

DURECT CORP  
Form SC 13G/A  
February 13, 2018  
**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, DC 20549**

**SCHEDULE 13G**

Under the Securities Exchange Act of 1934

(Amendment No. 1)\*

Direct Corporation  
(Name of Issuer)

Common Stock  
(Title of Class of Securities)

266605104  
(CUSIP Number)

December 31, 2017  
(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

Rule 13d-1(b)

Rule 13d-1(c)

Rule 13d-1(d)

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The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP  
No 266605104

NAME OF  
1. REPORTING  
PERSONS  
I.R.S.  
IDENTIFICATION  
NOS. OF  
ABOVE  
PERSONS  
(ENTITIES  
ONLY)

Broadfin  
Capital,  
LLC

CHECK THE  
APPROPRIATE  
2. BOX IF A  
MEMBER OF A  
GROUP (SEE  
INSTRUCTIONS)  
(a)   
(b)

3. SEC USE  
ONLY

CITIZENSHIP  
4. OR PLACE  
OF  
ORGANIZATION

Delaware

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
REPORTING PERSON  
WITH

SOLE  
5. VOTING  
POWER

0

SHARED

6. VOTING  
POWER

0

SOLE

7. DISPOSITIVE  
POWER

0

SHARED

8. DISPOSITIVE  
POWER

0

AGGREGATE  
AMOUNT

9. BENEFICIALLY  
OWNED BY EACH  
REPORTING  
PERSON

0

CHECK  
BOX IF  
THE  
AGGREGATE  
AMOUNT

10. IN ROW (9)  
EXCLUDES  
CERTAIN  
SHARES  
(SEE  
INSTRUCTIONS)

PERCENT  
OF CLASS  
REPRESENTED

11. BY  
AMOUNT  
IN ROW (9)

0%

TYPE OF  
REPORTING  
12.PERSON  
(SEE  
INSTRUCTIONS)

OO, IA

CUSIP  
No 266605104

1. NAME OF  
REPORTING  
PERSONS  
I.R.S.  
IDENTIFICATION  
NOS. OF  
ABOVE  
PERSONS  
(ENTITIES  
ONLY)

Broadfin  
Healthcare  
Master  
Fund, Ltd.

2. CHECK THE  
APPROPRIATE  
BOX IF A  
MEMBER OF A  
GROUP (SEE  
INSTRUCTIONS)  
(a)   
(b)

3. SEC USE  
ONLY

4. CITIZENSHIP  
OR PLACE  
OF  
ORGANIZATION

Cayman  
Islands

5. NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
REPORTING PERSON  
WITH

SOLE  
VOTING  
POWER

0

6. SHARED  
VOTING  
POWER

0

7. SOLE  
DISPOSITIVE  
POWER

0

8. SHARED  
DISPOSITIVE  
POWER

0

9. AGGREGATE  
AMOUNT  
BENEFICIALLY  
OWNED BY EACH  
REPORTING  
PERSON

0

10. CHECK  
BOX IF  
THE  
AGGREGATE  
AMOUNT  
IN ROW (9)  
EXCLUDES  
CERTAIN  
SHARES  
(SEE  
INSTRUCTIONS)

11. PERCENT  
OF CLASS  
REPRESENTED  
BY  
AMOUNT

IN ROW (9)

0%

TYPE OF  
REPORTING

12. PERSON

(SEE  
INSTRUCTIONS)

CO



CUSIP  
No 266605104

NAME OF  
1. REPORTING  
PERSONS  
I.R.S.  
IDENTIFICATION  
NOS. OF  
ABOVE  
PERSONS  
(ENTITIES  
ONLY)

Kevin Kotler

CHECK THE  
APPROPRIATE  
BOX IF A  
2. MEMBER OF A  
GROUP (SEE  
INSTRUCTIONS)  
(a)   
(b)

