September 9-10, 2020
History and Overview of the BDC Model
Overview

- **Business Development Companies (BDCs)**
  - Closed-end investment companies that are required to invest at least 70% of their assets in private or thinly-traded U.S. companies in the form of long-term debt or equity capital

- **Created by Small Business Investment Incentive Act of 1980 (the 1980 Amendments),** which amended the Investment Company Act of 1940 (the 1940 Act)

- In 1970s, private equity and venture capital firms believed the “small private investment company” exemption (Section 3(c)(1) of the 1940 Act) limited their capacity to provide financing to small, growing businesses (i.e., 100 investor limit)

- **Perceived crisis in capital markets triggered passage of the 1980 Amendments**
  - Intended to increase amount of money flowing to small businesses by allowing anyone to purchase shares in the open market
Overview (cont.)

- Provided Regulated Investment Company (RIC) tax status in 1990

- Special type of closed-end fund that:
  - Provides small, growing companies with access to capital
  - Enables private equity funds to access the public capital markets
  - Enables retail investors to invest in long-term growth of private U.S. businesses, participating in the upside of pre-IPO investing with complete liquidity

- Hybrid between an investment company and an operating company
  - Like all closed-end funds and mutual funds, BDCs are regulated by the SEC under the 1940 Act
  - Like traditional corporate registrants, BDCs file periodic reports on 10-Qs, 10-Ks and current reports on 8-Ks
Benefits of the BDC Model

- Access to public capital markets
- Shares may be traded on national exchanges
- Flow-through tax treatment as a RIC
- Reduced burden under the 1940 Act, as compared to closed-end funds
  - Restrictions on leverage
  - Restrictions on affiliated transactions
- External model permits management fee and carried interest incentive fee structure
- Publicly available financial information through quarterly reporting
- Portfolio is typically diversified
  - Reduces risk typically associated with private equity investments
Development of the BDC Industry

Prior to 2003, the largest BDCs were internally managed
• In 2004, Apollo Investment Corporation raised $930 million in less than three months, which ignited the growth in the externally managed traded BDC industry

In 2008, Franklin Square launched the first non-traded BDC

In 2011, TPG launched the first private BDC

BDC assets aggregated approximately $121 billion as of August 2020

* Based on those BDCs operating today
The BDC Industry

- 98 BDCs operating as of August 2020
  - 50 traded BDCs with $34 billion market cap and $89 billion in aggregate assets
  - 34 private BDCs with $22 billion in aggregate assets
  - 14 non-traded BDCs with $10 billion in aggregate assets
The BDC Industry Today

- 98 BDCs operating today
  - 34 private BDCs with aggregate assets of $22 billion
    - AB Private Credit Investors Corporation
    - AG Twin Brook BDC, Inc.
    - Audax Credit BDC Inc.
    - Barings Capital Investment Corporation
    - BC Partners Lending Corp
    - Blackstone / GSO Secured Lending Fund
    - Crescent Capital BDC, Inc.
    - Flat Rock Capital Corp.
    - Goldman Sachs Middle Market Lending Corp.
    - Goldman Sachs Private Middle Market Credit LLC
    - Goldman Sachs Private Middle Market Credit II LLC
    - Golub Capital BDC 3, Inc.
    - Guggenheim Credit Income Fund
    - Hancock Park Corporate Income, Inc.
    - Monroe Capital Income Plus Corp
    - Morgan Stanley Direct Lending Fund LLC
    - Muzinich BDC
    - New Mountain Guardian III BDC, L.L.C.
    - Nuveen Churchill Direct Lending Corp.
    - NMF SLF I, Inc.
    - Oaktree Strategic Income II, Inc.
    - Owl Rock Capital Corp III
    - Owl Rock Technology Finance Corp.
    - Palmer Square Capital BDC Inc.
    - Runway Growth Credit Fund Inc.
    - SCP Private Credit Income BDC LLC
    - TCG BDC II, Inc.
    - TCW Direct Lending LLC
    - TCW Direct Lending VII LLC
    - Trinity Capital
    - TriplePoint Global Venture Credit, LLC
    - Venture Lending & Leasing VII, Inc.
    - Venture Lending & Leasing VIII, Inc.
    - Venture Lending & Leasing IX, Inc.
  - 50 traded BDCs with $34 billion aggregate market cap and $89 billion in assets
    - 4 traded BDCs began as private BDCs
      - TPG Specialty Lending, Inc.
      - Bain Capital Specialty Finance, Inc.
      - TCG BDC, Inc. (fka Carlyle GMS Finance, Inc.)
      - Owl Rock Capital Corporation
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- 14 non-traded BDCs with aggregate assets of $10 billion
Since 2016, TCG BDC, Inc., Bain Capital Specialty Finance, Inc. and Owl Rock Capital Corp, three BDCs to IPO since 2016, began as private BDCs. FS KKR Capital Corp. II begin as a non-traded BDC and held its IPO in June 2020.
BDC Structures
Types of BDC Structures

