage ratio enjoys broad support in the BDC industry and the language provided in Appendix A reflects years of discussion and vetting by the industry and policy-makers alike. FS urges the Committee to support this change that, we believe, will enable BDCs to expand capital access to middle market companies, in particular, to help them grow and and continue to drive the U.S. economy.

II. Streamlining BDC Offering and Proxy Rules

In 2005, the SEC adopted final rules relating to Securities Offering Reform, which were the most significant modernization of the offering registration process under the Securities Act in decades. Unfortunately, the majority of these updates did not apply to BDCs. At the time the rule revisions were implemented, the SEC indicated it would consider reforms for BDCs at a later date, but this has not occurred. Section 4 of the "Small Business Credit Availability Act" from the 114th Congress would have made up for that oversight by directing the SEC to revise certain rules to allow BDCs to use streamlined securities offering provisions available to all other registrants under the Securities Act. This set of simple and modest reforms would benefit both BDC shareholders, the small- and medium-sized business in which they invest and, in turn, have a positive impact on economic growth by decreasing the cost and increasing the efficiency of capital formation for BDCs. These reforms are particularly important for smaller BDCs, which pay disproportionately higher costs to handle the significant paperwork required under the current BDC regulatory regime.

Specifically, these proposed changes would allow BDCs to utilize "incorporation by reference," which permits them to cite information in previous filings, rather than having to include the exact same information again in a new filing. These changes would streamline disclosure requirements and reduce burdensome regulatory paperwork for BDCs, while still ensuring investors receive the relevant and necessary disclosures. Investors would benefit from having a streamlined filing to review, rather than sifting through hundreds of pages of duplicative information.

Another important reform would allow BDCs to file automatic shelf registration statements and permit BDCs to qualify for Well-Known Seasoned Issuer status. These changes would permit BDCs that have a lengthy track record in the marketplace, and the confidence of investors, to offer their securities with more flexibility and agility to shift with market demands and changes. Finally, these updates would eliminate the requirement for BDCs to mail lengthy prospectuses to investors and elect to only send these documents when investors wish to receive them.

The legislative language to implement these reforms is included in Appendix A of this document. This language is identical to the language in Section 4 of H.R. 3868 that was approved by the House Financial Services Committee in 2015.

These reforms to the offering and proxy rules enjoy broad support throughout the BDC industry and FS believes these updates represent a common-sense solution that will save hundreds of thousands of dollars in paperwork and delivery costs, which are frequently passed along to investors. Importantly, these critical reforms would not, in any way, reduce or change the information that is available to investors about BDCs and their investments; nor would they reduce the regulatory requirements of BDCs, which will remain one of the most heavily regulated investment vehicles in the marketplace. Every other company in America that registers under the Securities Act benefits from streamlined rules reflecting the electronic age. BDCs and their shareholders should have access to the same streamlined filing benefits.

III. Permitting BDCs to Offer Multiple Classes of Common Stock

Finally, FS supports permitting BDCs to issue multiple classes of common stock, a legislative change that was not includeded in the "Small Business Credit Availability Act" but we believe is necessary to enhance investor choice, comply with recently published regulations, and level the playing field with similarly situated investment vehicles.

By limiting BDCs to a single share class, the current regime unnecessarily restricts investor choice when it comes to accessing BDC investments. Additional share classes for BDCs would expand consumer options and permit an investor to choose the method of purchasing shares that the investor deems most beneficial, based on factors applicable to the investor, such as the amount of the purchase, the length of time the investor expects to hold the shares, or existing relationships and compensation arrangements with financial advisors. This change would also increase competition as various BDC sponsors in the market would be able to modify share classes to fit the needs of potential investors. FS strongly believes that BDC investors would benefit from a menu of share class options that are tailored to their individual financial circumstances as opposed to the current "one-size fits all" regime for BDC investments.

In addition to expanding investor choice, recent rule changes have made the ability of non-listed investment funds to issue multiple classes of common stock a practical necessity. Specifically, in order to offer securities under the Department of Labor's Conflict of Interest Rule ("Fiduciary Rule") and its accompanying Best Interest Contract Exemption ("BICE"), at least two classes of shares are required: one built for the "level fee fiduciary" market and one structured for transaction-based compensation under the BICE. The Fiduciary Rule is expected to go into effect on June 9, 2017 and without BDCs having the ability to issue multiple classes of common stock, many investors will be denied access to BDC investments altogether. Importantly, even if the Fiduciary Rule does not ultimately go into effect, many broker-dealers have chosen to comply with the spirit of the Fiduciary Rule, changing their business practices and, in turn, making the offering of multiple BDC share classes a practical necessity.

This proposed change has precedent and would help investors by bringing BDCs in line with related investment vehicles. Under existing law, mutual funds and REITs are permitted to issue multiple share classes, and registered closed-end funds are routinely permitted to issue multiple share classes through SEC exemptive relief. Accordingly, even before the Fiduciary Rule caused industry-wide change, investors in BDCs were at a strategic and competitive disadvantage. This straightforward fix would place BDCs on a level playing field with mutual funds, REITs and registered closed-end funds, without reducing shareholder protections in any manner.