3. SEC USE  
ONLY

CITIZENSHIP  
4. OR PLACE  
OF  
ORGANIZATION

United  
States of  
America

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
REPORTING PERSON  
WITH

SOLE  
5. VOTING  
POWER

0

SHARED

6. VOTING  
POWER

0

SOLE

7. DISPOSITIVE  
POWER

0

SHARED

8. DISPOSITIVE  
POWER

0

AGGREGATE  
AMOUNT

9. BENEFICIALLY  
OWNED BY EACH  
REPORTING  
PERSON

0

CHECK  
BOX IF  
THE  
AGGREGATE  
AMOUNT

10. IN ROW (9)  
EXCLUDES  
CERTAIN  
SHARES  
(SEE  
INSTRUCTIONS)

PERCENT  
OF CLASS  
REPRESENTED

11. BY  
AMOUNT  
IN ROW (9)

0%

TYPE OF  
REPORTING  
12.PERSON  
(SEE  
INSTRUCTIONS)

IN, HC

CUSIP No 266605104

Item 1. (a). Name of Issuer:

Direct Corporation

(b). Address of Issuer's Principal Executive Offices:

10260 Bubb Road

Cupertino, California 95014

Item 2. (a). Name of Person Filing:

Broadfin Capital, LLC

Broadfin Healthcare Master Fund, Ltd.

Kevin Kotler

(b). Address of Principal Business Office, or if None, Residence:

Broadfin Capital, LLC

300 Park Avenue, 25<sup>th</sup> Floor

New York, New York 10022

United States of America

Broadfin Healthcare Master Fund, Ltd.

20 Genesis Close

Ansbacher House, Second Floor

P.O. Box 1344

Grand Cayman KY1-1108

Cayman Islands

Kevin Kotler

c/o Broadfin Capital, LLC

300 Park Avenue, 25<sup>th</sup> Floor

New York, New York 10022

United States of America

(c) Citizenship:

Broadfin Capital, LLC – Delaware

Broadfin Healthcare Master Fund, Ltd. – Cayman Islands

Kevin Kotler – United States of America

(d). Title of Class of Securities:

Common Stock

(e). CUSIP Number:

266605104

Item 3. This Statement is filed pursuant to ss.240.13d-1(b) or 240.13d-2(b), or (c), check whether the person filing is  
a

- (a)  Broker or dealer registered under Section 15 of the Exchange Act (15 U.S.C. 78c).
- (b)  Bank as defined in Section 3(a)(6) of the Exchange Act (15 U.S.C. 78c).
- (c)  Insurance company as defined in Section 3(a)(19) of the Exchange Act (15 U.S.C. 78c).
- (d)  Investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).
- (e)  An investment adviser in accordance with § 240.13d-1(b)(1)(ii)(E);
- (f)  An employee benefit plan or endowment fund in accordance with § 240.13d-1(b)(1)(ii)(F);
- (g)  A parent holding company or control person in accordance with Rule 13d-1(b)(1)(ii)(G);
- (h)  A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C.1813);
- (i)  A church plan that is excluded from the definition of an investment company under Section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3);
- (j)  Group, in accordance with s.240.13d-1(b)(1)(ii)(J).

Item 4. Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned:

Broadfin Capital, LLC – 0

Broadfin Healthcare Master Fund, Ltd. – 0

Kevin Kotler – 0

(b) Percent of class:

Broadfin Capital, LLC – 0%

Broadfin Healthcare Master Fund, Ltd. – 0%

Kevin Kotler – 0%

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote

Broadfin Capital, LLC – 0

Broadfin Healthcare Master Fund, Ltd. – 0

Kevin Kotler – 0

- (ii) Shared power to vote or to direct the vote

Broadfin Capital, LLC – 0

Broadfin Healthcare Master Fund, Ltd. – 0

Kevin Kotler – 0

- (iii) Sole power to dispose or to direct the disposition of

Broadfin Capital, LLC – 0

Broadfin Healthcare Master Fund, Ltd. – 0

Kevin Kotler – 0

- (iv) Shared power to dispose or to direct the disposition of

Broadfin Capital, LLC – 0

Broadfin Healthcare Master Fund, Ltd. – 0

Kevin Kotler – 0

Item 5. Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [X].

