January 7, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File Number S7-37-04

Dear Mr. Katz:

We appreciate the opportunity to comment on the SEC's proposed rule regarding the definition of an "eligible portfolio company" for business development companies (BDCs). We commend the commission for addressing this important issue. However, we are concerned that the proposed rule is overly restrictive and unnecessarily narrow. We urge the Commission to modify its proposal to reflect the definition as proposed in H.R. 3170 (108th Congress), which was passed without opposition by the United States House of Representatives in 2004.

The proposed rule appropriately addresses the need for a BDC to be able to provide follow-on financings to its existing portfolio companies and to consider such follow-on financings as eligible portfolio investments, whether or not such company has already outstanding classes of debt or equity securities. We also applaud the fact that the proposed rule clarifies that all non-publicly traded companies qualify as an eligible portfolio company notwithstanding any prior debt issuance. However, we believe the proposed rule should go further to expand the universe of companies that are eligible for financing. BDCs should be encouraged to offer another alternative means of financing to small public companies that do not have a broad market following, since there are few sources of public capital available to these companies.

We oppose the proposal as currently drafted because it uses a standard based on whether or not an issuer is listed on an exchange or the NASDAQ for determining qualification as an eligible portfolio company. This approach ignores the fact that, despite a listing on an exchange or on the NASDAQ, many small developing companies, including many of our members, often face difficulties raising growth capital from public capital markets. The proposed

rule would eliminate many small developing companies from accessing BDC financing.

We question why the proposed rule prohibits companies from being considered eligible for BDC financing unless they have received notice of failing to meet the quantitative listing standards of their current market. Requiring the determination that these companies do not meet the quantitative listing standards of any other exchange or the NASDAQ before being considered as eligible for BDC financing would add undue further burden to both the company and the BDC.
This is an unnecessarily complex method of determining eligible BDC investments, forcing the company to be in a much more precarious financial position before being eligible for the financing it needs.

The proposal fails to correctly identify the scope of those small companies in need of financing. In contrast to the SEC's proposed BDC eligible portfolio company criteria, the SEC is considering in a separate proposal to use a market capitalization standard as one way of determining an issuer's market following. No such effort was made in the Commission's eligible portfolio company proposal.

The Commission's proposed Securities Offering Reform [File Number S7-38-
04] rule uses a thorough analysis of how to determine if an issuer has a demonstrated market following. It thoughtfully uses the factors of analyst coverage, institutional ownership, and trading volume as indicators to distinguish between those issuers with and without depth and following in the market. Based on these key indicators, it utilizes a market capitalization standard as a proxy for determining the level of market following, using a $700 million threshold representing issuers that are "well-followed." We believe that this market capitalization standard, rather than a company's trading platform, best captures whether a company is well followed, and thus is more likely to be able to obtain financing for growth.

The exchange or trading platform on which a company trades has nothing to do with whether it can access capital. It is clear from our experience that some companies listed on an exchange or on the NASDAQ have problems accessing financing for growth. Since the various exchanges and the NASDAQ have a very wide range of listed companies, a standard linked to whether an issuer is listed on such a market does not adequately identify those issuers in need of access to capital. Instead, a market capitalization approach

can better measure whether an issuer is well-followed and able to access capital since it largely determines the levels of institutional investors, analyst following and trading volume of a company's stock.

As an alternative to the Commission's approach, and consistent with the Securities Offering Reform proposal, we recommend the Commission adopt a market capitalization approach similar to that in HR 3170, the Increased Capital Access for Growing Business Act. HR 3170 was passed without opposition by the United States House of Representatives in 2004 and utilizes a market capitalization standard of $250 million to delineate between eligible and ineligible investments for BDCs. This standard is used by the Commission in other regulatory contexts and would provide the SEC with flexibility to change the market capitalization level in the future as it is warranted.

We would be pleased to work with the Commission as it considers further changes to rules governing permissible BDC investments. We applaud urge the Commission to broaden the proposal to ensure that small, developing public companies are able to utilize BDC financing that is so important for their growth and expansion.

Sincerely,
David T. Hirschmann
Senior Vice President
U.S. Chamber of Commerce