



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32642; 812-14408]

Corporate Capital Trust, Inc., *et al.*

May 22, 2017

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

ACTION: Notice.

Notice of application for an order under sections 17(d) 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 business development companies (“BDCs”) and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.¹

Applicants: Corporate Capital Trust, Inc. (“CCT I”); Corporate Capital Trust II (“CCT II”); KKR Income Opportunities Fund (“KIO,” and together with CCT I and CCT II, the “Existing Regulated Entities”); CNL Fund Advisors Company (“CFA”); CNL Fund Advisors II, LLC (“CFA II”); KKR Credit Advisors (US) LLC (“KKR Credit”); the investment advisory subsidiaries and relying advisers of KKR Credit set forth on Schedule A to the application (collectively, with KKR Credit, the “Existing KKR Credit Advisers”); KKR Capital Markets Holdings L.P. and its capital markets subsidiaries and other indirect, wholly- or majority-owned subsidiaries of KKR & Co. L.P. (“KKR”) set forth on Schedule A to the application

¹ The requested order (“Order”) would supersede an exemptive order issued by the Commission on May 21, 2013 (In the Matter of Corporate Capital Trust, et al., Investment Company Act Release Nos. 30494 (Apr. 25, 2013) (notice) and 30526 (May 21, 2013) (order)) (the “Prior Order”), with the result that no person will continue to rely on the Prior Order if the Order is granted.

(collectively, the “KCM Companies”)²; KKR Financial Holdings LLC (“KFN”) and its wholly-owned subsidiaries set forth on Schedule A to the application (together with wholly-owned subsidiaries of KFN that may be formed in the future, the “KFN Subsidiaries.”); the Existing Affiliated Funds set forth on Schedule A to the application³; and Prisma Capital Partners LP (the “Existing KKR Primary Adviser”).

Filing Dates: The application was filed on December 24, 2014, and amended on June 1, 2015, December 7, 2015, July 14, 2016, and May 8, 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 June 16, 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.

² These entities are all indirect, wholly- or majority-owned subsidiaries of KKR and, from time to time, may hold various financial assets in a principal capacity (in such capacity, “Existing KKR Proprietary Accounts”).

³ The Existing Affiliated Funds, together with their direct and indirect wholly-owned subsidiaries, are entities (i) (A) whose primary investment adviser is an Existing KKR Credit Adviser or (B) whose primary investment adviser is the Existing KKR Primary Adviser and whose sub-adviser is an Existing KKR Credit Adviser (“Sub-Advised Affiliated Fund”) and (ii) that either (A) would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act or (B) may rely on the rule 3a-7 exemption from investment company status. Certain Existing Affiliated Funds are collateralized loan obligation (“CLO”) entities that rely on rule 3a-7 under the Act in addition to section 3(c)(7) thereof. These Existing Affiliated Funds are all advised by Existing KKR Credit Advisers.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-1090. Applicants: CCT I, CCT II, CFA, and CFA II, 450 S. Orange Avenue, Orlando, FL 32801; KIO, KKR Credit, KKR the KCM Companies, KFN, the KFN Subsidiaries, the Existing Affiliated Funds, and the Existing KKR Primary Adviser, 555 California Street, 50th Floor, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551-6812 or David J. Marcinkus, Branch Chief, 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. CCT I, a Maryland corporation, and CCT II, a Delaware statutory trust, are closed-end management investment companies that have elected to be regulated as BDCs under the Act.⁴ Each of CCT I and CCT II’s investment objective is to provide shareholders with current income and, to a lesser extent, long-term capital appreciation. CCT I and CCT II each have a five-member Board, of which three members are Independent Directors.⁵

⁴ 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.

⁵ “Board” means the board of directors of CCT I, CCT II, KIO, and any other Regulated Entity.

“Independent Directors” means the independent directors of CCT I, CCT II, KIO, and the independent directors or trustees of any other Regulated Entity who are not “interested persons” within the meaning of section 2(a)(19) of the Act.

