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December 24, 2006

VIA EMAIL

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Regarding Reproposed Rule 2a-46(b): Definition of Eligible Portfolio Company under the Investment Company Act of 1940; File No. S7-37-04

Dear Ms. Morris:

American Capital Strategies Ltd. (NASDAQ: ACAS) ("American Capital") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") Reproposed Rule 2a-46(b): Definition of Eligible Portfolio Company under the Investment Company Act of 1940 (the "Reproposed Rule").[1] American Capital strongly supports the adoption of the Reproposed Rule and after considering the alternative additional definitions of eligible portfolio company set forth in the Reproposed Rule, American Capital firmly believes the Commission should adopt the second alternative definition ("Alternative Two"), which would include companies with market capitalizations of less than $250 million. In addition, American Capital recommends that the Commission include a provision within the Reproposed Rule that would automatically adjust the market capitalization contained in the rule by reference to an appropriate index or other metric.

American Capital is an internally managed, publicly traded investment company with assets in excess of $8 billion, and is the largest business development company ("BDC") in the United States.[2] As such, American Capital supports the Commission's review and reconsideration of certain provisions of the Investment Company Act of 1940 (the "Investment

[1] Rel. No. IC-27539 (Oct. 25, 2006).

[2] American Capital invests in and sponsors management and employee buyouts, invests in private equity sponsored buyouts, and provides capital directly to private and small public companies. It provides senior debt, mezzanine debt and equity fund growth, acquisitions and recapitalizations. For more information, please see http://www.americancapital.com.

Company Act") for the purpose of ensuring that the regulatory framework applicable to BDCs continues to effect the legislative intent behind the Small Business Investment Incentive Act of 1980 ("SBIIA") in light of ongoing market developments.

A. Alternative One vs. Alternative Two

While both alternatives proposed by the Commission would further the legislative intent behind the SBIIA, Alternative Two would more closely align the definition of eligible portfolio company with the purpose Congress intended. The first alternative ("Alternative One") requires that a BDC have knowledge of a company's public float, or the company's total number of publicly-owned shares available for trading, to determine if it meets the definition of an eligible portfolio company.

While a company's public float may be a good indicator of whether a company is small and unseasoned, it may be difficult to ascertain. Estimates of domestic operating companies' public float are not readily ascertainable from reliable third-party sources and are inherently subjective. Moreover, requiring BDCs to obtain and confirm a company's public float poses an unnecessary impediment to their investment activities. In order to determine a company's public float, a BDC would need to know the number of shares of a company that are owned by affiliated entities or otherwise restricted in order to determine how many of the company's outstanding shares are available for trading. The number of a company's shares that are owned by affiliated entities or otherwise restricted is not readily available information and may be difficult to obtain from reliable third-party sources. The difficulty of obtaining such information was acknowledged in the proposing release,[3] in which the Commission's Office of Economic Analysis ("OEA") was unable to obtain an estimated public float from Bloomberg LLP for 333 of the companies it surveyed.[4] Instead, the OEA used the market capitalizations of each of the 333 companies. In addition, the OEA's survey does not include the public float information of companies whose securities are exclusively listed on regional exchanges because such information was not available from their primary data source. Further, the proposing release acknowledges that small public companies often have a "high percentage" of insider investors, making the use of public float more subjective for the very types of issues that were the focus of SBIIA.

Market capitalization can be calculated with certainty, which will ensure that the definition of eligible portfolio company is applied consistently and fairly. In contrast to the

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[3] Rel. No. IC-27539, p.12 (Oct. 25, 2006).

[4] Id. (According to footnote 27 of the Proposing Release, Bloomberg provided estimates of public float for 3,471 out of 3,804 of the domestic operating companies requested by the Commission. The 333 companies for which public float estimates were not available represent approximately 9% of the total number of domestic operating companies for which Bloomberg was asked to provide public float information.)

computation of public float, determining a company's market capitalization requires only a simple mathematical equation for which all of the variable information can be easily obtained from reliable third-party sources. The ease of computation and widespread availability of the information needed to compute a company's market capitalization will help to ensure that the definition of an eligible portfolio company is applied consistently among BDCs considering investment in exchange-traded companies. Furthermore, while the Commission acknowledged that obtaining a company's public float from reliable third-party sources is likely to be more difficult than determining a company's market capitalization, it indicated that a BDC should be able to acquire such information during the course of its negotiations with a company prior to its investment in that company. However, the need to acquire this information during the course of BDCs' investment analysis imposes an unnecessary burden on BDCs. Therefore, not only does a market capitalization standard provide for fairness and consistency in the definition's application, it poses no additional impediments to BDCs' central function – investing in eligible portfolio companies. For all of these reasons, American Capital strongly supports the market capitalization standard of Alternative Two.

