



8011-01p

SECURITIES AND EXCHANGE COMMISSION

Release No. IC-32461; File No. 812-13764

Golub Capital BDC, Inc., et al.; Notice of Application

January 31, 2017

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of application for an order under sections 17(d), 57(a)(4) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies (“BDCs”) and certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: Golub Capital BDC, Inc. (“GBDC”), Golub Capital Investment Corporation (“GCIC”); GC Advisors LLC (“GC Advisors”); GC Synexus Advisors, LLC, and GC Investment Management LLC (each a “Controlled Adviser”); Golub Capital Partners V, L.P., Golub Capital Partners VI, L.P., Golub Capital Partners VII, L.P., Golub Capital Partners VIII, L.P., Golub Capital Partners 9, L.P., Golub Capital Partners 10, L.P., Golub Capital Partners International VII, L.P., Golub Capital Partners International VIII, L.P., Golub Capital Partners International 9, L.P., Golub Capital Partners International 10, L.P., Golub Capital International Ltd., GC 2009 Mezzanine Partners, L.P., GEMS Fund, L.P., GEMS Fund 4, L.P., Golub Capital Pearls Direct Lending Program, L.P., Golub Capital Coinvestment, L.P., Golub Capital Finance, LLC, GC Finance Operations LLC, Golub Capital Finance Funding LLC, Golub Capital Partners Ltd., Golub Capital Partners CLO 11 Ltd.,

Golub Capital Partners CLO 14 Ltd., Golub Capital Partners CLO 15 Ltd., Golub Capital Partners CLO 16 Ltd., Golub Capital Partners CLO 17 Ltd., Golub Capital Partners CLO 18(M) Ltd., Golub Capital Partners CLO 19(B) Ltd., Pearls X, L.P., SG-E2 LLC, Golub Capital Partners CLO 21(M), Ltd., Golub Capital Partners Warehouse CLO 22(B), Ltd., Golub Capital Partners CLO 23 (B), Ltd., Golub Capital Partners CLO 24(M), Ltd., Golub Capital Partners CLO 25 (M), Ltd., Golub Capital Partners CLO 26(B), Ltd., Golub Capital Partners CLO 28(M), Ltd., Golub Capital Partners CLO 29(B), Ltd., Golub Capital Partners CLO 30(M), Ltd., Golub Capital Partners CLO 31(M), Ltd., Golub Capital Partners CLO 32(M), Ltd., GCP Finance 2 Ltd., GCP Finance Ltd., GCP Finance 4, Ltd., GC International Ladder Ltd., GCP Finance 3 Ltd., GCP Finance 5 Ltd., GCP Finance 6 Ltd., Golub Capital Partners CLO 33(M), Ltd., Golub Capital Partners 11, L.P., Golub Capital Partners International 11, L.P., and Golub Capital Partners 11 Rollover Fund, L.P. (collectively, “Existing Affiliated Funds”); Golub GP V, LLC, Golub GP VI, LLC, Golub Onshore GP, LLC, Golub Offshore GP, Ltd., Golub Capital Coinvestment, LLC, Golub Onshore GP 2, LLC and Golub Onshore GP NC, LLC; and Golub Capital LLC.

Filing Dates: The application was filed on April 1, 2010, and amended on September 30, 2010, December 10, 2012, June 6, 2013, December 2, 2013, December 5, 2013, August 11, 2014, January 28, 2015, October 29, 2015, June 2, 2016, September 23, 2016 and January 26, 2017.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature

of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-1090. Applicants: 666 Fifth Avenue, 18th Floor, New York, New York 10103.

For Further Information Contact: Barbara T. Heussler, Senior Counsel, at (202) 551-6990 or Daniele Marchesani, Assistant Director, at (202) 551-6821 (Chief Counsel's Office, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. GBDC and GCIC, a Delaware corporation and a Maryland corporation, respectively, are organized as non-diversified, closed-end management investment companies that have elected to be regulated as BDCs under section 54(a) of the Act.¹ GBDC and GCIC (the "Regulated Funds")² seek to maximize the total return to their stockholders through both current income and capital appreciation through debt and minority equity investments. The boards of directors (each a

¹ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

² The term "Regulated Funds" means GBDC, GCIC, and any future closed-end management investment company that has elected to be regulated as a BDC or is registered under the Act, whose investment adviser is an Adviser (as defined below) and who intends to participate in the Co-Investment Program (as defined below).

“Board”³ of GBDC and GCIC consist of the same six members, four of whom are not “interested persons” as defined in section 2(a)(19) of the Act (“Non-Interested Directors”)⁴.

