NC3 NATIONAL COALITION for COMMUNITY CAPITAL www.comcapcoalition.org nc3@comcap.us 802-793-3169

March 17, 2021

The Honorable Sherrod Brown
Chairman, U.S. Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Pat Toomey
Ranking Member, U.S. Senate Committee on Banking, Housing, and Urban Affairs

Dear Chairman Brown and Ranking Member Toomey,

In response to your recent request for legislative proposals to foster economic growth and capital formation, the National Coalition for Community Capital (NC3) urges Congress to adopt overdue updates to the Investment Company Act of 1940 (ICA). The law has been largely neglected over the years and contains barriers to the sorts of capital formation innovations and activities appropriate for a robust and equitable 21st century American economy. NC3, a multi-stakeholder organization dedicated to accelerating economic growth and capital formation in equitable, inclusive, and democratic ways, views the following three updates in particular as critical to 1) expanding access to capital, 2) distributing decision-making about who gets funded, 3) creating better wealth-building opportunities for retail investors, and 4) establishing a mechanism for unifying members of communities across America in common purpose.

First, we ask that paragraph 6(a)(5)(a)(iii) of Section 6(a)(5) of the ICA be stricken. Currently, this paragraph contains an exemption for a business and industrial development company (BIDCO), which is a state-regulated fund that provides technical assistance to its portfolio companies. Yet, only accredited investors can participate in BIDCOs pursuant to paragraph 6(a)(5)(a)(iii). Section 6(a)(5) is therefore of limited utility because accredited investor-only funds operate more efficiently under separate ICA regulatory provisions. Eliminating paragraph 6(a)(5)(a)(iii) would enable retail investor participation in BIDCOs substantively regulated at the state level.

Second, we ask for key changes to certain restrictions associated with the exemption for intrastate funds in section 6(d) of the ICA. In particular, such a fund must be a closed-end fund, is limited in size to $10 million, and, in the absence of any rule or regulation (as is currently the case), must obtain an exemptive order from the SEC – whereby the SEC historically imposed a long list of burdensome requirements, which increases the unpredictability and cost of such a fund. Historically, these restrictions have made the exemption essentially unworkable, as evidenced by its lack of use since the 1970s. To remedy this problem, we urge that:

- The term “closed-end” be stricken from the first sentence of section 6(d)
- The cap in paragraph (d)(1) be increased from $10 million to $50 million

- The requirement that such a fund obtain an exemptive order from the SEC be replaced with a more generic statement that it is subject to such terms and conditions as the SEC determines to be necessary in the public interest, perhaps using the same language as in paragraph 6(a)(5)(E) (which applies to BIDCOs)
- That the statute expressly permit offers to be visible to out-of-state persons, provided that sales of securities in the contemplated offering are only made to in-state residents

Third, to accommodate small funds designed to serve communities spanning two or more states, we urge the adoption of a new exemption that would be section 6(g) of the ICA. This exemption would read:

> (g) Any company that is not engaged in the business of issuing redeemable securities, if—
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> (i) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the issuer and which it proposes to offer for sale, do not exceed $50,000,000, or such other amount in excess of $50,000,000 as the Commission may set by rule, regulation, or order;
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> (ii) the company is operated in accordance with such terms and conditions as may be imposed by any state in which the company sells its securities or, in the absence of any applicable state regulation, in accordance with such terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.

More details on the context for our requests along with our thoughts about related regulatory reforms that would also help fuel equitable capital formation and drive economic activity may be found in the enclosed letter NC3 sent to the SEC in October 2020 advocating for expanded exemptions under the ICA.

We thank you for your consideration. Please contact us with any questions or to discuss these proposals.

