



July 21, 2020

BY ELECTRONIC TRANSMISSION

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549

Re: Good Faith Determinations of Fair Value (File No. S7-07-20)

Dear Ms. Countryman:

The Small Business Investor Alliance (“SBIA”) appreciates the opportunity to comment on the rule proposal (“Proposal”) issued by the Securities and Exchange Commission (“SEC” or “Commission”) related to determinations of fair value by registered investment companies and business development companies (“BDCs”).

SBIA is a national association that develops, supports, and advocates on behalf of policies that benefit investment funds that finance small and mid-size businesses in the lower middle market, as well as the investors that provide capital to these funds. Our membership consists of the advisers of traditional 3(c)(1) and 3(c)(7) private funds, funds and their advisers that have been licensed by the Small Business Administration (“SBA”) as Small Business Investment Companies (“SBICs”), and the investors that invest in these funds including banks, family offices, and fund of funds. SBIA is also the largest representative of the business development company (“BDC”) industry, as our membership includes 28 firms that run approximately 50 BDC funds, and account for nearly 80% of all BDC assets under management.

The SBIA commends the Commission for its ongoing work to modernize the securities laws to reflect our nation’s dynamic capital markets. As the Proposal notes, rules governing the valuation of fund securities have not been comprehensively reformed in over fifty years, despite the rapid evolution of the investment industry and the types of securities in which funds are invested.

Discussion

The SBIA is generally supportive of the approach taken by the Proposal, in particular provisions of proposed rule 2a-5 under the Investment Company Act of 1940 (the “1940 Act”) that grant boards flexibility in developing policies and procedures to determine a fund’s fair value. The Proposal affirms that boards would be permitted to make this determination on their own or assign the duty to the fund’s investment adviser. If a board decides to assign valuation duties to the fund’s investment adviser, it would be required to conduct proper oversight of the adviser, maintain records related to such an assignment, and ensure the “reasonable segregation of functions” amongst personnel of the investment adviser in order to manage any conflicts of interest.

The Proposal properly reflects the important role that boards play in the oversight of registered funds and BDCs. Importantly, the Proposal also does not seek to impose one-size-fits-all requirements on boards to determine fair value and instead takes a principles-based approach to compliance. For example, the Proposal acknowledges that idiosyncratic valuation risks and appropriate fair value methodologies both depend upon the “facts and circumstances” of individual funds, and that boards are not required to follow specific methodologies. The SBIA supports this principles-based approach as it will grant boards flexibility in determining an approach that is in the best interests of their shareholders.

However, while the Proposal is intended apply to “all registered investment companies and BDCs,” it seems to exclude internally-managed BDCs and registered funds. Although most BDCs and registered funds are externally-managed by a registered investment adviser and therefore do not have any employees, certain BDCs and registered funds have instead elected to be internally-managed. These internally-managed funds employ their executive officers and other personnel directly and do not have an outside investment adviser or pay any external investment advisory fees. As the Proposal is currently drafted, it is unclear if the boards of internally-managed BDCs would be able to avail themselves of the provisions related to assigning their valuation duties to the personnel who handles the day to day administration of the fund. We do not believe there is any compelling reason to treat internally-managed BDCs different than those that have external advisers.

Instead of assigning valuation duties to an investment adviser, a fund board should be able to assign these duties to the officers and other personnel of the fund who generally have fiduciary and similar duties to the fund and its equity holders, whether or not those officers and other personnel are employed directly by the fund or by the investment adviser to the fund, provided that the board follows the same oversight approach outlined in the Proposal. Therefore, we recommend that a technical fix be made so that proposed rule 2a-5 can have its full intended effect and apply to all BDCs and regulated funds, whether externally or internally-managed. This would help avoid regulatory confusion and ensure that investors in all BDCs and other regulated funds are afforded the same robust protections.

We also note that the SEC’s Release No. 33837 issued on April 8, 2020 providing certain relief to BDCs under the 1940 Act asset coverage ratio as a result of the COVID-19 outbreak also

contemplates certain actions by a BDCs investment adviser, which also makes it unclear whether internally-managed BDCs can rely on the order.

BDCs are a critical source of financing for small and mid-size businesses in the United States. BDCs are mandated by law to invest at least 70% of their assets in “qualifying assets” which consist of U.S. operating companies that are privately owned or have a market capitalization below \$250 million. Many BDCs make 100% of their investments in qualifying assets and over 95% of BDC investments are made in U.S. businesses. BDCs are also highly regulated and transparent investment vehicles that provide retail investors with a reliable source of income on their investment portfolios.

Conclusion

We appreciate the work of the Commission and Division of Investment Management in putting forward the Proposal. We believe that with the amendment described above, the Proposal will serve the interests of investors as well as the small and mid-size businesses that rely on BDCs and other registered funds for capital. We look forward to working with the SEC as this rulemaking initiative moves forward.

Sincerely,



Brett Palmer
President
Small Business Investor Alliance