This final amendment reflects that each Reporting Person has ceased to be the beneficial owner of more than five percent of the Common Stock of the issuer.

Item 6. Ownership of More Than Five Percent on Behalf of Another Person.

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing



of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

N/A

**Item Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent**

**7. Holding Company or Control Person.**

If a parent holding company or control person has filed this schedule, pursuant to Rule 13d-1(b)(1)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company or control person has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identification of the relevant subsidiary.

See Exhibit A attached hereto.

Item Identification and Classification of Members of the Group.

8.

If a group has filed this schedule pursuant to §240.13d-1(b)(1)(ii)(J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to §240.13d-1(c) or §240.13d-1(d), attach an exhibit stating the identity of each member of the group.

N/A

Item Notice of Dissolution of Group.

9.

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

N/A

Item Certification.

10.

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under § 240.14a-11.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

February 13, 2018  
(Date)

BROADFIN CAPITAL, LLC\*  
By: /s/ Kevin Kotler  
(Signature)

Kevin Kotler, Managing Member  
(Name/Title)

February 13, 2018  
(Date)

BROADFIN HEALTHCARE

MASTER FUND, LTD.

By: /s/ Kevin Kotler  
(Signature)

Kevin Kotler, Director  
(Name/Title)

February 13, 2018  
(Date)

By: /s/ Kevin Kotler\*  
(Signature)

Kevin Kotler  
(Name/Title)

\*The Reporting Persons disclaim beneficial ownership in the shares reported herein except to the extent of their pecuniary interest therein.

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on

behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Note. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See s.240.13d-7 for other parties for whom copies are to be sent.

Attention. Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

AGREEMENT

The undersigned agree that this Schedule 13G, Amendment No. 1, dated February 13, 2018 relating to the Common Stock of Durect Corporation shall be filed on behalf of the undersigned.

February 13, 2018  
(Date)

BROADFIN CAPITAL, LLC  
By: /s/ Kevin Kotler  
(Signature)

Kevin Kotler, Managing Member  
(Name/Title)

February 13, 2018  
(Date)

BROADFIN HEALTHCARE  
MASTER FUND, LTD.

By: /s/ Kevin Kotler  
(Signature)

Kevin Kotler, Director  
(Name/Title)

February 13, 2018  
(Date)

By: /s/ Kevin Kotler  
(Signature)

Kevin Kotler  
(Name/Title)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this

purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Note. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See s.240.13d-7 for other parties for whom copies are to be sent.

Attention. Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).



EXHIBIT A

Broadfin Capital, LLC is the relevant entity for which Kevin Kotler may be considered a control person.

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<sup>17</sup> *See, e.g.*, SEC Rel. No. IC-4697 (Sept. 8, 1966) ( For purposes of Section 2(a)(3)(C), affiliation based upon control would depend on the facts of the given situation, including such factors as extensive interlocks of officers, directors or key personnel, common investment advisers or underwriters, etc. ); Lazard Freres Asset Management, SEC No-Action Letter (pub. avail. Jan. 10, 1997) ( While, in some circumstances, the nature of an advisory relationship may give an adviser control over its client's management or policies, whether an investment company and another entity are under common control is a factual question ).

- <sup>18</sup> See Protecting Investors: A Half-Century of Investment Company Regulation, 1504 Fed. Sec. L. Rep., Extra Edition (May 29, 1992) at 488 *et seq.*
- <sup>19</sup> Securities and Exchange Commission v. Talley Industries, Inc., 399 F.2d 396, 405 (2d Cir. 1968), cert. denied, 393 U.S. 1015 (1969).
- <sup>20</sup> H.Rep. No. 96-1341, 96th Cong., 2d Sess. 45 (1980) *reprinted in* 1980 U.S.C.C.A.N. 4827.

