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1275 Pennsylvania Ave., NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
www.sutherland.com

ATLANTA
AUSTIN
HOUSTON
NEW YORK
WASHINGTON DC

STEVEN B. BOEHM
DIRECT LINE: 202.383.0176
E-mail: steven.boehm@sutherland.com

CYNTHIA M. KRUS
DIRECT LINE: 202.383.0218
E-mail: cynthia.krus@sutherland.com

March 31, 2009

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Attention: Ms. Elizabeth M. Murphy, Secretary
Via e-mail: rule-comments@sec.gov

Re: Proposed Amendment to New York Stock Exchange Rule 452
(Release No. 34-59464; File No. SR-NYSE-2006-92)

Dear Ms. Murphy:

We are writing on behalf of the BDC Roundtable, an industry group of business development companies ("BDCs"), in response to Release No. 34-59464 in which the U.S. Securities and Exchange Commission (the "Commission") solicits comments on the proposed changes to New York Stock Exchange ("NYSE") Rule 452 that would eliminate discretionary broker voting for the election of directors (the "Proposal").[1] Specifically, we are writing to request that the Commission except BDCs from the proposed changes to Rule 452. While we commend the NYSE and the NYSE's Proxy Working Group (the "Working Group") for its decision to except registered investment companies from the proposed changes to Rule 452, we are writing to request that the Commission extend such exception to BDCs given that, as discussed below, BDCs are also investment companies regulated under the Investment Company Act of 1940, as amended, (the "1940 Act") and will be similarly affected by the proposed changes.

In recognition of the fact that the Proposal would have a disproportionate impact on investment companies and would create significant difficulties for investment companies in

[1] *See* Securities Exchange Act Release No. 59464 (February 26, 2009), 74 FR 9864 (March 6, 2009).

achieving quorums and electing directors, the NYSE and the Working Group amended the original proposal to preserve discretionary broker voting for registered investment companies. Unfortunately, although BDCs are subject to most of the same rules and regulations of the 1940 Act as registered investment companies, BDCs are not technically "registered" under the 1940 Act pursuant to Section 8 but rather "elect to be regulated as a BDC" by filing a notification as required by Section 54 of the 1940 Act.[2] As a result of the reference in the Proposal to "*registered* investment companies" rather than just "investment companies," BDCs must comply with the Proposal despite the fact that registered investment companies and BDCs share the same characteristics that gave rise to the exception provided to registered investment companies – namely, regulatory structure and a large retail shareholder base.

BDCs were created by Congress in 1980 through amendments to the 1940 Act. A BDC is a publicly traded closed-end investment company that generally makes direct investments in private or thinly-traded public companies in the form of long-term debt or equity capital, with the goal of generating capital appreciation and/or current income. A BDC must be organized under the laws of, and have its principal place of business in, the United States and be operated for the purpose of making investments primarily in smaller, developing American businesses and making available significant managerial assistance to the businesses in which they invest. BDCs were designed to provide private sources of investment capital for small and middle market US businesses through a vehicle that would provide similar protections of the 1940 Act under which all investment companies are regulated.[3]

BDCs should be excepted from the Proposal because the Proposal will not provide any demonstrable benefit to the BDC industry and its shareholders. In fact, the Proposal would impose significant hardships on the BDC industry by creating difficulties in achieving a quorum and thereby increasing costs to BDCs as a result of adjournments and additional solicitations.

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[2] For example, BDCs are subject to the following rules and regulations among others:

- A BDC's board of directors must be comprised of independent directors;
- A BDC and its officers and directors are prohibited from engaging in affiliated and joint transactions;
- Certain persons are prohibited from serving as employees, officers, directors or investment advisers of a BDC;
- A BDC's investment advisory contract must be approved by a majority of independent directors as well as a majority of its outstanding voting securities;
- A BDC's independent directors must select its independent public accountants;
- A BDC may only change the nature of its business so as to cease to be a BDC if it seeks the approval of a majority of its outstanding voting securities;
- A BDC must appoint a chief compliance officer that reports to the board of directors;
- A BDC must adopt a compliance manual as required by Rule 38a-1 under the 1940 Act; and
- A BDC may only sell shares of its common stock at a price below its then current net asset value if approved by a majority of its outstanding voting securities.

[3] While there are fewer than 30 BDCs in the U.S. today, it is estimated that collectively BDCs support over 1,500 small and middle market portfolio companies with more than 1.2 million jobs in the United States, and in 2007 provided over 45% of the mezzanine capital financing that was raised that year.

Like registered investment companies, BDCs have a higher proportion of retail shareholders than most operating companies. In fact, approximately 63% of BDC shares are held by retail investors, a percentage far greater than traditional operating companies.[4]

Due to their large retail shareholder base, BDCs must engage proxy solicitors at great expense to the shareholders themselves to locate, contact, and provide alternate means of voting (e.g. telephone voting) to these investors to solicit proxies for any matter that is deemed to be non-routine.[5] If discretionary voting were to be eliminated for uncontested elections for BDCs, it is likely that BDCs would be unable to achieve a quorum at all on the matter of electing directors, or would only be able to do so at great expense to the shareholders.

As a result, we are requesting that the NYSE and the Commission make a technical amendment to the Proposal to except all investment companies, including BDCs, from the Proposal so that BDCs may continue to permit discretionary broker voting for the election of directors. We believe it is consistent to view BDCs in the same light as registered investment companies for purposes of the Proposal given that BDCs are investment companies regulated in the same way as registered investment companies and will be similarly affected by the proposed changes.

Sincerely,

/s/ Steven B. Boehm

Steven B. Boehm

/s/ Cynthia M. Krus

Cynthia M. Krus

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[4] This percentage is based on individual ownership data gathered from http://finance.yahoo.com.

[5] The Investment Company Institute completed a study of the costs associated with proxy solicitation of investment company shareholders, which indicated that typical proxy solicitation costs would more than double from $1.65 to $3.68 for each shareholder account. *See* Costs of Eliminating Discretionary Broker Voting on Uncontested Elections of Investment Company Directors (December 18, 2006). In a recent proxy solicitation for a non-routine item, a BDC was forced to adjourn its meeting twice in order to solicit additional votes, and incurred solicitation expenses of approximately $7.70 per shareholder account.