2. KIO, a Delaware statutory trust, is a non-diversified, closed-end management investment company registered under the Act. KIO's primary investment objective is to seek a high level of current income with a secondary objective of capital appreciation. KIO has a four member Board, of which three members are Independent Directors.

3. Each of CFA and CFA II is a subsidiary of CNL Financial Group, LLC and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). CFA serves as CCT I's investment adviser. CFA II serves as CCT II's investment adviser. A CFA Adviser (as defined below) will serve as the investment adviser and administrator to each Regulated Entity with KKR Credit as Sub-Adviser.

4. KKR is a global investment firm structured as a holding company that conducts its business through various subsidiaries, which include investment advisers and broker-dealers. KKR also holds various financial assets in a principal capacity. KKR Credit, a subsidiary of KKR, is a Delaware limited liability company registered as an investment adviser under the Advisers Act. KKR Credit serves as investment adviser to KIO and as sub-adviser to CCT I and CCT II. The CFA Advisers and the KKR Credit Advisers are not affiliated persons or affiliated persons of affiliated persons (as defined in the Act), except for the affiliation that arises as a result of serving as the advisers of any Regulated Entity with KKR Credit as Sub-Adviser.

5. The Existing KKR Primary Adviser is registered as an investment adviser under the Advisers Act and serves as the primary investment adviser to the Sub-Advised Affiliated Funds. A KKR Primary Adviser will serve as the primary investment adviser to any Sub-Advised Affiliated Fund.

6. KFN, a majority-owned subsidiary of KKR, is a specialty finance company that is externally advised by an Existing KKR Credit Adviser. KFN, which was acquired by KKR on

April 30, 2014, is a holding company that engages in its specialty finance business through the wholly-owned KFN Subsidiaries, which rely on one or more exemptions or exceptions from the definition of an investment company.

7. The KCM Companies are indirect, wholly- or majority-owned subsidiaries of KKR and, from time to time, may hold various financial assets in a principal capacity (in such capacity, together with KFN and the KFN Subsidiaries, the “Existing KKR Proprietary Accounts,” and, together with any Future KKR Proprietary Account, the “KKR Proprietary Accounts”). Each KKR Proprietary Account, other than the KCM Companies, is or will be advised by a KKR Credit Adviser.

8. Applicants seek an order to permit one or more Regulated Entities⁶ and/or one or more Affiliated Investors⁷ to participate in the same investment opportunities through a proposed

⁶ “Regulated Entity” means any of the Existing Regulated Entities and any Future Regulated Entity.

“Future Regulated Entity” means any closed-end management investment company formed in the future (a) that is registered under the Act or has elected to be regulated as a BDC, (b)(i) whose investment adviser is KKR Credit or (ii) whose investment adviser is a CFA Adviser and whose sub-adviser is KKR Credit.

“Regulated Entity with KKR Credit as Sub-Adviser” means a Regulated Entity whose investment adviser is a CFA Adviser and whose sub-adviser is KKR Credit.

“CFA Adviser” means CFA, CFA II, or any future investment adviser that (i) controls, is controlled by, or is under common control with CFA, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

“KKR Credit Adviser” means any Existing KKR Credit Adviser or any future investment adviser that (i) is controlled by, or a relying adviser of, KKR Credit, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

“Adviser” means any KKR Credit Adviser or any CFA Adviser. The term Adviser does not include any KKR Primary Adviser.

“KKR Primary Adviser” means the Existing KKR Primary Adviser or any future investment adviser that (i) is controlled by KKR, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a KKR Credit Adviser.

⁷ “Affiliated Investor” means (a) any Existing Affiliated Fund, (b) any Future Affiliated Fund, (c) any Existing KKR Proprietary Account; or (d) any Future KKR Proprietary Account.

co-investment program (the “Co-Investment Program”) where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) of the Act and rule 17d-1 thereunder.