Sincerely,

Ken Linge, NC3 Executive Director

Janice Shade, Chair, NC3 Community Investment Fund Task Force

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OCTOBER 21, 2020

U.S. SECURITIES AND EXCHANGE COMMISSION
DIVISION OF INVESTMENT MANAGEMENT
CHIEF COUNSEL'S OFFICE
100 F STREET, NE
WASHINGTON, DC 20549

RE: NC3 COMMUNITY INVESTMENT FUND TASK FORCE

VIA EMAIL SUBMISSION TO: IMOCC@SEC.GOV

INTRODUCTION

The treble damage of 2020's global pandemic, economic downturn, and protests against racial injustice has heightened public awareness of long-standing systemic issues within U.S. capital markets. The current plight of local economies highlights the fact that capital has long been a challenge for businesses, especially those run by women, people of color, rural entrepreneurs, and others marginalized by a money system designed ages ago. Meanwhile, the lack of effective wealth-building opportunities for non-wealthy Americans constitutes a powerful disincentive to save money and contributes to ever-greater wealth inequality.

In response, the National Coalition for Community Capital formed a Community Investment Fund Task Force to expedite our work of the past three years toward durable, sustainable community capital solutions to usher in a more inclusive and democratic economy with greater local ownership and control. The following details our recommended actions toward this goal.

I. BACKGROUND

a. The National Coalition for Community Capital (NC3)

The National Coalition for Community Capital (NC3) is a 501(c)(3) nonprofit organization based in South Burlington, Vermont, and representing a geographically dispersed coalition of members across the U.S.[1] Formed in 2017, NC3's mission is to democratize financial systems, where empowered citizen

[1] More information on NC3 is available at: https://comcapcoalition.org/.

investors catalyze the growth of locally-rooted ventures creating economic opportunity for all.[2] Among other things, we promote financial awareness, education, and endeavor to expand access to community-based capital opportunities through targeted outreach, education, and advocacy. Since its inception, NC3 has fostered the growth of a national multi-sector coalition of individuals and organizations that share a vision of a more equitable, democratic, inclusive, and broadly prosperous American economy.

We recognize that there are different ways in which to define what constitutes a "community."[3] We believe that communities tend to be formed by liked-minded persons, irrespective of their economic class or means, on the basis of common interests, sentiments, goals and often geographies. Generally, they share one fundamental precept in common: A belief that, collectively, community members can influence their environments and each other towards a desired end.

Our three national ComCap conferences have brought together hundreds of leaders and seekers of community capital solutions to explore issues of financial inclusion and social justice.[4] Our membership and networks comprise a broad array of community prosperity architects including investment crowdfunding pioneers, economic development professionals, community foundation and CDFI leaders, attorneys, investment advisors, and, of course, entrepreneurs and business owners seeking patient, neighborly capital.

In short, we have identified a growing desire and need for increased access to community-based capital opportunities for smaller, typically local, companies and the communities that support them.[5] These concerns and desires, which we share as an organization, transcend race, gender, social status, and geography. The urgency in which we are working to address these issues has been heightened of late by the COVID-19 pandemic and the long-standing issues of social and economic injustice that continue to gain prominence in our national dialogue.

b. Recent Regulatory Developments

In recent years, the U.S. Securities and Exchange Commission ("SEC") has made a number of meaningful changes to the federal securities laws to allow for greater direct access to capital opportunities for smaller companies and investors. Additionally, the SEC has created internal offices at the Commission designed to specifically advocate for investors and small companies within the SEC and beyond for the benefit of both parties in a way that did not previously exist.[6] These efforts have helped facilitate community-based capital opportunities across the country in a manner that did

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[2] *Id.*

[3] See, e.g., "What Is Community Anyway?," David M. Chavis & Kien Lee, Stanford Social Innovation Review (May 2015), available at: https://ssir.org/articles/entry/what_is_community_anyway.

[4] For more information on NC3 ComCap conferences, see https://comcap.us/.

[5] In addition to feedback from outreach engagement and conference participants, we note that the SEC has received similar feedback in response to recent regulatory efforts. See, e.g., Comments of Cutting Edge Capital (Sept. 2019) on SEC's Concept Release on Harmonization of Securities Offering Exemptions, SEC Rel. No. 33-10649 ("Concept Release"), available at: https://www.sec.gov/comments/s7-08-19/s70819-6193327-192496.pdf, and Comments of Ketsal (June 2020) on SEC Rel. No. 33-10763 (see footnote 11 below), available at: https://www.sec.gov/comments/s7-05-20/s70520-7364866-218811.pdf.

