



VIA Electronic Mail

November 9, 2015

Institutional Shareholder Services, Inc.
702 King Farm Boulevard
Suite 400
Rockville, MD 20850

Re: ISS U.S. Draft Policy on Compensation at Externally-Managed Issuers

Dear Sir or Madam:

This letter is in response to the proposed policy update titled "*Compensation at externally-managed issuers*" (the "Proposed Policy"), a proposed voting policy which was recently released for comment by Institutional Shareholder Services, Inc. ("ISS"). While the Proposed Policy appears intended to focus on external advisers to real estate investment trusts ("REITs"), we are concerned about the unintended consequences this policy may have on external managers to business development companies ("BDCs"), which have a different regulatory structure.

The Small Business Investor Alliance ("SBIA") appreciates the opportunity to comment on the Proposed Policy. SBIA is a national association that develops, supports, and advocates on behalf of policies that benefit investments funds that finance small and mid-size businesses in the lower middle market and middle market, as well as the investors that provide capital to these funds. Our membership consists of traditional 3(c)(1) and 3(c)(7) private funds and their advisers, funds registered as BDCs under the Investment Company Act of 1940, funds that have been licensed or are seeking to be licensed by the Small Business Administration ("SBA") as small business investment companies ("SBICs") and their advisers, and the investors that invest in these funds, including high net worth individuals, banks, family offices and pension funds.¹ As the largest association of BDCs, we currently represent 40 BDCs, including 36 that are externally managed.

After reviewing the Proposed Policy, SBIA believes that it is not appropriate to be applied to BDCs, even though many of them are externally managed. We believe this to be the case for the following reasons:

1. All BDCs are subject to the Investment Company Act of 1940, as amended (the "40 Act"). Under the 40 Act, among other things, BDCs are required to have a

¹ SBIA currently represents over 200 individual fund advisers, including 40 BDCs.

majority of their board members consist of non-“interested” (or independent) directors. On an annual basis, the board, including a majority of the independent directors, is required to approve the external manager’s contract and compensation.²

2. In addition to the statutory requirement for annual approval of the external manager’s contract and compensation, the SEC and the courts have provided extensive guidance on the rigorous process that the board must undergo to properly fulfill its fiduciary duty in connection with the annual approval.³ Given this extensive board oversight, BDC external manager compensation is already subject to significant scrutiny and investor interests are well-protected.⁴
3. Under the 40 Act, externally-managed BDCs cannot make BDC stock grants or award other equity incentive arrangements for BDC stock to executives/employees of the external manager. Therefore, one of the principal areas of conflict of interest highlighted by ISS in the Proposed Policy – the link between stock performance and compensation to the executives – is absent for externally managed BDCs.
4. As a related matter, each BDC officer’s stock ownership is listed in the BDC’s registration statements and proxy statements, so there is adequate disclosure of stock ownership. Investors are already able to measure the degree the executives’ stock value would swing based on changes in the BDC’s stock price.
5. Further, each BDC must disclose conflicts of interests in its public filings, which would cover potential conflicts in the compensation structures.
6. Each external manager of a BDC is a registered under the Investment Advisers Act of 1940. Under applicable rules, the external manager must disclose conflicts of interest in its Form ADV.
7. Lastly, many external managers to BDCs have other clients in addition to the BDC. In these cases, the external manager’s total compensation likely comes from multiple sources, including the manager’s other clients. Allocation of the external manager’s compensation from the BDC to specific executives may be arbitrary and may not provide investors with meaningful information.

² See Investment Company Act of 1940, as amended, Section 15(c).

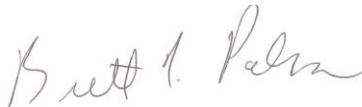
³ See Jones v. Harris Associates L.P., 130 S.Ct. 1418 (2010) and Gartenberg v. Merrill Lynch Asset Management, Inc., 528 F. Supp. 1038 (S.D.N.Y. 1981), aff’d, 694 F.2d 923 (2d Cir. 1982), cert. denied, 461 U.S. 906 (1983).

⁴ There is significant institutional research coverage of the BDC industry, which includes analysts reviewing BDC external manager compensation. These include Jonathan Bock at Wells Fargo, Bryce Rowe at Robert W. Baird & Co., among others.

Based on the above points, we ask that ISS clarify the Proposed Policy to ensure that it does not apply to BDCs when ISS finalizes and releases its proposed 2016 voting policies on November 18, 2015.

If you have any questions regarding this letter, please contact Chris Hayes, SBIA's General Counsel at chayes@sbia.org or (202) 628-5055.

Sincerely,

A handwritten signature in cursive script that reads "Brett Palmer".

Brett Palmer
President
Small Business Investor Alliance (SBIA)