B. Alternative Two: $150 Million vs. $250 Million

With regard to the two alternative market capitalization ceilings proposed, American Capital recommends that the Commission adopt a market capitalization ceiling of $250 million. As acknowledged by the Commission in the proposing release, the $250 million ceiling is a recognized size standard used to identify small, public companies.[5] Moreover, while the $250 million ceiling is the larger of the two alternative market capitalization amounts proposed, it is still less than or equal to the market capitalizations commonly used by leading mutual fund data providers, such as Lipper and Morningstar, to define micro-cap companies.[6]

The $250 million market capitalization amount is also appropriate because companies that fall within that market capitalization range are generally not followed by analysts and have fewer institutional investors and less liquid trading activity. In addition, the higher ceiling not

[5] Rel. No. IC-27539, p.15 (Oct. 25, 2006)("Proposing Release").

[6] At the Commission's request, the Advisory Committee on Smaller Public Companies (the "Committee") defined "smaller public company" in their final report to the Commission to include micro-cap and small-cap companies with equity capitalizations of approximately $787 million or less. The $250 million ceiling proposed by the Commission in the Proposing Release is considerably less than the ceiling used by the Committee for purposes of assessing the impact of the current regulatory system on smaller companies under the securities laws. Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission, f.n. 1 (April 23, 2006).

only enables BDCs greater flexibility in selecting companies that will benefit from their investment, but it is also more reflective of market changes since the adoption of SBIIA.[7]

Increasing the number of companies in which BDCs can invest is consistent with the legislative intent of SBIIA. Congress considered the appropriate balance between maintaining investor safeguards and promoting the flow of capital to small and financially troubled businesses at length prior to passing the legislation. Prior to the unintended consequences of the Federal Reserve Board's amendment of the definition of margin security, SBIIA permitted BDCs "to invest in approximately 66 percent of the 12,000 publicly held operating companies" in 1980.[8] The use of a $250 million ceiling expands the definition of eligible portfolio company to encompass more small and financially troubled companies, and is, therefore, consistent with the purpose of SBIIA.

The Commission raised the concern that the use of a greater size-based standard, such as a $250 million market capitalization ceiling, might result in BDCs' increased investment in larger companies to the detriment of smaller companies. American Capital, however, does not believe this concern will be realized as a result of the adoption of a $250 million market capitalization ceiling. This belief stems largely from the fact that a larger company does not always have more favorable investment attributes or otherwise present a more attractive investment in comparison to smaller companies, whether measured on a risk/reward basis or some other metric. Market capitalization of a company is just one of many factors that a BDC generally considers in its investment decision. Finally, BDCs have not historically favored larger non-public companies at the expense of smaller non-public companies, and there is no reason to think that this would occur in the context of investments in public companies.

Regardless of which alternative definition the Commission adopts, American Capital recommends that the Commission build into the Reproposed Rule an adjustment provision of the dollar amount included in the definition to reflect changes in the marketplace, such as inflation and the growth of equity markets. For example, the final rule could provide for the annual adjustment of the specified amount of market capitalization based on an index measuring the growth in the equity markets. Providing for such an adjustment would ensure that the definition

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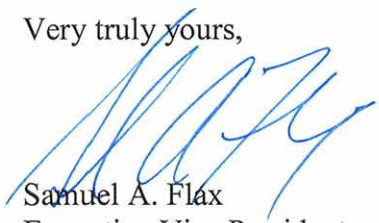
[7] The Commission estimated that the number of companies that would be included in the definition of eligible portfolio company under Alternative One was roughly equivalent to the number included by using a $100 million market capitalization ceiling. The comparable market capitalization standard is significantly less than the lesser of the two alternative amounts proposed in connection with Alternative Two. Thus, Alternative One would create a less expansive definition of eligible portfolio company than Alternative Two and would provide BDCs less flexibility to select appropriate investments. Rel. No. IC-27539 at f.n. 31 (Oct. 25, 2006).

[8] Statement of Rep. Sue Kelly (R. NY.) in connection with the introduction of the "Increased Capital Access for Growing Business Act," H.R. 436 (April 6, 2005).

of eligible portfolio company is correlated with the continuously evolving nature of the capital markets generally and small businesses in particular.[9]

For the reasons discussed above, we strongly support the Commission's proposal to amend the definition of eligible portfolio company to include certain exchange-listed companies whose market capitalization is less than $250 million. We also commend the Commission (and the Staff) for developing Rules 2a-46 and 55a-1. If you have any questions or would like additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Samuel A. Flax
Executive Vice President
and General Counsel

[9] See, e.g., Proposed Exchange Act Rules 700(f), 701(e), Rel. No. 34-54946 (Dec. 18, 2006).