— Three types:
  • Traded BDCs
    • Traditional Structure
  • Non-Traded BDCs
    • First launched in 2008
  • Private BDCs
    • Newest model
# Types of BDC Structures

<table>
<thead>
<tr>
<th></th>
<th>Traded BDCs</th>
<th>Non-Traded BDCs</th>
<th>Private BDCs</th>
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</thead>
<tbody>
<tr>
<td><strong>Type of Offering</strong></td>
<td>Traditional IPO</td>
<td>Continuous offering up to a preset maximum amount</td>
<td>Private placement offering; generally, a capital call structure</td>
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<tr>
<td><strong>Initial Portfolio</strong></td>
<td>Either a blind-pool vehicle or acquisition of an existing portfolio</td>
<td>Acquired as shares are sold</td>
<td>Acquired as capital is called</td>
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<tr>
<td><strong>Initial Liquidity</strong></td>
<td>Listed on NASDAQ or NYSE</td>
<td>Periodic repurchase offers</td>
<td>Generally none, but may conduct periodic repurchase offers</td>
</tr>
<tr>
<td><strong>Lifespan</strong></td>
<td>Indefinite</td>
<td>Generally contemplate either winding down or an IPO or other liquidity event within a fixed 5-7 year period</td>
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Formation Process
General Formation Considerations

- Formation and structuring issues
- Any necessary exemptive relief
- Registration of investment adviser (if externally managed)
- Develop compliance and corporate governance program
- Select service providers
- Organize the entity
  - Typically as a Delaware or Maryland corporation
Traded BDCs
IPO Process Overview

- File an IPO registration statement on Form N-2 under the Securities Act
  - May submit initial registration statement confidentially, minimizing market and reputational risk
- Register a class of securities under the Exchange Act
- Apply to list securities on the NASDAQ/NYSE
- File Form N-54A to make an election to be regulated as a BDC
- Have an N-2 registration statement declared effective by the SEC
- Comply with regulatory requirements of the 1940 Act
- Comply with reporting requirements including the Exchange Act, Sarbanes-Oxley Act, etc.
Non-traded BDCs
Additional Requirements for Non-traded BDCs

- Suitability requirements
- FINRA review
- State blue sky review and compliance with blue sky laws
- Keeping offering material up to date
- Liquidity event
Private BDCs
Process to Raise a Private BDC

– Organize the entity – typically a Delaware or a Maryland corporation
– File a registration statement on Form 10 to register a class of securities under the 1934 Act
– Prepare a private placement memorandum and subscription agreement for the private offering
– Make an election to be regulated as a BDC by filing Form N-54A
– Comply with all other federal securities laws and regulatory requirements for a BDC
Advantages and Disadvantages
Traded BDCs

— Advantages:
  • Investor liquidity
  • Available to all investors
  • Infinite lifespan

— Disadvantages
  • Listing process can be costly
  • Additional corporate governance requirements
  • Market price volatility
Non-traded BDCs