[6] The Office of the Investor Advocate was established by the SEC in Feb. 2014, when Rick A. Fleming was appointed as the SEC's first Investor Advocate. The Office of the Advocate for Small Business Capital Formation began operations in Jan. 2019, when Martha Legg Miller was appointed at the SEC's first Advocate for Small Business Capital Formation.

not previously exist. Importantly, the SEC's demonstrated willingness to be a facilitator of, and active participant in, capital formation on a local level bolsters our efforts, further supports our mission, and fosters greater civic engagement.

Since the enactment of the Jumpstart Our Business Startups Act ("JOBS Act") in 2012,[7] the SEC has adopted a number of regulatory changes that relate primarily to the Securities Act of 1933 (the "Securities Act"),[8] including:

- Regulation Crowdfunding ("Reg CF") in 2015 to facilitate:
    - capital raising by smaller companies of up to $1.07 million through the sale of securities annually; and
    - retail (non-accredited) investor access to direct investment opportunities in private companies subject to investment limitations;[9]
- Amendments to Regulation A ("Reg A") in 2015 to facilitate:
    - capital raising by smaller companies of up to $50 million through the sale of securities annually; and
    - retail investor access to direct investment opportunities in private companies subject to investment limitations;[10] and
- Rule 147A and amendments to Rule 147 and Rule 504 in 2016 to facilitate:
    - capital raising by smaller companies through the sale of securities in local, intrastate and regional securities offerings primarily in compliance with state securities laws; and
    - retail investor access to direct investment opportunities in private companies within their communities, localities, and regions.[11]

SEC has further demonstrated a willingness to revisit its securities laws as they relate to private exempt offerings and the entities that intermediate them. The SEC's recent efforts to harmonize its exemptive securities law framework under the Securities Act,[12] amend its critical "accredited investor" definition,[13] and seek public input on potential complementary changes to regulations

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[7] See Jumpstart Our Business Startups Act, available at: https://www.govinfo.gov/content/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

[8] 15 U.S.C. 77a *et seq*.

[9] See SEC Adopts Rules to Permit Crowdfunding, Press Release (Oct. 2015), available at: https://www.sec.gov/news/pressrelease/2015-249.html.

[10] See SEC Adopts Rules to Facilitate Small Companies' Access to Capital (Mar. 2015), available at: https://www.sec.gov/news/pressrelease/2015-49.html.

[11] See SEC Adopts Final Rules to Facilitate Intrastate and Regional Securities Offerings, Press Release (Oct. 2016) https://www.sec.gov/news/pressrelease/2016-226.html.

[12] See Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, SEC Rel. No. 33-10763 (Mar. 2020), available at: https://www.sec.gov/rules/proposed/2020/33-10763.pdf.

[13] See Amending the "Accredited Investor" Definition, SEC Rel. No. 33-10824 (Aug. 2020), available at: https://www.sec.gov/rules/final/2020/33-10824.pdf.

under the Investment Company Act of 1940 ("IC Act")[14] will ultimately further increase opportunities for communities to contribute capital to the companies and causes they care about.

Consistent with these formal SEC actions under the Securities Act, public statements by SEC Chairman Clayton[15] and others, including Dalia Blass, Director of the Division of Investment Management, indicate a further willingness to consider changes to long-standing positions on rules and regulations under the IC Act.[16] In particular, the Chairman and Director are considering and have sought public input on new or novel ways in which the SEC can appropriately increase retail investor access to indirect capital opportunities relating to private companies vis-à-vis pooled investment vehicles (or "funds"). As with its recent accomplishments and follow-on efforts under the Securities Act, the SEC and its staff's proactive approach to revisit rules and regulations and long-standing SEC staff positions under the IC Act should be applauded.

c. Community Investment Funds

As noted above, NC3 works to empower communities nationwide by enabling increased access to, and appreciation of, community-based capital opportunities. One important way in which we do this is through education and advocacy around so-called community investment funds ("CIFs").