9. For purposes of the requested Order, “Co-Investment Transaction” means any transaction in which a Regulated Entity (or its Blocker Subsidiary) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order or the Prior Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Entity (or its Blocker Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.⁸ Neither any CFA Adviser nor any KKR Primary Adviser will be the source of any Potential Co-Investment Transaction.

10. Applicants state that a Regulated Entity may, from time to time, form a special purpose subsidiary (a “Blocker Subsidiary”).⁹ A Blocker Subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Investor or Regulated Entity because it would be a company controlled by its parent Regulated Entity for purposes of section

“Future Affiliated Fund” means an entity formed in the future (a) (i) whose primary investment adviser is a KKR Credit Adviser or (ii) whose primary adviser is a KKR Primary Adviser and whose sub-adviser is a KKR Credit Adviser (“a “Sub-Advised Affiliated Fund”), and (b)(i) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act or (ii) with respect to CLO entities, may rely on Rule 3a-7 under the 1940 Act in addition to Section 3(c)(7) of the 1940 Act.

“Future KKR Proprietary Account” means an indirect, wholly- or majority-owned subsidiary of KKR that is formed in the future and, from time to time, may hold various financial assets in a principal capacity.

⁸ All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

⁹ “Blocker Subsidiary” means an entity (i) whose sole business purpose is to hold one or more investments on behalf of the Regulated Entity; (ii) that is wholly-owned by a Regulated Entity (with the Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (iii) with respect to which the Regulated Entity’s Board has the sole authority to make all determinations with respect to the entity’s participation under the conditions of the application; and (iv) that does not pay a separate advisory fee, including any performance-based fee, to any person; and (v) that is an entity that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

57(a)(4) and rule 17d-1. Applicants request that a Blocker Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Blocker Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Entity were participating directly.

11. Applicants note that CFA is responsible for the overall management of CCT I, while KKR Credit is responsible for the day-to-day management of CCT I's investment portfolio. CFA II is responsible for the overall management of CCT II, while KKR Credit is responsible for the day-to-day management of CCT II's investment portfolio. Applicants represent that although KKR Credit will identify and recommend investments for the Regulated Entities with KKR Credit as Sub-Adviser, the CFA Advisers will have ultimate authority to approve or reject the investments proposed by KKR Credit, subject to the oversight of the Board of each Regulated Entity.

12. Applicants state that opportunities for Potential Co-Investment Transactions may arise when advisory personnel of a KKR Credit Adviser become aware of investment opportunities that may be appropriate for a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors. In such cases, Applicants state that the Adviser to a Regulated Entity will be notified of such Potential Co-Investment Transactions and of KKR Credit's recommended allocation. Applicants submit that the Adviser will then independently analyze and evaluate the investment opportunity as to its appropriateness for each Regulated Entity for which it serves as investment adviser, taking into consideration the Regulated Entity's Objectives and Strategies¹⁰ and any Board-Established Criteria.¹¹ Applicants represent that, if

¹⁰ "Objectives and Strategies" means a Regulated Entity's investment objectives and strategies, as described in the Regulated Entity's registration statement on Form N-2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933, as amended (the "1933 Act"), or under the Securities and Exchange Act of 1934, as amended, and the Regulated Entity's reports to shareholders.

the CFA Adviser to a Regulated Entity determines that the opportunity is appropriate for the Regulated Entity, the CFA Adviser will present the investment opportunity to the CFA Adviser's investment committee for its approval. If the CFA Adviser's investment committee approves the investment for the Regulated Entity, the CFA Adviser will present the Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act ("Eligible Directors"), and the "required majority," as defined in section 57(o) of the Act ("Required Majority")¹² will approve such Co-Investment Transaction prior to any investment by the participating Regulated Entity.