For all of these reasons, FS supports a simple modification to Section 18 of the 1940 Act that would allow BDCs to issue multiple classes of common stock under certain conditions. The legislative language to implement these reforms is included in Appendix B of this document. This change enjoys near unanimous support among non-traded BDCs, broad support among the greater BDC industry and is supported by BDC-related trade associations, in particular, the Small Business Investor Alliance and the Investment Program Association.

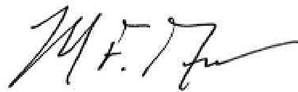
FS hopes the Committee will act expeditiously to allow BDCs to issue multiple classes of common stock, enhancing investor choice, responding to new regulations and placing BDCs on a level playing field with similarly situated investments so investors continue to have access to BDC investments.

CONCLUSION

BDCs offer a critical source of capital to small and middle market U.S. companies and FS believes that, if enacted, the legislative changes we describe above would position BDCs to play an even more substantial role in supporting these job-creating businesses. We believe that middle market companies in particular will continue to grow and drive the U.S. economy and that the time is right to modernize the regulation of the BDC sector to help support that growth, while maintaining the BDC's position in the marketplace as a highly regulated, transparent investment vehicle.

FS Investments appreciates this opportunity to provide input on pro-growth, pro-consumer economic initiatives and we look forward to working with you and other members of Congress on these important issues in the days ahead.

Sincerely,



____

Mike Gerber
Executive Vice President
FS Investments

Appendix A

Expanding Access to Capital for BDCs

Explanation: The text below is Section 3(a)(2) of H.R. 3868, the "Small Business Credit Availability Act" from the 114th. This version of the text was approved by the House Financial Services Committee in 2015.

SEC. ___. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DEVELOPMENT COMPANIES.

(a) IN GENERAL.—Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(2) by striking paragraph (1) and inserting the following:

"(1) Except as provided in paragraph (2), the asset coverage requirements of subparagraphs (A) and (B) of section 18(a)(1) (and any related rule promulgated under this Act) applicable to business development companies shall be 200 percent.

"(2) The asset coverage requirements of subparagraphs (A) and (B) of section 18(a)(1) and of subparagraphs (A) and (B) of section 18(a)(2) (and any related rule promulgated under this Act) applicable to a business development company shall be 150 percent if—

"(A) within five business days of the approval of the adoption of the asset coverage requirements described in clause (ii), the business development company discloses such approval and the date of its effectiveness in a Form 8–K filed with the Commission and in a notice on its website and discloses in its periodic filings made under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)—

"(i) the aggregate value of the senior securities issued by such company and the asset coverage percentage as of the date of such company's most recent financial statements; and

"(ii) that such company has adopted the asset coverage requirements of this subparagraph and the effective date of such requirements;

"(B) with respect to a business development company that issues equity securities that are registered on a national securities exchange, the periodic filings of the company under section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) include disclosures reasonably designed to ensure that shareholders are informed of—

"(i) the amount of indebtedness and asset coverage ratio of the company, determined as of the date of the financial statements of the company dated on or most recently before the date of such filing; and

"(ii) the principal risk factors associated with such indebtedness, to the extent such risk is incurred by the company; and

"(C)(i) the application of this paragraph to the company is approved by the required majority (as defined in section 57(o)) of the directors of or general partners of such company who are not interested persons of the business development company, which application shall become effective on the date that is 1 year after the date of the approval, and, with respect to a business development company that issues equity securities that are not registered on a national securities exchange, the company extends, to each person who is a shareholder as of the date of the approval, an offer to repurchase the equity securities held by such person as of such approval date, with 25 percent of such securities to be repurchased in each of the four quarters following such approval date; or

"(ii) the company obtains, at a special or annual meeting of shareholders or partners at which a quorum is present, the approval of more than 50 percent of the votes cast of the application of this paragraph to the company, which application shall become effective on the date immediately after the date of the approval.";

Streamlining BDC Offering and Proxy Rules

Explanation: The text below is Section 4 of H.R. 3868, the "Small Business Credit Availability Act" from the 114th. This version of the text was approved by the House Financial Services Committee in 2015.

SEC. ____. PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING AND PROXY RULES.

(a) REVISION TO RULES.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall revise any rules to the extent necessary to allow a business development company that has filed an election pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53) to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the Commission takes pursuant to this subsection shall include the following:

(1) The Commission shall revise rule 405 under the Securities Act of 1933 (17 C.F.R. 230.405)—

(A) to remove the exclusion of a business development company from the definition of a well-known seasoned issuer provided by that rule; and

(B) to add registration statements filed on Form N–2 to the definition of automatic shelf registration statement provided by that rule.