Applicants believe that the Conditions would ensure that the conflicts of interest that Section 17(d) and Section 57(a)(4) were designed to prevent would be addressed and the standards for an order under Rule 17d-1 and Section 57(i) would be met.

C. Need for Relief

Co-Investment Transactions are prohibited by either or both of Rule 17d-1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d-1 and/or Section 57(b), as modified by Rule 57b-1 thereunder, as applicable, with respect to each participating Regulated Fund.

Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons with respect to a Regulated Fund within the meaning of Section 2(a)(3) by reason of common control because (i) the Existing Advisers manage, and may be deemed to control, each of the Existing Affiliated Funds and any other Affiliated Fund will be managed by, and may be deemed to be controlled by, an Adviser to Affiliated Funds; (ii) KACALP is the investment adviser to various Affiliated Funds, and KACALP controls the other Existing Advisers to Regulated Funds, and may be deemed to control indirectly those Regulated Funds and Future Regulated Funds; (iii) each BDC Downstream Fund will be deemed to be controlled by its BDC parent and/or its BDC parent's investment adviser; and (iv) the Advisers to Affiliated Funds and the Advisers to Regulated Funds are under common control of KACALP. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds, including any BDC Downstream Fund, in a manner described by Section 57(b) and related to the other Regulated Funds in a manner described by Rule 17d-1; and, therefore, the prohibitions of Rule 17d-1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

In addition, because the KA Proprietary Accounts are controlled by KACALP and, therefore, may be under common control with the Existing Advisers other than KACALP, any future Advisers, and any Future Regulated Funds, the KA Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by Section 57(b) and also prohibited from participating in the Co-Investment Program.

The Applicants acknowledge that some of the Affiliated Funds may not be funds advised by Advisers to Affiliated Funds because they are KA Proprietary Accounts (*i.e.*, an Adviser investing in a principal capacity). The Applicants further acknowledge that many of the previously ordered exemptive applications seeking similar co-investment relief have been limited to co-investment transactions between a BDC and its affiliated funds only.<sup>21</sup> The Applicants do not believe these KA Proprietary Accounts should raise issues under the Conditions of this Application because the allocation policies and procedures of the Advisers provide that investment opportunities will be offered to client accounts before they are offered to KA Proprietary Accounts. The Applicants do not believe that the participation of KA Proprietary Accounts in the Co-Investment Program would raise any regulatory or mechanical concerns different from those discussed with respect to the Affiliated Funds that are clients and advised by Advisers to Affiliated Funds. In accordance with the allocation policies and procedures, Potential Co-Investment Transactions will be offered to, and allocated among, the Affiliated Funds (other than the KA Proprietary Accounts) and Regulated Funds based on each client's particular Objectives and Strategies and in accordance with the Conditions. If the aggregate amount recommended by the applicable Advisers to Affiliated Funds and the Advisers to Regulated Funds to be invested by the Affiliated Funds (other than the KA Proprietary Accounts) and the Regulated Funds in a Potential Co-Investment Transaction were equal to or more than the amount of the investment opportunity, a KA Proprietary Account would not participate in the investment opportunity. If the

- <sup>21</sup> However, *see* Medley Capital Corporation, et al. (File No. 812-14778) Investment Company Act Rel. Nos. 32809 (September 8, 2017) (notice) and 32850 (October 4, 2017) (order); Corporate Capital Trust, Inc., et al. Inv. Co. Act Rel. Nos. 32642 (May 22, 2017) (notice) and 32683 (June 19, 2017) (order); Corporate Capital Trust, Inc., et al. (File No. 812-13844) Investment Company Act Rel. No. 30494 (April 25, 2013) (notice) and 30009 (May 21, 2013) (order); Harvest Capital Credit Corporation, et al. (File No. 812-14365) Investment Company Act Rel. No. 31860 (October 5, 2015) (notice) and 31930 (December 10, 2015) (order); and NF Investment Corp., et al. (File No. 812-14472) Investment Company Act Rel. No. 32340 (October 27, 2016) (notice) and 32362 (November 22, 2016) (order), all of which included relief for proprietary accounts.

aggregate amount recommended by the applicable Advisers to Affiliated Funds and the Advisers to Regulated Funds to be invested by the Affiliated Funds (other than the KA Proprietary Accounts) and the Regulated Funds in a Potential Co-Investment Transaction were less than the amount of the investment opportunity, a KA Proprietary Account would then have the opportunity to participate in the Potential Co-Investment Transaction in a principal capacity, up to the excess amount of the investment opportunity.