13. Applicants state that KKR Credit has an investment committee through which KKR Credit will carry out its obligation under condition 1 to make a determination as to the appropriateness of the Potential Co-Investment Transaction for any Regulated Entity. Applicants represent that in the case of a Potential Co-Investment Transaction, KKR Credit would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a). Applicants further note that each CFA Adviser and KKR Credit has adopted its own allocation policies and procedures that take into

¹¹ "Board-Established Criteria" means criteria that the Board of a Regulated Entity may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which each Adviser to the Regulated Entity should be notified under condition 1. The Board-Established Criteria will be consistent with a Regulated Entity's Objectives and Strategies. If no Board-Established Criteria are in effect, then each Adviser to a Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within the Regulated Entity'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 EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. Each Adviser to a Regulated Entity may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Entity 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.

¹² In the case of a Regulated Entity that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to section 57(o).

account the allocation policies and procedures for the Regulated Entities. Applicants believe that while each KKR Credit client may not participate in each investment opportunity, over time each KKR Credit client would participate in investment opportunities fairly and equitably.

14. Applicants submit that, if a Potential Co-Investment Transaction were within the investment objectives and strategies of a Sub-Advised Affiliated Fund, the KKR Credit Adviser would have primary responsibility for the investment, including making the initial investment recommendation. Applicants further note that the KKR Credit Adviser will be responsible for complying with the conditions of the Order that relate to any Sub-Advised Affiliated Fund. Applicants state that if the KKR Credit Adviser and KKR Primary Adviser agree that the Sub-Advised Affiliated Fund should invest in the Potential Co-Investment Transaction and at what size of investment, the KKR Credit Adviser would then determine an allocation for the Regulated Entities and Affiliated Investors, including the Sub-Advised Affiliated Fund.

15. Applicants acknowledge that some of the Affiliated Investors may not be funds advised by a KKR Credit Adviser because they are KKR Proprietary Accounts. The KKR Proprietary Accounts are either entities that are advised by a KKR Credit Adviser pursuant to an investment management agreement or, in the case of KCM Companies, are broker-dealers that may hold financial assets in a principal capacity. Applicants do not believe the participation of these KKR Proprietary Accounts in Co-Investment Transactions should raise issues under the conditions of this Application because KKR's and a KKR Credit Adviser's allocation policies and procedures provide that investment opportunities are offered to client accounts before they are offered to KKR Proprietary Accounts, even if the KKR Proprietary Accounts are the first to learn of an investment opportunity.

16. Under condition 16, if an Adviser or its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and any Affiliated Investor (collectively, the “Holders”) own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Entity (“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.

17. No Independent Director of a Regulated Entity will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Entities.

Applicants’ Legal Analysis:

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a 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). Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission’s rules under section 17(d) of the Act applicable to registered closed-end investment companies will be 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.

2. Rule 17d-1 under the Act prohibits 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 considering whether to grant an application

under rule 17d-1, the Commission considers whether the participation by the company 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 submit that each of the Affiliated Investors and the Regulated Entities could be deemed to be a person related to each other Regulated Entity in a manner described by section 57(b) by virtue of being under common control. In addition, section 57(b) applies to any investment adviser to a Regulated Entity, including sub-advisers. Applicants submit that KKR Credit, in its role as sub-adviser to CCT I and CCT II, could be deemed to be a person related to CCT I and CCT II in a manner described in section 57(b). Therefore, KKR Credit and any person under common control with KKR Credit (such as the Regulated Entities and the Affiliated Investors) could be prohibited from participating in the Co-Investment Program with CCT I and CCT II by section 57(a)(4) and Rule 17d-1.

4. 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 considers whether the company's participation in the 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.

5. Applicants state that in the absence of the requested relief, the Regulated Entities would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each

Regulated Entity's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Entities' 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 the Order will be subject to the following conditions:

1. Each time a KKR Credit Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria, each Adviser to a Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. (a) If each Adviser to a Regulated Entity deems participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Adviser (or Advisers, if there are more than one) will then determine an appropriate level of investment for such Regulated Entity.

