February 1st, 2022

Mr. Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Business development company co-investment transactions

Dear Chair Gensler:

The Small Business Investor Alliance (SBIA) appreciates efforts by the Securities and Exchange Commission (SEC) to provide regulatory relief for business development companies (BDCs) since the onset of the pandemic. As demonstrated through examples included in this letter, regulatory relief for co-investment transactions has allowed BDCs to provide critical financing for portfolio companies during an incredibly challenging economic period.

The SBIA continues to believe that the benefits of co-investment warrant a permanent solution that allows BDCs to engage in the practice without having to rely on temporary no-action periods or staff approval of individual transactions. The relief provided by the SEC over the last two years has shown that co-investment transactions facilitate financing for middle market businesses without jeopardizing investor protections. However, if a permanent solution cannot be achieved by March 31st, 2022, we respectfully urge the SEC to extend existing no-action relief for certain co-investment transactions for a minimum of twelve months.

Background

In April 2020, the SEC issued temporary, conditional relief (the "Exemptive Order")[1] which allowed BDCs to engage in follow-on transactions with affiliated funds, subject to certain conditions. In January 2021, the SEC announced a three month no-action period for BDCs that continued to rely on the provisions of the Exemptive Order. The no-action period was subsequently extended through March of 2022.

For years, BDCs have had to rely on obtaining no-action and exemptive relief from the SEC when entering into co-investments with affiliated funds. This process can be unnecessarily

[1] SEC Permits Business Development Companies to Issue Additional Securities and Invest Alongside Certain Affiliates In Order to Provide Additional Financial Support to their Portfolio Companies (April 8, 2020)

cumbersome, unpredictable, and often relies upon the views of SEC staff regarding particular types of transactions. The Exemptive Order has helped provide certainty for BDCs and their portfolio companies through what continues to be a historically challenging period for the American economy.

As the SEC noted when the Exemptive Order was issued, BDCs have a statutory mission to provide capital to small and middle market U.S.-based businesses. The pandemic and economic disruption of the last two years have made this mission even more critical as businesses adjust to new realities and lingering uncertainty over the future. The Exemptive Order has been an indispensable tool for many BDCs to continue serving their portfolio companies and provide returns to their investors.

The SBIA has collected the following real-life examples of BDCs and their portfolio companies that have relied on the Exemptive Order to engage in co-investments:

- Xcel Group Brand is a management company engaged in design, production, and marketing of apparel, jewelry and other home goods & consumer products through interactive television, brick & mortar, and ecommerce channels. The company sought additional funding to refinance a third-party lender in its credit facility where a BDC and its affiliated funds co-invested to provide the company with additional flexibility. As a result of the relief, an affiliated fund of the BDC was able to help the company to provide the additional capital.

- A&A Group is a B2B packaging supplier serving the North American Cannabis and Pharmaceutical end markets. New funds were able to provide an additional $5.25 million to finance additional growth.

- Rodeo Dental is an operator of 20 pediatric dental clinics in five Texas markets offering general dentistry, orthodontics, and other oral health services. Due to the relief an additional $9.75 million was provided by new funds to finance the acquisition/expansion of additional dental clinics.

- Gener8 is a provider of complex product design and high mix, low volume manufacturing services. Due to the relief an additional $16.25 million was provided by new funds to finance the growth of the company.

- Pacific Group is a provider of packaging solutions for food packaging companies that mainly operate in the snack foods, baked goods, prepared meats, and trail mix markets. Due to the relief an additional $9.75 million was provided by new funds to fund growth of the company.

- Integrated Rehab Consultants is an outsourced physiatry services provider for skilled nursing facilities. Due to the relief, an additional $25.5 million was provided by new funds to finance an acquisition.

- Multi-Specialty is a provider of rehab/therapy services with specialized focus on individuals injured in auto accidents or injured on the job (i.e. worker's comp). Due to the relief new funds provided an additional $17.75 million to fund an acquisition of peers in the marketplace.

- Healthdrive is a provider of mobile medical care to long-term care facilities in the US. Due to the relief an additional $15.8 million was provided by new funds to finance its expansion.

- Core BTS (IT services and implementation company) Exemptive relief facilitated $23 million of additional funding that financed three acquisitions, increasing the company's geography and product lineup.

- Advanced Barrier Extrusions (Food packaging company) Exemptive relief was used to help BDC finance the acquisition of another packaging company with complimentary technology and locations.

- Munch Supply (Midwest-based HVAC distributor) BDC helped provide $12.8 million in additional financing under exemptive relief that was used to acquire two adjoining distribution territories.

- Invincible Boats (Sportfishing boat manufacturer) BDC provided additional $11.5 million under exemptive relief for acquisition of a complimentary boat manufacturer.

- Dr. Scholl's (Producer of shoe inserts for comfort and orthopedics) Exemptive relief was used to facilitate $15 million in additional financing to purchase a competitor in the sports orthotics category.

- Tech Insights (Technology development and implementation firm that works with large manufacturers) BDC used exemptive relief to provide $3 million additional operating capital for growth.

As the SBIA noted in a previous letter to the SEC[2], the Exemptive Order has not compromised investor protection or created additional risk in the markets in any way. Indeed, the Exemptive Order has helped BDCs navigate an extremely difficult period and demonstrated why co-investment transactions are an effective and necessary mechanism for BDCs and their investors. Further, absent the Exemptive Order a number of our member BDCs would have actually lost out on opportunities to provide financing to small and medium sized companies in need of it which, in turn negatively impacts not only these companies but BDC shareholders as well.

Accordingly, given the upcoming March 31st deadline for no-action relief, we respectfully request the SEC further extend the no-action position for a minimum of twelve months. In the long term, we continue to believe the SEC should undertake a formal rulemaking process to

[2] SBIA December 4th, 2020 letter, available at bdcsworkforamerica.org/wp-content/uploads/2021/01/20201204-SBIA-Coinvestment-FINAL-dec-4-2020.pdf

permit BDCs to enter into co-investment transactions without continually having to seek approval from the SEC. We believe this would be the most efficient and beneficial outcome for BDCs, their portfolio companies, and their investors.

The SBIA looks forward to continuing to work with SEC commissioners and staff on this critical issue.

Sincerely,

Brett Palmer
President
Small Business Investor Alliance

cc: The Honorable Caroline Crenshaw
The Honorable Allison Herren Lee
The Honorable Hester Peirce
William Birdthistle, Director of the Division of Investment Management