— Advantages:

• Enables certain investors to participate in the upside of pre-IPO investing
• Continuous offering allows steady flow of capital
• Offering price tied to NAV – avoids market price volatility of traded BDCs
• Optionality

— Disadvantages

• Limited shareholder liquidity
• Blue Sky registration can be costly and time-consuming, and can result in additional compliance requirements
Private BDC

Advantages:
- Capital Commitment Structure
- Optionality
- Potentially shorter registration process
- Fewer state filings

Disadvantages:
- Limited to accredited investors
- Very little shareholder liquidity
BDC Regulatory and Reporting Requirements
SEC Reporting Requirements for BDCs

- Form 10-K (Annual Report)
- Form 10-Q (Quarterly Report)
- Form 8-K (Current Report)
- Proxy Statements
- Sections 13 and 16 Filings
  - Forms 3, 4 or 5 for reporting beneficial ownership by directors, executive officers and > 10% shareholders
  - Schedules 13D and 13G for reporting beneficial ownership by > 5% shareholders
- Regulation FD
- Comply with the Sarbanes-Oxley Act of 2002
- Internal Control over Financial Reporting/Attestation
  - JOBS Act provides that “emerging growth companies” may take advantage of reduced reporting obligations on internal controls during the first five years
- Disclosure Controls and Procedures
Financial Statement Disclosures

– Valuation policy
– Fair value and Level 3 investments
– Control investments, investments in affiliates vs. investment in non-affiliates
– Schedule of investments requires disclosure of, among other things:
  • Name of each portfolio investment
  • Details of each portfolio investment (e.g., interest rate, maturity date)
  • Non-income-producing investments
  • Assets held in securitized vehicles
– Concentration – geography and industry sectors
– Reg G reconciliation of non-GAAP financial measures
“Good” vs. “Bad” BDC Assets

— A BDC must invest 70% of its assets in “good” BDC assets

— 70% basket includes securities issued by an “eligible portfolio company,” as defined in Section 2(a)(46), which includes:

  • U.S. issuers that are neither an investment company as defined in Section 3 (other than a wholly owned SBIC) nor a company which would be an investment company except for the exclusion from the definition of investment company in Section 3(c) and

    i. Do not have any class of securities listed on a national securities exchange; or
    
    ii. Have a class of securities listed on a national securities exchange, but have an aggregate market value of outstanding voting and non-voting common equity of less than $250 million

— A BDC can generally invest with flexibility in “bad” assets that do not fall within the “70% basket”

  • The SEC Staff has never been called upon to consider whether utilizing a specific strategy for the entire “30% basket,” e.g., investing solely in foreign companies, might run afoul of the intent of Section 55(a)
Limitations on Transactions with Affiliates

— Section 57 addresses the ability of BDCs to engage in certain types of transactions with affiliates:
  • Section 57 is less onerous than its counterpart for registered investment companies (Section 17)
— Depending on the nature of the affiliation with the BDC, transactions involving a BDC and one or more of its affiliates require either:
  • Authorization by the required majority of the board of directors, which consists of a majority of the board, including a majority of disinterested board members; or
  • An order of the SEC
— Co-investment between a BDC and an affiliated fund generally requires SEC exemptive relief
  • MassMutual exception (i.e., no terms negotiated other than price)
  • Recent staff guidance has provided additional flexibility without exemptive relief
Affiliate Relationships

Close Affiliates
- Director, officer, employee, or member of an advisory board
- Controlling (25%+ holder), or is controlled by, or is under common control with, any director, officer, employee, or member of an advisory board
- Investment adviser (IA) of, principal underwriter (PU) for, or person directly or indirectly either controlling (25%+ holder), controlled by, or under common control with, the BDC
- Any person who controls, is controlled by, or under common control with, an IA of, PU for, or person directly or indirectly controlling, controlled by, or under common control with, the BDC
- Officer, director, partner, or employee of an IA of, PU for, or person directly or indirectly controlling, controlled by, or under common control with, the BDC