CIFs are funds that facilitate fund participants' indirect support of and/or investment in community-driven capital opportunities. Each of the existing regulatory forms in which CIFs may currently operate, however, suffer from regulatory and/or practical limitations that diminish their availability and utility for retail (non-accredited) investor community participants. Given these constraints, CIFs tend to be mission-driven funds that either operate pursuant to an exemption or exclusion from the IC Act in limited sectors (e.g., real estate) that are invested in by only accredited investors or otherwise within limited operational confines (e.g., non-profits) for which there can be no opportunity for a return on capital.

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[14] 15 U.S.C. 80a *et seq*. See Speech: PLI Investment Management Institute, Dalia Blass, Director, Division of Investment Management (July 2020) ("Dir. Blass PLI Speech"), available at: https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute.

[15] See Statement on Harmonizing, Simplifying and Improving the Exempt Offering Framework, Chairman Jay Clayton (March 2020) ("The staff and I will continue to explore ways to expand access to private investments for Main Street investors and whether appropriately structured funds—such as through the inclusion of private investments in retirement target date funds—can facilitate Main Street investor access to private investments in a manner that ensures incentive alignment with professional investors with appropriate investor protections and at reasonable cost."), available at: https://www.sec.gov/news/public-statement/statement-clayton-harmonization-2020-03-04; Remarks at Meeting of the Small Business Capital Formation Advisory Committee, Chairman Jay Clayton (Nov. 2019) ("[I]t is our obligation to explore whether we can reduce cost and complexity, increase opportunity for our Main Street investors in [the private capital] market, including through professionally managed funds. To be more specific, I am thinking about funds where Main Street investors are able to invest in the private market on terms similar to those available to institutional investors and on a diversified basis."), available at: https://www.sec.gov/news/public-statement/clayton-remarks-small-business-capital-formation-advisory-committee-111219.

[16] See Dir. Blass Speech ("The Division is currently re-examining whether [its historic approach to non-accredited investor access to closed-end funds of private funds] should be reviewed consistent with our firm commitment to investor protection. We are interested in hearing from fund sponsors, investors and other market participants with ideas for closed-end fund of private funds that would respond to our [investor protection] concerns.").

II. REQUEST FOR REGULATORY CONSIDERATION

Consistent with recent SEC actions, staff statements, public input received on the SEC's concept release on its exempt offering framework, and the recommendations of participants in the SEC's Forum on Small Business Capital Formation,[17] we request that the SEC, among other things, consider utilizing its statutory discretion under Section 6 of the IC Act to expand retail investor access to funds through appropriately structured and professionally managed local, in-state regulated investment vehicles that are exempt from registration under the IC Act[18] and are able to raise capital in exempt securities offerings.[19] In so doing, we believe that the SEC can help facilitate meaningful private sector, state and local government action to encourage greater community ownership, participation, and support of local business ventures. These funds, which we would consider to be a new form of CIF, would operate pursuant to SEC rules and/or staff guidance but otherwise be primarily substantively regulated at the state level through existing, amended, or newly adopted state law provisions that include state-determined and specific investor protections. Importantly, SEC action in this regard would encourage state legislatures and regulatory bodies to adopt provisions for CIFs that will ultimately allow for greater community-based ownership of, and participation in, local economies.

III. LEGAL FRAMEWORK

a. The Securities Act

Under the Securities Act, every offer and sale of securities must be registered or conducted pursuant to an exemption from registration. The provisions of the Securities Act apply equally to any person or company looking to offer and sell securities, including investment companies. Given the unique characteristics of investment companies and how they are regulated, however, the Securities Act and the rules adopted thereunder only provide for a limited number of exempt securities offering frameworks pursuant to which investment companies can offer and sell securities. For example, unregistered funds typically raise capital pursuant to Securities Act Section 4(a)(2) and Regulation D,[20] but are otherwise ineligible for other exemptive Securities Act offering frameworks such as Regulation CF and Regulation A.[21]

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[17] See, generally, SEC's Report on the 39th Annual Small Business Forum (June 2020), and, specifically, identified Forum participant priorities regarding "Crowdfunding/Community Investing" and "Retail Access to Pooled Investment Funds," available at: https://www.sec.gov/files/2020-oasb-forum-report-final_0.pdf.