2. Each of the Existing Affiliated Funds would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

3. GC Advisors, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and serves as the investment adviser to each of GBDC and GCIC pursuant to the applicable Investment Advisory Agreement. GC Advisors or a Controlled Adviser currently serves as investment adviser to each of the Existing Affiliated Funds. Golub Capital LLC, a wholly-owned subsidiary of GC Advisors, makes experienced investment professionals available to GC Advisors pursuant to a staffing agreement.

4. Applicants seek an order (“Order”) to permit one or more Regulated Funds and Affiliated Funds⁵ to participate in the same investment opportunities through a proposed co-investment program where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act (the “Co-Investment Program”).⁶ A “Co-Investment Transaction” means any transaction in which one or more Regulated Funds (or a Wholly-Owned

³ The term “Board” means the board of directors of a Regulated Fund.

⁴ Currently, Lawrence E. Golub serves as a Director and Chairman of the Board of each of GBDC and GCIC and David B. Golub serves as a Director and Chief Executive Officer of GBDC and as a Director, President and Chief Executive Officer of GCIC (“Principals”).

⁵ The term “Affiliated Fund” means (a) the Existing Affiliated Funds and (b) any Future Affiliated Fund. “Future Affiliated Fund” means an entity (a) whose investment adviser is an Adviser and (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (iii) that intends to participate in the Co-Investment Program. The term “Adviser” means (a) GC Advisors, (b) the Controlled Advisers, and (c) any future investment adviser that controls, is controlled by or is under common control with GC Advisors and is registered as an investment adviser under the Advisers Act.

⁶ All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

Investment Subsidiary, as defined below) participated together with one or more Regulated Funds and Affiliated Funds in reliance on the Order. A “Potential Co-Investment Transaction” means any investment opportunity in which the Regulated Funds (or its Wholly-Owned Investment Subsidiary, as defined below) could not participate together with one or more Regulated Funds and Affiliated Funds without obtaining and relying on the Order.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.⁷ A Wholly-Owned Investment Subsidiary would be prohibited from investing in a Co-Investment Transaction with another Regulated Fund or any Affiliated Fund because it would be a company controlled by the applicable Regulated Fund for purposes of sections 17(d) and 57(a)(4) and rule 17d-1. Applicants request that a Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of the applicable Regulated Fund, and that such Wholly-Owned Investment Subsidiary’s participation in any such transaction be treated, for purposes of the requested Order, as though the Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Fund’s investments and, therefore, no conflicts of interest could arise between such Regulated Fund and its respective Wholly-Owned Investment Subsidiaries. The Board of the Regulated Fund would make all relevant determinations under the conditions with regard to a

⁷ The term “Wholly-Owned Investment Subsidiary” means an entity (a) whose sole business purpose is to hold one or more investments on behalf of a Regulated Fund (and, in the case of an SBIC Subsidiary (as defined below), maintain a license under the SBA Act (as defined below) and issue debentures guaranteed by the SBA (as defined below)); (b) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the Board of the Regulated Fund has the sole authority to make all determinations with respect to the Wholly-Owned Investment Subsidiary’s participation under the conditions of the application; and (d) that is an entity that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The term “SBIC Subsidiary” means a Wholly-Owned Investment Subsidiary that is licensed by the Small Business Administration (the “SBA”) to operate under the Small Business Investment Act of 1958, as amended, (the “SBA Act”) as a small business investment company.

Wholly-Owned Investment Subsidiary’s participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in place of the Regulated Fund. If a Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, its Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

6. When considering Potential Co-Investment Transactions for any Regulated Fund, an Adviser will consider only the Objectives and Strategies,⁸ Board-Established Criteria,⁹ investment policies, investment positions, capital available for investment (“Available Capital”)¹⁰, and other pertinent factors applicable to that Regulated Fund. The participation of a Regulated Fund in a Potential Co-Investment Transaction may only be approved by a Required Majority, as defined in section 57(o) (a “Required Majority”), of the directors of the Board eligible to vote on that Co-

⁸ The term “Objectives and Strategies” means a Regulated Fund’s investment objectives and strategies as described in the Regulated Fund’s registration statement, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 or the Securities Exchange Act of 1934, and the Regulated Fund’s reports to shareholders.

⁹ The term “Board-Established Criteria” means criteria that the Board of the applicable Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which an Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund’s then-current Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund’s Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund’s then current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum earnings before interest, taxes, depreciation, and amortization of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the applicable Board’s consideration, but Board-Established Criteria will only become effective if approved by a majority of the Non-Interested Directors. The Non-Interested Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

¹⁰ Available Capital will be determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Fund or imposed by applicable laws, rules, or regulations or interpretations.