#### D. Precedents

The Commission has issued numerous exemptive orders under the Act permitting registered investment companies and BDCs to co-invest with affiliated persons.<sup>22</sup> Although the various precedents involved somewhat different formulae, the Commission has accepted, as a basis for relief from the prohibitions on joint transactions, use of allocation and approval procedures to protect the interests of investors in the BDCs and registered investment companies. Several precedents involve a sub-adviser.<sup>23</sup> Applicants further submit that the involvement of a sub-adviser does not raise any legal or policy concerns that are different from those considered in the precedent applications because the role of the Adviser would be essentially the same with respect to Co-Investment Transactions. Applicants submit that the allocation procedures set forth in the Conditions for relief are consistent with and expand the range of investor protections found in the orders we cite.

Applicants propose to limit the Potential Co-Investment Transactions of which each Adviser would be notified of to those investments that would be consistent with each fund's then-current Objectives and Strategies and Board-Established Criteria, thus reducing unnecessary burdens that would otherwise be imposed on Applicants. In addition, Applicants seek to extend the Standard Precedent to obtain exemptive relief to permit co-investments by BDC Downstream Funds that are not wholly owned subsidiaries of the Regulated Funds, subject to appropriate safeguards built into proposed Conditions.

THL Credit, Inc. and its affiliates previously received exemptive relief consistent with the relief Applicants are requesting herein. Thus, Applicants based the Application on the application of THL Credit, Inc. and its affiliates, for which an order was granted on September 19, 2018 (the *THL Order*<sup>24</sup>). Applicants believe that the relief requested herein is consistent with the policy underlying the THL Order as well as co-investment relief granted by the Commission to other BDCs and to registered closed-end funds.

The Commission also has issued orders extending co-investment relief to proprietary accounts.<sup>25</sup>

<sup>22</sup> See, e.g., Benefit Street Partners BDC, Inc., et al., (File No. 812-14601) Investment Company Act Release Nos. 33068 (April 6, 2018) (notice) and 33090 (May 1, 2018) (order); TCG BDC, Inc., et al., (File No. 812-14798) Investment Company Act Release Nos. 32945 (December 20, 2017) (notice) and 32969 (January 17, 2018) (order); New Mountain Finance Corporation, et al., (File No. 812-14799) Investment Company Act Rel. Nos. 32900 (November 20, 2017) (notice) and 32941 (December 18, 2017) (order); OakTree Strategic Income, LLC, et al., (File No. 812-14758) Investment Company Act Rel. Nos. 32831 (September 22, 2017) (notice) and 32862 (October 18, 2017) (order); Corporate Capital Trust, Inc., et al., (File No. 812-14408) Investment Company Act Rel. Nos. 32642 (May 22, 2017) (notice) and 32683 (June 19, 2017) (order); Corporate Capital Trust, Inc., et al., (File No. 812-14408) Investment Company Act Rel. Nos. 32642 (May 22, 2017) (notice) and 32683 (June 19, 2017) (order); Golub Capital BDC, Inc., et al., (File No. 812-13764) Investment Company Act Rel. Nos. 32461 (January 31, 2017) (notice) and 32509 (February 7, 2017) (order).