[18] IC Act Section 6, among other things, the SEC has the discretion to, by rule or order, allow non-accredited investor access to pooled investment vehicles pursuant to Section 6(a)(5)(A)(iii), 6(c), and 6(d).

[19] See, e.g., Securities Act Rule 147A and Rule 504 of Regulation D.

[20] See, e.g., Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017, SEC Division of Economic and Risk Analysis Staff Report (Aug. 2018) ("Among the other findings, the majority of the capital raised in the Regulation D market in 2017 was raised by pooled investment vehicles ($1,671 billion)."), available at: https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf see also Concept Release, at Section IV.A.2.

[21] See 17 CFR 227.100(b)(3) and 17 CFR 230.251(b)(4).

b. The IC Act

Unlike the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act"),[22] which are primarily disclosure statutes, the IC Act and its implementing regulations impose a complex set of substantive regulatory requirements on companies that are required to register[23]. Section 3(a)(1) of the IC Act defines an investment company to be, among other things, any issuer of securities that "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities." This is a subjective test based generally on how a company holds itself out to the public and the manner in which it pursues its business. It tends to capture traditional investment companies that act deliberately in that capacity. Section 3(a)(1) sets forth additional criteria that, if satisfied by an issuer, would constitute an investment company, including an objective, numerical test that applies to companies that hold a significant portion of their assets in investment securities even if they do not hold themselves out as traditional investment companies.

Companies that fall within the Section 3(a)(1) definitions of an investment company must either satisfy an exclusion or exemption from the IC Act or register with the SEC under the IC Act. The IC Act and its implementing rules impose strict requirements on registered investment companies' governance, leverage, capital structure, and operations. It is therefore not uncommon for private funds and other alternative investment vehicles, whose activities fall squarely within the definition of "investment company," to be set up to satisfy an exclusion from that definition or to operate in a manner that is exempt from some or all of the provisions of the IC Act.

c. Exclusions and Exemptions from IC Act Registration

Private and/or unregistered funds can take various forms. Many private funds operate pursuant to an exclusion from the definition of an investment company under Section 3(c)(1) or 3(c)(7) of the IC Act.[24] These funds are generally limited in the number and type of persons that can purchase their securities as well as the manner in which the funds can be offered to the public. Other unregistered funds, such as real estate-related funds are operated pursuant to an exclusion from the investment company definition contained in Section 3(c)(5) or in a manner that excludes them from satisfying the criteria identified in the Section 3(a)(1) definition. Charitable funds can, for example, rely on the exclusion contained in Section 3(c)(10) of the IC Act. Some funds are structured as business development companies ("BDCs"), which are a category of closed-end investment companies that do not register under the IC Act, but rather elect to be subject to certain of its provisions.

Business and industrial development companies ("BIDCOs") are another type of investment company that operate under state statutes that provide state and local enterprises with direct investments and loan financings, as well as managerial assistance. BIDCOs typically meet the definition of "investment company" under the IC Act because they invest in securities. Section 6(a)(5) of the IC Act, however, exempts BIDCOs from most provisions of that Act subject to certain conditions. Section 6(a)(5)(A) provides an exemption from the requirements of the IC Act

[22] 15 U.S.C. 78a *et seq*.

[23] See Concept Release, at Section IV.C.

[24] Concept Release, at Section IV.A.2.

for BIDCOs, that are "...not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State…."

Under Section 6(a)(5)(A)(i), a BIDCO's organizational documents must state that the company's activities are limited to the promotion of in-state economic, business, or industrial development "through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose." Section 6(a)(5)(A)(ii) further provides that, immediately following each sale of its securities, at least 80% of the securities being offered in such a sale must be held by persons who reside, or who have a substantial business presence, in the State. Section 6(a)(5)(A)(iii) requires a BIDCO to sell or propose to sell its securities to only accredited investors or to such other persons that the Commission may permit by rule, regulation, or order.

Intrastate funds are funds that operate pursuant to the exemption provided in Section 6(d) of the IC Act. These are closed-end funds that are subject to such terms and conditions as the SEC deems to be necessary or appropriate in the public interest or for the protection of investors, provided that:

- The fund only ever sells no more than $10 million in securities (or such other amount as the SEC may otherwise determine); and
- No securities are sold or proposed to be sold in connection with a public offering to any person who is not a resident of the State under the laws of which such fund is organized or otherwise created.