Investment Transaction under section 57(o) (the “Eligible Directors”).¹¹ When selecting investments for the Affiliated Funds, an Adviser will select investments separately for each Affiliated Fund, considering in each case, only the investment objective, investment policies, investment position, capital available for investment, and other pertinent factors applicable to that particular Affiliated Fund. Applicants’ state that the Objectives and Strategies of each Regulated Fund and the investment objectives and strategies of the Affiliated Funds are substantially similar, and GC Advisors anticipates that a portfolio company that is an appropriate investment for one or more Regulated Funds will normally be an appropriate investment for one or more Affiliated Funds. To the extent a Potential Co-Investment Transaction falls within any Board-Established Criteria of a Regulated Fund and the objectives and strategies of one or more Regulated Funds and Affiliated Funds, each Regulated Fund intends to co-invest with the Affiliated Funds, with certain exceptions based on factors such as available capital, investment size or diversification.¹²

7. With respect to participation in a Potential Co-Investment Transaction by a Regulated Fund, the applicable Adviser will present each Potential Co-Investment Transaction and the proposed allocation of each investment opportunity to the Eligible Directors. The Required Majority of a Regulated Fund will approve each Co-Investment Transaction prior to any investment by the Regulated Fund.

8. With respect to the pro rata dispositions and Follow-On Investments¹³ provided in conditions 7 and 8, a participating Regulated Fund may participate in a pro rata disposition or

¹¹ With respect to Regulated Funds that are not BDCs, the defined terms Eligible Directors and Required Majority apply as if each Regulated Fund were a BDC subject to section 57(o) of the Act.

¹² A Regulated Fund, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

¹³ “Follow-On Investment” means any additional investment in an existing portfolio company whose securities were acquired in a Co-Investment Transaction, including the exercise of warrants, conversion privileges or other similar rights to acquire additional securities of the portfolio company.

Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) the proposed participation of each Affiliated Fund and Regulated Fund in such disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the applicable Board has approved such Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of such Regulated Fund. If the Board of a Regulated Fund does not so approve, any such disposition or Follow-On Investment will be submitted to the Eligible Directors. The Board of a Regulated Fund may at any time rescind, suspend or qualify their respective approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

9. No Director will be considered a Non-Interested Director with respect to a particular Co-Investment Transaction unless the Director has no direct or indirect financial interest in that Co-Investment Transaction or any interest in any portfolio company, other than through an interest in the securities of a Regulated Fund.

10. Applicants represent that if an Adviser, the Principals, any person controlling, controlled by, or under common control with an Adviser or the Principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting securities of a Regulated Fund ("Shares"), then the Holders will vote such Shares as required under condition 14. Applicants believe that this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of an Adviser or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. The Non-Interested

Directors shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors they deem relevant.

Applicants' Legal Analysis:

1. Section 57(a)(4) of the Act prohibits any person who is related to a BDC in the manner described in section 57(b) from participating in joint transactions with the BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to a Regulated Fund in a manner described in section 57(b) of the Act. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the rules under section 17(d) of the Act applicable to registered closed-end investment companies, are deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 applies to joint transaction involving a BDC.

2. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission will consider whether the participation by the Regulated Fund in such joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that the Co-Investment Program will increase favorable investment opportunities for the Regulated Funds and allow the Regulated Funds to participate in attractive opportunities at levels that are appropriate. The conditions are designed to ensure that GC Advisors would not be able to favor any Regulated Fund or Affiliated Funds over other Regulated Funds through the allocation of investment opportunities among them. Applicants state that the Regulated Fund's participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions:

Applicants agree that any Order granting the requested relief will be subject to the following conditions:

1. (a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified, for each Regulated Fund the Adviser manages, of all Potential Co-Investment Transactions that (i) an Adviser considers for any other Regulated Fund or Affiliated Fund and (ii) fall within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under condition 1(a), such Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

- (A) the interests of the shareholders of the Regulated Fund; and
- (B) the Regulated Funds then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion

with its affiliated persons), and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except

(A) to the extent permitted by condition 13;

(B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable;

(C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction; or

(D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board Established Criteria that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8¹⁴, a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor. The Adviser will maintain books and records that demonstrate compliance with this condition for each Regulated Fund.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

¹⁴ This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) the proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) the proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) the amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the will be allocated among them pro rata based on each party's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria, including investments in Potential Co-Investment Transactions made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, and concerning Co-Investment Transactions in which the Regulated Fund participated, so that the Non-Interested Directors may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those Potential Co-Investment Transactions which the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually: (a) the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions, and (b) the continued appropriateness of any Board-Established Criteria.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of any of the Affiliated Funds.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in

proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee¹⁵ (including break-up or commitment fees but excluding broker's fees contemplated section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amount they invest in such Co-Investment Transaction. None of the Advisers, the Affiliated Funds, the other Regulated Funds nor any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C), and (b) in the case of an Adviser, investment advisory fees paid in accordance with their respective agreements between the Advisers and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable state law affecting the Board's composition, size or manner of election.

¹⁵ Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman
Assistant Secretary

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