<sup>23</sup> See Excelsior Private Markets Fund II (Master), LLC, et al., (File No. 812-14548-05) Investment Company Act Rel. Nos. 32597 (April 10, 2017) (notice) and 32628 (May 8, 2017) (order); Altegris KKR Commitments Master Fund, et al., (File No. 812-14410) Investment Company Act Rel. Nos. 32265 (September 19, 2016) (notice) and

- 32319 (October 17, 2016) (order); Carey Credit Income Fund, et al. (File No. 812-14426) Investment Company Act Rel. Nos. 32138 (June 2, 2016) (notice) and 32164 (June 28, 2016) (order); Triloma EIG Global Energy Fund, et al. (File No. 812-14429) Investment Company Act Rel. Nos. 32106 (May 5, 2016) (notice) and 32132 (May 31, 2016) (order); Benefit Street Partners BDC, Inc. et al. (File No. 812-14126) Investment Company Act Rel. Nos. 31651 (May 27, 2015) (notice) and 31686 (June 23, 2015) (order); Corporate Capital Trust, Inc. et al. (File No. 812-13844) Investment Company Act Rel. No. 30494 (April 25, 2013) (notice) and 30526 (May 21, 2013) (order).
- <sup>24</sup> See THL Credit, Inc., et al. (File No. 812-14807) Investment Company Act Rel. Nos. 33213 (August 24, 2018) (notice) and 33239 (September 19, 2018) (order).
- <sup>25</sup> See Medley Capital Corporation, et al. (File No. 812-14778) Investment Company Act Rel. Nos. 32809 (September 8, 2017) (notice) and 32850 (October 4, 2017) (order); Corporate Capital Trust, Inc., et al. Inv. Co. Act Rel. Nos. 32642 (May 22, 2017) (notice) and 32683 (June 19, 2017) (order); Corporate Capital Trust, Inc. et al. (File No. 812-13844) Investment Company Act Rel. No. 30494 (April 25, 2013) (notice) and 30009 (May 21, 2013) (order); Harvest Capital Credit Corporation, et al. (File No. 812-14365) Investment Company Act Rel. No. 31860 (October 5, 2015) (notice) and 31930 (December 10, 2015) (order); and NF Investment Corp., et al. (File No. 812-14472) Investment Company Act Rel. No. 32340 (October 27, 2016) (notice) and 32362 (November 22, 2015) (order).

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#### **IV. STATEMENT IN SUPPORT OF RELIEF REQUESTED**

In accordance with Rule 17d-1 (made applicable to transactions subject to Section 57(a) by Section 57(i)), the Commission may grant the requested relief as to any particular joint transaction if it finds that the participation of the Regulated Funds in the joint transaction is consistent with the provisions, policies and purposes of the Act and is not on a basis different from or less advantageous than that of other participants. Applicants submit that allowing the Co-Investment Transactions described in this Application is justified on the basis of (i) the potential benefits to the Regulated Funds and the shareholders thereof and (ii) the protections found in the Conditions.

As required by Rule 17d-1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. The Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers.

##### **A. Potential Benefits**

In the absence of the relief sought hereby, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Section 17(d), Section 57(a)(4) and Rule 17d-1 should not prevent BDCs and registered closed-end investment companies from making investments that are in the best interests of their shareholders.

Each Regulated Fund and its shareholders will benefit from the ability to participate in Co-Investment Transactions. The Board, including the Required Majority, of each Regulated Fund has determined that it is in the best interests of the Regulated Fund to participate in Co-Investment Transactions because, among other matters, (i) the Regulated Fund should be able to participate in a larger number and greater variety of transactions; (ii) the Regulated Fund should be able to participate in larger transactions; (iii) the Regulated Fund should be able to participate in all opportunities approved by a Required Majority or otherwise permissible under the Order rather than risk underperformance through rotational allocation of opportunities among the Regulated Funds; (iv) the Regulated Fund and any other Regulated Funds participating in the proposed investment should have greater bargaining power, more control over the investment and less need to bring in other external investors or to structure investments to satisfy the different needs of external investors; (v) the Regulated Fund should be able to obtain greater attention and better deal flow from investment bankers and others who act as sources of investments; and (vi) the Conditions are fair to the Regulated Funds and their shareholders.