Remote Affiliates
- 5%+ holder
  - Executive officer, director, general partner in a 5%+ holder
  - Any person who directly or indirectly either controls, is controlled by, or is under common control with, a 5%+ holder
  - Any person who is a Sec. 2(a)(3) affiliate of a director, officer, employee, IA, member of an advisory board or promoter of, PU for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with, the BDC

Non-Affiliates
- Examples include:
  - A company controlled by an employee of the IA of a BDC
  - An affiliate of an affiliate of a 5% holder of the BDC
Approvals for Transactions with Affiliates

Requires SEC exemptive relief

Requires approval\(^1\) of both:
- a majority of the BDC’s directors who have no financial interest in such transaction; and
- a majority of such directors who are not interested persons of the BDC.

\(^1\)Board approvals must be made on the basis that:
1. the terms, including the consideration to be paid or received, are reasonable and fair to the shareholders of the BDC and do not involve overreaching of the BDC or its shareholders on the part of any person concerned;
2. the proposed transaction is consistent with the interests of the shareholders of the BDC and is consistent with the policy of the BDC as recited in SEC filings made by the BDC and its reports to shareholders; and
3. the directors record in their minutes and preserve in their records, for the required periods, a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefore.
1940 Act Requirements

- A BDC must have a majority of independent directors – persons who are not “interested persons” as defined in Section 2(a)(19) of the 1940 Act

- Custody agreement
  - Maintain its securities and similar investments in the custody of (i) a bank qualified under Section 26(a)(1) of the 1940 Act, (ii) a broker-dealer, or (iii) itself and be subject to additional audit and operational procedures related to securities held in safekeeping

- Fidelity bond
  - Maintain a bond issued by a reputable fidelity insurance company, in an amount prescribed by the 1940 Act, to protect the BDC against larceny and embezzlement
  - Must cover each officer and employee with access to securities and funds of the BDC

- Code of ethics
  - Maintain and enforce standards of conduct with officers and directors of the BDC
  - Requires reporting of all securities holdings and transactions
1940 Act Requirements (cont.)

— Restrictions on investing in other investment companies. A BDC may not invest:
  • In more than 3% of the outstanding voting stock of an investment company
  • More than 5% of the value of its total assets in an investment company
  • More than an aggregate of 10% of its total assets in investment companies

— Restrictions on investment funds investing in a BDC
  • Neither a public (i.e., registered) nor private investment fund may own more than 3% of the outstanding voting stock of a BDC

— Limitations on indemnification
  • Prohibited from protecting any director or officer against any liability to the company, or its security holders, arising from willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such person’s office

— Bookkeeping and records requirements
  • Must maintain and make available for inspection prescribed books and records
  • Must make available significant managerial assistance to portfolio companies
1940 Act Requirements (cont.)

- Must appoint a Chief Compliance Officer
- Must maintain a compliance program compliant with Rule 38a-1 of the 1940 Act, which requires:
  - Adopting and implementing policies and procedures designed to prevent violation of the federal securities laws
  - Reviewing these policies and procedures annually to ensure they are adequate and effectively implemented
- Compliance policies and procedures for the registered investment adviser under Rule 206(4)-7 of the Investment Advisers Act of 1940
  - Requires an investment adviser of a BDC to adopt and implement policies and procedures
  - Requires maintaining and enforcing a code of ethics for adviser’s employees
- Subject to regular examinations by the SEC
Other Important Limitations

— BDCs are not permitted to sell shares below net asset value (NAV) without shareholder approval
  • Approval must be obtained annually
  • Markets have imposed limitations on how much a BDC can sell below NAV

— BDCs may seek to receive an SEC order granting exemptive relief permitting, among other things:
  • Co-investment among affiliates
  • Ownership of a registered investment adviser
  • Exclusion of leverage from the asset coverage calculation for debt held by an SBIC subsidiary
  • Issuance of restricted stock to officers/employees
  • Issuance of stock options to independent directors