Intrastate funds typically require, and operate pursuant to, bespoke, fact-specific SEC exemptive orders, the process and terms of which has resulted in a lack of regulatory engagement and adoption by market participants.

IV. DISCUSSION

NC3 believes that the existing regulatory framework under the securities laws for pooled investment vehicles does not adequately address or facilitate the creation or existence of CIFs or for robust indirect community ownership opportunities vis-a-vis broad-based participation in CIFs. As such, we respectfully request that the SEC exercise its statutory authority in Section 6 of the IC Act to adopt a self-executing regulatory framework that would encourage the creation of CIFs substantively regulated at the state-level.

We believe that an updated and self-executing federal regulatory framework that includes appropriate investor protections but otherwise generally relies on implementing regulations at the state and local level for retail investor participation in CIFs would result in greater access to capital opportunities in communities nationwide. As envisioned, CIFs would be uniquely positioned to help increase capital opportunities for entrepreneurs, local going concerns, and community member participants traditionally excluded from capital markets generally, and fund-related investment opportunities, specifically. Among other things, CIFs can help to alleviate long-standing issues of social injustice and unequal access to financial opportunities in communities nationwide, especially in traditionally poorly- and under-served communities. The adoption of a regulatory framework at

the federal level would provide state and local governments and the private sector with important additional flexibility and incentives to make CIFs a reality in any number of ways that are not currently possible.

As the SEC recently noted in its Concept Release, retail investors are limited in their ability to indirectly gain exposure to exempt securities offerings.[25] Yet, indirect exposure to exempt securities offerings through private funds may ultimately prove to be a safer and/or better capital deployment strategy for retail investors than through the direct investment opportunities they are currently afforded through exempt securities offerings conducted pursuant to Regulation CF or Regulation A. The only meaningful option that such investors have is to invest in registered investment companies and BDCs.[26] Such companies, however, are subject to extensive and often costly disclosure and operational requirements under various federal securities laws and practical limitations related to the nature of investments in smaller, private companies.[27] Thus, we don't see many such funds being formed, leaving retail investors excluded from local investment opportunities solely due to lack of available options.

Similarly, while smaller, locality-based companies may technically be able to raise capital from pooled investment vehicles, the reality is that the vast majority of women- and minority-owned businesses, as well as thousands of businesses outside the handful of coastal concentrations of capital, are significantly less likely to be able to raise capital from private funds.[28] This is the result of multiple factors and biases that are beyond the scope of our outreach here. One such factor, however, is that not every company is an appropriate investment opportunity for traditional investment companies that exclusively pursue profits in the form of capital appreciation. The vast majority of smaller, private companies do not need, want, or actively seek growth-stage capital on the terms and conditions typically required by such investment firms and their investors.

Irrespective of their status under the federal securities laws, community-focused capital contributors deploy capital for various reasons and a profit motive is not necessarily primary among them. Stated differently, community members contribute patient capital that is returned to them in various forms, including, among others, through increased community health and economic well-being. They do not, however, tend to contribute capital to local companies primarily in order to receive market rate capital appreciation in return.

In short, the IC Act currently provides for the creation of a limited number of imperfect CIFs. Each of these current forms suffers from regulatory and/or practical limitations that diminish their ultimate utility for communities. For example, registered investment companies and BDCs are costly to set up, subject to substantive regulatory requirements, and are practically limited in investing in community-based capital opportunities. Similarly, private 3(c)(1) and 3(c)(7) funds are nimble and widespread but for practical and regulatory reasons do not allow for widespread public offerings in which retail, non-accredited investors can participate. On paper, BIDCOs, Intrastate Funds, and

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[25] Concept Release, at Section IV.C.

[26] *Id.*

[27] *Id.*

[28] See, e.g., Report of the SEC's Office of the Advocate for Small Business Capital Formation, "Investing in Underrepresented Founders (What We Can Learn from the Data)" (Aug. 2020), available at: https://www.sec.gov/spotlight/sbcfac/sbcfac-learn-from-data.pdf.

charitable funds satisfy many of the CIF criteria but are either limited by default to accredited investors, subject to caps on the amount of capital that can be raised and deployed, unable to generally solicit potential investors, technically limited to entities organized in the state in which they operate and sell securities, or are required to be operated in a manner that eliminates the possibility, however remote, of capital appreciation to fund contributors.