(2) The Commission shall revise rules 168 and 169 under the Securities Act of 1933 (17 C.F.R. 230.168 and 230.169) to remove the exclusion of a business development company from an issuer that can use the exemptions provided by those rules.

(3) The Commission shall revise rules 163 and 163A under the Securities Act of 1933 (17 C.F.R. 230.163 and 230.163A) to remove a business development company from the list of issuers that are ineligible to use the exemptions provided by those rules.

(4) The Commission shall revise rule 134 under the Securities Act of 1933 (17 C.F.R. 230.134) to remove the exclusion of a business development company from that rule.

(5) The Commission shall revise rules 138 and 139 under the Securities Act of 1933 (17 C.F.R. 230.138 and 230.139) to specifically include a business development company as an issuer to which those rules apply.

(6) The Commission shall revise rule 164 under the Securities Act of 1933 (17 C.F.R. 230.164) to remove a business development company from the list of issuers that are excluded from that rule.

(7) The Commission shall revise rule 433 under the Securities Act of 1933 (17 C.F.R. 230.433) to specifically include a business development company that is a well-known seasoned issuer as an issuer to which that rule applies.

(8) The Commission shall revise rule 415 under the Securities Act of 1933 (17 C.F.R. 230.415)—

(A) to state that the registration for securities provided by that rule includes securities registered by a business development company on Form N–2; and

(B) to provide an exception for a business development company from the requirement that a Form N–2 registrant must furnish the undertakings required by item 34.4 of Form N–2.

(9) The Commission shall revise rule 497 under the Securities Act of 1933 (17 C.F.R. 230.497) to include a process for a business development company to file a form of prospectus that is parallel to the process for filing a form of prospectus under rule 424(b).

(10) The Commission shall revise rules 172 and 173 under the Securities Act of 1933 (17 C.F.R. 230.172 and 230.173) to remove the exclusion of an offering of a business development company from those rules.

(11) The Commission shall revise rule 418 under the Securities Act of 1933 (17 C.F.R. 230.418) to provide that a business development company that would otherwise meet the

eligibility requirements of General Instruction I.A of Form S–3 shall be exempt from paragraph (a)(3) of that rule.

(12) The Commission shall revise rule 14a–101 under the Securities Exchange Act of 1934 (17 C.F.R. 240.14a–101) to provide that a business development company that would otherwise meet the requirements of General Instruction I.A of Form S–3 shall be deemed to meet the requirements of Form S–3 for purposes of Schedule 14A.

(13) The Commission shall revise rule 103 under Regulation FD (17 C.F.R. 243.103) to provide that paragraph (a) of that rule applies for purposes of Form N–2.

(b) REVISION TO FORM N–2.—Not later than 1 year after the date of enactment of this Act, the Commission shall revise Form N–2—

(1) to include an item or instruction that is similar to item 12 on Form S–3 to provide that a business development company that would otherwise meet the requirements of Form S–3 shall incorporate by reference its reports and documents filed under the Securities Exchange Act of 1934 into its registration statement filed on Form N–2; and

(2) to include an item or instruction that is similar to the instruction regarding automatic shelf offerings by well-known seasoned issuers on Form S–3 to provide that a business development company that is a well-known seasoned issuer may file automatic shelf offerings on Form N–2.

(c) TREATMENT IF REVISIONS NOT COMPLETED IN TIMELY MANNER.—If the Commission fails to complete the revisions required by subsections (a) and (b) by the time required by such subsections, a business development company shall be entitled to treat such revisions as having been completed in accordance with the actions required to be taken by the Commission by such subsections until such time as such revisions are completed by the Commission.

(d) RULE OF CONSTRUCTION.—Any reference in this section to a rule or form means such rule or form or any successor rule or form.

Appendix B

SEC. ___. ALLOWING THE ISSUANCE OF MULTIPLE CLASSES OF COMMON STOCK BY BUSINESS DEVELOPMENT COMPANIES.

(a) IN GENERAL. — Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)) is amended—

(1) by redesignating paragraphs (3) and (4) as (4) and (5), respectively; and

(2) by inserting as paragraph (3) the following:

"(3) Notwithstanding any provision of section 18, a business development company may issue more than one class of common stock, provided that no such class shall have a preference or priority over any other class upon the distribution of the assets of such business development company or in respect of the payment of dividends or distributions, except that the net income attributable to, and distributions payable on, each class may differ in proportion to the expenses attributable to each class, and that any such class shall be voting stock and have equal voting rights with every other class of outstanding voting stock.

(b) CONFORMING AMENDMENTS. — The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 57—

(A) in subsection (j)(1), by striking "section 61(a)(3)(B)" and inserting "section 61(a)(4)(B)"; and

(B) in subsection (n)(2), by striking "section 61(a)(4)(B)" and inserting "section 61(a)(5)(B)"; and

(2) in section 63(3), by striking "section 61(a)(3)" and inserting "section 61(a)(4)".