##### **B. Protective Representations And Conditions**

The Conditions ensure that the proposed Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Specifically, the Conditions incorporate the following critical protections: (i) all Regulated Funds participating in the Co-Investment Transactions will invest at the same time (except that, subject to the limitations in the Conditions, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa), for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other; (ii) a Required Majority of each Regulated Fund must approve various investment decisions (not including transactions completed on a pro rata basis pursuant to Conditions 6(c)(i) and 8(b)(i) or otherwise not requiring Board approval) with respect to such Regulated Fund in accordance with the Conditions; and (iii) the Regulated Funds are required to retain and maintain certain records.





Applicants believe that participation by the Regulated Funds in Pro Rata Follow-On Investments and Pro Rata Dispositions, as provided in Conditions 6(c)(i) and 8(b)(i), is consistent with the provisions, policies and purposes of the Act and will not be made on a basis different from or less advantageous than that of other participants. A formulaic approach, such as pro rata investment or disposition eliminates the possibility for overreaching and unnecessary prior review by the Board. Applicants note that the Commission has adopted a similar pro rata approach in the context of Rule 23c-2, which relates to the redemption by a closed-end investment company of less than all of a class of its securities, indicating the general fairness and lack of overreaching that such approach provides.

Applicants also believe that the participation by the Regulated Funds in Non-Negotiated Follow-On Investments and in Dispositions of Tradable Securities without the approval of a Required Majority is consistent with the provisions, policies and purposes of the Act because there is no opportunity for overreaching by affiliates.

If an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the  **Holders** ) own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the  **Shares** ), then the Holders will vote such Shares as required under Condition 15.

Applicants believe that this condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed if desired by the Holders will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

In sum, the Applicants believe that the Conditions would ensure that each Regulated Fund that participates in any type of Co-Investment Transaction does not participate on a basis different from, or less advantageous than, that of such other participants for purposes of Section 17(d) or Section 57(a)(4) and the Rules under the Act. As a result, Applicants believe that the participation of the Regulated Funds in Co-Investment Transactions in accordance with the Conditions would be consistent with the provisions, policies, and purposes of the Act, and would be done in a manner that was not different from, or less advantageous than, the other participants.

## **V. CONDITIONS**

Applicants agree that any Order granting the requested relief shall be subject to the following Conditions:

### **1. Identification and Referral of Potential Co-Investment Transactions**

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

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the 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. Board Approvals of Co-Investment Transactions**

(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 Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata

based on the size of the Internal Orders, as described in section III.A.1(b) above. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds and Regulated Funds order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or 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 transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) the interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) 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 any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) the settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) the date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) 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, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the 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 (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds 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 any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect<sup>26</sup> financial benefit to the Advisers, any other Regulated Fund, the Affiliated 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 14, (B) to the extent permitted by Section 17(e) or 57(k), 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)(B)(z).

3. Right to Decline. 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. General Limitation. Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,<sup>27</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.

5. Same Terms and Conditions. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective 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 5, if Condition 2(c)(iii)(B) is met.

6. Standard Review Dispositions.

(a) *General*. If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) the Adviser to such Regulated Fund or Affiliated Fund<sup>28</sup> will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions*. 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 Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required*. A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) the participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;<sup>29</sup> (B) 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 (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

- <sup>26</sup> For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.
- <sup>27</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.
- <sup>28</sup> Any KA Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).
- <sup>29</sup> In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval*. 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.

7. Enhanced Review Dispositions.

(a) *General*. If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval*. 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:

(i) the Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d-1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements*: The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions*. Each Regulated Fund has 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 Funds and any other Regulated Fund;

(ii) *Original Investments*. All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel*. Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities*. All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or

securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security



held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial<sup>30</sup> in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. Standard Review Follow-Ons.