In our view, the SEC should consider adopting a regulatory framework under the IC Act that is inspired by its recent adoption of Securities Act Rule 147A. In that rulemaking, the SEC proactively sought public and state regulator engagement on the ways in which it could facilitate capital formation on a local level and increased direct in-state investment opportunities for in-state residents through, for example, state-based crowdfunding opportunities.

In the end, the SEC adopted a new regulation that was consistent with the statutory parameters of Securities Act Section 3(a)(11) and Rule 147 adopted thereunder but that relieved issuers and investors of various statutory requirements that limited the utility of these provisions without any concomitant reduction in investor protections. The SEC adopted a new rule that, among other things, allowed for broad-based communications across state lines and out-of-state incorporation, provided that the issuers retained a significant in-state presence and limited sales to in-state residents.

Consistent with the Chairman's recent public statements, as well as the public statements of Dir. Blass, we request that the SEC look to its existing rules and statutory requirements, particularly those included in Section 6 of the IC Act, in order to identify ways in which it can adopt regulations that are consistent with its mission and the general policy goals of the IC Act, but that facilitate the creation of CIFs. To effectively meet these goals, we believe that any rules adopted by the SEC for CIFs should potentially require or, as the case may be, allow the CIF to:

- be managed by an investment advisor substantively regulated at the state or federal level;
- be subject to regulation by the State in which the fund has its principal place of business;
- be organized under statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State;
- state in their organizational documents that the company's activities are limited to the promotion of in-state economic, business, or industrial development through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State;
- be able to pursue capital deployment strategies beyond those that provide for maximized returns in the form of capital appreciation;
- include provisions in its organizational documents that require an investment committee, the majority of members of which are residents of the state in which the fund has its principal place of business;
- be able to generally solicit potential investors in the fund;
- be able to make sales of securities to retail, non-accredited investors;
- be limited to participation primarily by residents of the state in which the fund has its principal place of business;
- be a closed-end fund that is not engaged in the business of issuing redeemable securities;

- not be required to seek SEC or SEC staff approval before launching;
- be limited in the amount of capital that it can raise during the lifetime of the fund to no more than $50 million; and
- raise capital pursuant to a state or federal securities law that requires the provision of a substantive disclosure document to investors.

CIFs must be subject to appropriately tailored regulatory requirements at the state and federal level that are commensurate with the potential risks they introduce to and expectations of CIF contributors. The existence of risks, however, should no longer serve as the sole basis for the exclusion of a broad swath of community-based capital opportunities capable of being addressed by an appropriate regulatory framework. We believe that any regulatory provisions adopted by the SEC to facilitate the creation of CIFs that include or are consistent with the requirements listed above will provide:

- in-state community-based investors with significant regulatory protections, including disclosure, state oversight, and professional management with fiduciary obligations to fund participants;
- CIFs with sufficient regulatory oversight and operational flexibility to pursue community-based investments; and
- smaller, local companies with additional means with which to raise capital and provide their respective communities with various forms of positive returns on capital contributions.

V. CONCLUSION

Community Investment Funds hold the potential to create more resilient local economies that can weather future crises, and to fill the gap in capital markets for traditionally marginalized entrepreneurs and small business owners. At the same time, CIFs open new avenues to build wealth among citizens formerly excluded from local impact investment opportunities. The combined effect will be a bold step toward addressing the debilitating concentration of wealth in the U.S. and the creation of economic justice for all.

Sincerely,

Ken Linge
NC3 Executive Director

Christopher D. Miller
NC3 Board Chair

Zachary O. Fallon
Founder/CEO, Sō.Capital
Principal, Ketsal

Janice Shade
Founder, Initiative for Local Capital

Brian J. Beckon
Principal, Cutting Edge Counsel

CC:
Chairman Jay Clayton
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison Herren Lee
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