— Exemptive relief process may take from 6–18 months depending on complexity
  • Typically based on precedents
Board Responsibilities

- **Independence**: A majority of the board must be independent
  - Determined by Section 2(a)(19) of the 1940 Act
  - Generally, the following are not independent: (1) affiliates and their family members; (2) interested persons of the Company’s adviser or principal underwriter; (3) the Company’s legal counsel or anyone who served as legal counsel within the last two years; (4) any person who has engaged in a transaction with or loaned money to the Company in the past six months; and (5) anyone who has a material business or professional relationship with the Company
  - Independent directors may serve on the board of multiple funds managed by the same adviser

- **Advisory Contract**: Approve an advisory agreement
  - An advisory agreement must be approved by a majority of the board, including a majority of the independent directors, at an in-person meeting
  - An advisory agreement must be approved in accordance with Section 15(c) of the 1940 Act
  - To approve an advisory agreement, the board must (1) request comprehensive information about the adviser’s services; (2) evaluate the services and the advisory fees paid for these services; and (3) decide whether to approve the advisory agreement

- **Compliance**: The board must approve the Company’s compliance program and Chief Compliance Officer (CCO)

- **Valuation**: The board must approve the Company’s valuations quarterly
NASDAQ/NYSE Listing Standards

BDCs that have their securities listed or traded on NASDAQ/NYSE must comply with the corporate governance listing standards, including:

• A listed BDC must have an audit committee composed solely of “independent directors” (as defined by the applicable exchange or association)

• Director nominees of a listed BDC must be selected or recommended for the board’s selection by a nominating committee or the vote of a majority of the BDC’s independent directors (depending on the exchange)

• The non-management, or “independent directors,” of the BDC must hold regularly scheduled executive sessions

• The BDC must adopt a code of business conduct and ethics, various committee charters and, in the case of NYSE-listed BDCs, corporate governance guidelines
  • All such documents must be posted on the company’s website
The Small Business Credit Availability Act – BDC Modernization Legislation
An Overview of the BDC Modernization Legislation

- On March 23, 2018, Congress passed the Small Business Credit Availability Act (SBCAA) as part of its omnibus spending bill.

- The SBCAA includes various changes to regulations under the federal securities laws that impact BDCs, including:
  - Allowing BDCs to increase their leverage
  - Aligning the BDC communication and offering rules with the more liberalized rules available to operating companies

- On April 8, 2020, the SEC adopted rule amendments to implement the SBCAA that became effective on August 1, 2020.
Leverage Ratio Increase

- BDCs are now permitted to use more leverage in their investment operations, subject to certain conditions. The legislation reduced the minimum asset coverage ratio from 200% to 150%
  - The increase in permissible leverage must be approved by either the BDC’s board of directors or stockholders
    - If the board of directors approves the increase, there is a one-year waiting period for the increase to be effective
    - If the stockholders approve the increase, it becomes effective the day after the approval
  - Non-listed BDCs are required to offer to repurchase each shareholder’s securities upon approval of the increase and for each of the four calendar quarters following the approval
Leverage Limitation Example

A BDC must have 200% asset coverage (total assets/total debt), or 150% asset coverage if it receives the required approvals.

- For example, a BDC with $50 in assets can borrow up to an additional $50. Under the new legislation, if a BDC receives the required approvals, a BDC with $50 in assets can borrow up to an additional $100.