(b) If the aggregate amount recommended by the Adviser (or Advisers, if there are more than one) to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, *pro rata* based on each participant's Available Capital for investment in the asset class being

allocated, up to the amount proposed to be invested by each.¹³ The Adviser (or Advisers, if there are more than one) to a Regulated Entity will provide the Eligible Directors of a Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Entity's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a) above, the Adviser to the Regulated Entity (or Advisers, if there are more than one) will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Directors for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' 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 Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

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

(A) the interests of the Regulated Entity's shareholders; and

¹³ "Available Capital" means (a) for each Regulated Entity, the amount of capital available for investment 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 Entity or imposed by applicable laws, rules, regulations or interpretations, and (b) for each Affiliated Investor (excluding KKR Proprietary Accounts), the amount of capital available for investment 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 by the Affiliated Investors' directors, general partners, or adviser or imposed by applicable laws, rules, regulations or interpretations.

(B) the Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided that, if another Regulated Entity or Affiliated Investor, but not the Regulated Entity 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 a 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; and

(B) the Adviser to the Regulated Entity (or Advisers, if there are more than one) agrees to, and does, provide periodic reports to the Regulated Entity'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 other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors 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 Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Adviser to the Regulated Entity (or Advisers, if there are more than one), any other Regulated Entity, any KKR Primary Adviser or the Affiliated Investors 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 under sections 17(e) or 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(C), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. A Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Adviser to the Regulated Entity (or Advisers, if there are more than one) will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity 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 8,¹⁴ a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor, or any affiliated person of another Regulated Entity or Affiliated Investor is an existing investor.

6. A Regulated Entity 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 Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, 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 Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the applicable Adviser(s) will:¹⁵

(i) notify each Regulated Entity of the proposed disposition at the earliest practical time; and

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

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

¹⁵ Any KCM Company that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 7(a)(i) and 8(a)(i).

(b) Each Regulated Entity 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 Affiliated Investors and any other Regulated Entity.

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

(d) Each Regulated Entity and each Affiliated Investor will bear its own expenses in connection with the disposition.

8. (a) If any Regulated Entity or Affiliated Investor desires to make a Follow-On Investment in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the applicable Adviser(s) will:

(i) notify the Regulated Entity 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 the Regulated Entity.

(b) A Regulated Entity may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) the proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity 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 to the Regulated Entity (or Advisers, if there are more than one) will provide their written recommendation as to such Regulated Entity's participation to the Eligible Directors, and the Regulated Entity will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in such Regulated Entity's best interests.

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

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

(ii) the aggregate amount recommended by the Adviser (or Advisers if there are more than one) to a Regulated Entity to be invested by the Regulated Entity in the Follow-On Investment, together with the amount proposed to be invested by the other Regulated Entities and the participating Affiliated Investors in the same transaction, exceeds the amount of the opportunity, then the amount invested by each such party will be allocated among them *pro rata* based on each participant's Available Capital for

investment in the asset class being allocated, 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 Independent Directors of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that the Regulated Entity considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually (a) the continued appropriateness for the Regulated Entity of participating in new and existing Co-Investment Transactions, and (b) the continued appropriateness of any Board-Established Criteria.

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

11. No Independent Director of a Regulated Entity will also be a director, general partner, managing member or principal, or otherwise an “affiliated person” (as defined in the Act) of any Affiliated Investor.

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 1933 Act) shall, to the extent not payable by the applicable Adviser(s) under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors 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 fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable)¹⁶ received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a *pro rata* basis based on the amount 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 Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the applicable Adviser(s), any KKR Primary Adviser nor any affiliated person of the Regulated Entities or the Affiliated Investors 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 Entities and the Affiliated Investors, 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 the Advisers and KKR Primary Advisers, investment advisory

¹⁶ Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

14. The KKR Proprietary Accounts will not be permitted to invest in a Potential Co-Investment Transaction, except to the extent the demand from the Regulated Entities and the other Affiliated Investors is less than the total investment opportunity.

15. The Advisers to the Regulated Entities and Affiliated Investors will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisers to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within such Regulated Entity's then-current Objectives and Strategies and Board-Established Criteria and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

16. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Entity, 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.

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

Eduardo A. Aleman,
Assistant Secretary.