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VIA EMAIL

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549-1090

Re: File No. S7-10-07

Dear Ms. Morris:

We are submitting this letter to respond to the request of the Securities and Exchange Commission (the "SEC") for comments on the SEC's proposed amendments to the eligibility requirements of Form S-3 to allow issuers to conduct primary securities offerings on Form S-3 without regard to the size of their public float or the rating of the debt they are offering, so long as they satisfy the other eligibility conditions of Form S-3 and do not sell more than the equivalent of 20% of their public float in primary offerings pursuant to proposed new General Instruction I.B.6 to Form S-3 over any period of 12 calendar months. Importantly, Form S-3 eligibility for primary offerings enables issuers to conduct primary offerings "off the shelf" under Rule 415 of the Securities Act of 1933 (the "Securities Act"). The proposed amendments to Form S-3 were discussed in Release No. 33-8812 (the "Release"). We appreciate the opportunity to comment on the matters discussed in the Release.

I. Business Development Companies

We actively represent in varying capacities more than 10 closed-end investment companies that have elected to be regulated as business development companies ("BDCs") under the Investment Company Act of 1940 (the "Investment Company Act"). BDCs are subject to Sections 55 through 65 of the Investment Company Act, and those other sections of the Investment Company Act enumerated in Section 59 of the Investment Company Act. BDCs are also required to register a class of equity securities under the Securities Exchange Act of 1934 (the "Exchange Act") and, therefore, are subject to the periodic reporting requirements of Section 13(a) of the Exchange Act.

II. Use of Rule 415 by BDCs

Prior to the 1980s, the SEC prohibited companies from registering securities that they did not intend to offer for sale within a short period of time. This prohibition prevented companies from quickly accessing the financial markets because of the delay associated with the SEC's registration process. However, in the 1980s, the SEC adopted Rule 415 of the Securities Act to permit companies to register any number of securities to be offered and sold on a delayed or continuous basis. (Rule 415 offerings are known as "shelf offerings.") A "delayed offering" is one in which there is no present intention to offer securities at the time of effectiveness. A "continuous offering" is one in which securities are offered promptly after effectiveness and will continue in the future. Rule 415 contains a list of the types of offerings that may be made on a delayed or continuous basis and imposes certain requirements on those offerings.

Specifically, Rule 415(a)(1) contains an exclusive list of those offers and sales of securities that an issuer may register on a shelf basis. The word "only" is included in Rule 415(a)(1) to make this clear. Rule 415(a)(1)(x) permits shelf offerings of "securities registered (*or qualified to be registered*) [emphasis added] on Form S-3 or Form F-3 which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant" BDCs are required to register their securities on Form N-2, and are not permitted to file a registration statement on any other form. However, Rule 415(a)(1)(x) does not require the securities to be registered on Form S-3; it is sufficient that the securities be "qualified" to be registered on Form S-3. Accordingly, a BDC that meets the registrant and transaction requirements of Form S-3 should be permitted to offer and sell its securities pursuant to Rule 415(a)(1)(x) even though it is required to register its securities on Form N-2.

Indeed, the staff of the SEC's Division of Investment Management (the "Staff") has held that a closed-end investment company may conduct a shelf offering on Form N-2 in accordance with Rule 415(a)(1)(x) if such company's common stock is "qualified to be registered" on Form S-3.¹ That is, closed-end investment companies, including BDCs, that satisfy the registrant requirements of Form S-3, which generally pertain to reporting history under the Exchange Act, as well as at least one of the transaction requirements of Form S-3 in connection with a primary offering may register securities on Form N-2 for a shelf offering to be made on a continuous or delayed basis in accordance with Rule 415(a)(1)(x).² These transaction requirements provide that companies may register primary shelf offerings on Form S-3 only if their non-affiliate market capitalization, or "public

¹ See Staff No-Action Letters Pilgrim America Prime Rate Trust (available May 1, 1998) and Nuveen Virginia Premium Income Municipal Fund (available October 6, 2006).

² See Shelf Registration Statements on Form N-2 filed by the following BDCs: Allied Capital Corporation, American Capital Strategies, Ltd., Apollo Investment Corporation, Ares Capital Corporation, Harris & Harris

float," is \$75 million or more.³ Transactions involving primary offerings of non-convertible investment grade securities; certain rights offerings, dividend reinvestment plans and conversions; and offerings by selling shareholders do not require that the company have at least a \$75 million minimum public float.⁴

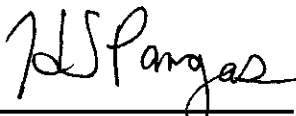
III. Acknowledgment of Permitted Use of Proposed New General Instruction I.B.6. to Form S-3 by BDCs

Based upon the foregoing, a BDC should be able to rely on proposed new General Instruction I.B.6 to Form S-3 for primary shelf offerings of its securities, whether or not it satisfies the \$75 million minimum float threshold, so long as it stays within certain offering size limitations and otherwise satisfies the registrant requirements of Form S-3, such as timely Exchange Act reporting for at least the prior year. In order to facilitate the use of proposed new General Instruction I.B.6 to Form S-3 by BDCs, we believe that it would be extremely helpful if the SEC were to specifically acknowledge the permissibility of such use in the adopting release relating to such new general instruction to Form S-3.

* * *

We appreciate your consideration of this comment. Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,



Harry S. Pangas

Group, Inc., MCG Capital Corporation, Hercules Technology Growth Capital, Inc., Patriot Capital Funding, Inc., Technology Investment Capital Corp. and UTEK Corporation.

³ See General Instruction I.B.1 of Form S-3.

⁴ See General Instructions I.B.2 through I.B.4 of Form S-3.