Other investment companies are restricted to a 300% asset coverage requirement with respect to issuing debt.
Communication and Offering Rules Reform

The SEC adopted rule amendments that allow certain BDCs to rely on liberalized registration, offering, and communications processes, including:

- Use of short-form registration statements on Form N-2 and incorporation by reference (backwards and forwards)
- Ability to qualify as a well-known seasoned issuer (WKSI) status
- Immediate or automatic effectiveness of certain filings made in connection with continuous public offerings
- Expanded communication with the market

The final rules adopted by the SEC became effective on August 1, 2020
Management and operational considerations
Internally Managed Structure

- A BDC is managed internally by executive officers (i.e., no external adviser)

- Must comply with SEC executive compensation disclosure requirements

- Certain performance-based compensation is permitted, including:
  - Issuance of at-the-market options, warrants or rights pursuant to an executive compensation plan; or
  - Maintenance of a profit sharing plan

- Otherwise, the BDC must use cash assets as compensation

- Exemptive orders permitting the issuance of restricted stock have been issued in a number of circumstances including:
  - Hercules Capital, Inc.
  - Main Street Capital Corporation
Externally Managed Structure

- Portfolio managed by external investment adviser
- Investment adviser must be registered under the Advisers Act
- May utilize an external administrator for expense reimbursement purposes
- Adviser is permitted to take a base management fee, as well as an incentive fee on both:
  - Investment income
  - Realized capital gains
- Contrasts with most registered closed-end funds, which are typically prohibited from taking an incentive fee on capital gains
- Incentive fees are often subject to hurdle/catch-up features
Calculation of Adviser’s Incentive Fee

— SEC Staff has taken no formal position on the calculation of the fee but requires BDCs to contain extensive disclosure in registration statements regarding the manner in which the fee will be calculated in varying scenarios

— Section 205(b)(3) of the Advisers Act permits external investment advisers to BDCs to receive incentive fees, provided that the BDCs do not have any outstanding equity-based compensation arrangement or profit-sharing plan
  • Section 205(b)(3) provides an exception from the general prohibition on an investment adviser charging an incentive fee based on a share of capital gains
  • May assess an incentive performance fee of up to 20% on a BDC’s realized capital gains net of all realized capital losses and unrealized capital depreciation over a specified period
Portfolio Valuation Process

- Investments are reported at fair value, as determined in good faith by the board of directors.
- ASC 820 – Fair Value Measurements and Disclosures
  - “Fair value” is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.
- Key controls in the valuation process:
  - Documented approval of trades
  - Controls over inputs in valuation write-ups
  - Segregation between preparation and review of valuations
  - Use of independent third-party valuation consultants to assist
  - Identified and monitored problem loans
  - High level analytical reviews
  - Completeness of disclosures
  - All controls evidence Sarbanes-Oxley 404 readiness
Investments must be classified into three levels:

- **Level 1**: Inputs are unadjusted, quoted prices in active markets for identical financial instruments at the measurement date.
- **Level 2**: Inputs include quoted prices for similar financial instruments in active markets and inputs that are observable for the financial instruments, either directly or indirectly, for substantially the full term of the financial instrument.
- **Level 3**: Inputs include significant unobservable inputs for the financial instruments and include situations where there is little, if any, market activity for the investment. The inputs into the determination of fair value are based upon the best information available and may require significant management judgment or estimation.

- Majority of BDCs classify debt and equity investments as Level 3 instruments.
- Debt investments with broker quotes may be considered a Level 2 instrument (broadly syndicated loans).
Factors that Impact Valuation

- General economic factors
  - Changes in interest rates and credit spreads and return on equity
  - Changes in aggregate demand level
  - Changes in economic outlook

- Industry factors
  - Change in supply or demand for product
  - Change in competition
  - Barriers to entry

- Company specific factors
  - Current and expected life cycle of company – Achievement of milestones, company performance relative to projections
  - Experience and competence of the top management team and board of directors
  - Existence of intellectual capital and intangible assets
    - Proprietary technology, products or services
    - Quality of work force
    - Strategic relationships with major suppliers or customers
  - Cost structure and financial condition
Taxation as a RIC

A BDC may elect to be taxed as a “regulated investment company,” or RIC, under Subchapter M of the Internal Revenue Code.

Taxation as a RIC:
- Allows “pass through” tax treatment for income and capital gains that are distributed to shareholders.
- Must distribute at least 90% of its investment income to shareholders annually, and 98% to avoid excise tax.
- May retain, distribute or “deem distribute” capital gains.
- 90% of annual gross income must be “good” RIC income:
  - Interest, dividends, gains and some types of fees.
- Quarterly diversification tests:
  - At least 50% of total assets must be invested in cash, government securities, RIC securities and “other” securities, which cannot be more than 5% of a RIC’s total assets OR more than 10% of an issuer’s voting stock.
  - No more than 25% of the RIC’s assets may be invested in any one issuer (or in similar businesses if the RIC controls).
  - No more than 25% of the RIC’s total assets may be invested in QPTPs.

Conversion to RIC status – Built-in gains must be considered at formation.
Non-US investors are subject to:
- US income tax income that is effectively connected with a US trade or business (ECI)
  - Must also have a permanent establishment if treaty applies
  - US withholding tax on dividends and interest (other than portfolio interest)
- Tax-exempt investors subject to unrelated business taxable income (UBTI)
  - Treated as having UBTI to the extent purchased with debt financing
- Non-US investors and tax-exempt investors in private funds classified as partnerships are treated as engaging in any business of the partnership and tax-exempt investors are treated as financing investments with debt to extent that the partnership used debt to purchase investments
  - Private funds originating debt may be engaged in US trade or business and generally use leverage to purchase investments
- BDC/RIC generally acts as a corporate blocker for UBTI (including debt) and ECI
- No withholding tax on interest-related dividends, short-term capital gain dividends, or long-term capital dividends
BDC Corporate Governance
Board of Directors

- A BDC’s board of directors is responsible for oversight of the operation of the BDC, and is tasked with ensuring that the BDC is operating in the best interests of its shareholders.

- A BDC’s board must consist of a majority of “independent directors,” as defined in the 1940 Act.

- General responsibilities of a BDC’s board include approval of advisory contracts, determining the fair value of a BDC’s portfolio investments and review of various compliance matters.

- State law imposes traditional corporate responsibilities and fiduciary duties on a BDC’s board.

- The obligations and fiduciary duties of the board of directors of a publicly traded BDC’s board are the same as those of a private BDC’s board.
Board Committees

- BDC boards often (and in some cases are required to) establish committees that have specific ongoing responsibilities and duties.

- Audit Committee
  - Review and approve financial statements, pre-approve non-audit services
  - 1934 Act and exchange listing independence requirements

- Nominating and Corporate Governance Committee
  - Review and approve nominations for directors to the BDC’s board

- Valuation Committee
  - Review and approve fair valuations of a BDC’s portfolio investments

- Compensation Committee
  - Review and approve advisory agreement for externally managed BDCs and executive compensation for internally managed BDCs

- Special Committees
  - Typically appointed in connection with review of potential strategic transactions or other extraordinary events
Board and Committee Meetings

- BDC Boards generally hold regularly quarterly meetings, and will hold additional special meetings as the need arises.

- A BDC’s audit committee will also typically meeting on a quarterly basis to review and approve a BDC’s financial statements that will be included in SEC filings.

- Other committees of a BDC’s board will meet annually or on an as-needed basis.

- Meeting attendees typically include the Board, members of the BDC’s management team, and outside service providers.

- A typical quarterly board meeting agenda may include:
  - Approval of minutes from prior meetings
  - Approval of fair valuations
  - Management/business update
  - Quarterly compliance report
  - Quarterly regulatory update
  - Executive session with CCO and BDC legal counsel
Corporate Governance Policies and Procedures

- At its organizational board meeting, a BDC will adopt various policies and procedures to satisfy the applicable corporate governance requirements of the 1940 Act, state law and NYSE/Nasdaq.

  - 38a-1 Compliance Manual
  - 1940 Act Code of Ethics
  - Sarbanes-Oxley Code of Business Conduct
  - Corporate Governance Guidelines
  - Committee Charters

- A BDC’s board will regularly review and renew these policies and procedures.