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the issuer of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) the proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,<sup>31</sup> immediately preceding the Follow-On Investment; and (B) 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 this Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* 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 makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

<sup>30</sup> In determining whether a holding is immaterial for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

<sup>31</sup> To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating

Regulated Funds and Affiliated Funds outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund and Affiliated Fund outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds and the Affiliated Funds outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity,

then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1(b) above.

(e) *Other Conditions.* 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 this application.

9. Enhanced Review Follow-On Investments.

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the issuer of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* 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 reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds and Regulated Funds investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as

applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund s or Affiliated Fund s holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds and the Affiliated Funds outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1(b) above.

(e) *Other Conditions.* 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 this application.

#### 10. Board Reporting, Compliance and Annual Re-Approval

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the 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 such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund s 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.

(c) 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. In the case of a

BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Funds' best interests.

11. Record Keeping. 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).

12. Director Independence. No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an affiliated person (as defined in the Act) of any Affiliated Fund.

13. Expenses. 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 advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. Transaction Fees.<sup>32</sup> Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants 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), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) 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)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. Independence. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (a) the election of directors; (b) the removal of one or more directors; or (c) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

16. Proprietary Accounts. The KA Proprietary Accounts will not be permitted to invest in a Potential Co-Investment Transaction except to the extent the aggregate demand from the Regulated Funds and the Affiliated Funds is less than the total investment opportunity.

<sup>32</sup> Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

**VI. PROCEDURAL MATTERS**

A. Communications

Please address all communications concerning this Application and the Notice and Order to:

David Shladovsky

Kayne Anderson Capital Advisors, L.P.

1800 Avenue of the Stars, Third Floor

Los Angeles, CA 90067

Tel.: (310) 282-7900

Please address any questions, and a copy of any communications, concerning this Application, the Notice and Order to:

Wendell M. Faria

Paul Hastings LLP

875 15th Street, N.W.

Washington, D.C. 20005

Tel.: (202) 551-1758

Or

David A. Hearth

Paul Hastings LLP

101 California Street

Forty-Eighth Floor

San Francisco, CA 94111

Tel.: (415) 856-7007

The Applicants desire that the Commission issue an Order pursuant to Rule 0-5 under the Act without conducting a hearing. The verifications required by Rule 0-2(d) of the Act are attached hereto as Exhibit A. Applicants request that any questions regarding this Application be directed to the persons listed on the facing page of this Application.

**REQUEST FOR ORDER OF EXEMPTION**



For the foregoing reasons, the Applicants request that the Commission enter an Order under Sections 17(d) and 57(i) of the Act and Rule 17d-1 under the Act granting Applicants the relief sought by the Application. Applicants submit that the requested exemption is consistent with the protection of investors.

All requirements for the execution and filing of this Application in the name and on behalf of each Applicant by the undersigned have been complied with and the undersigned is fully authorized to do so and has duly executed this Application this 1<sup>st</sup> day of March, 2019.

\* \* \* \* \*

*Signature Pages Follow*

KAYNE ANDERSON MLP/MIDSTREAM  
INVESTMENT COMPANY

KAYNE ANDERSON  
MIDSTREAM/ENERGY FUND, INC.

KAYNE ANDERSON BDC, LLC

KAYNE SENIOR CREDIT III LOANCO,  
LLC

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: Secretary

*Signature Page for Application of Kayne Anderson MLP/Midstream Investment Company, et al.*

KAYNE ANDERSON CAPITAL INCOME PARTNERS (QP), L.P.

KAYNE ANDERSON INCOME PARTNERS, L.P.

KAYNE ANDERSON INFRASTRUCTURE INCOME FUND, L.P.

KAYNE ANDERSON MIDSTREAM INSTITUTIONAL FUND, L.P.

KAYNE ANDERSON MLP FUND, L.P.

KAYNE ANDERSON REAL ASSETS FUND, L.P.

KAYNE EQUITY YIELD STRATEGIES, L.P.

KAYNE SELECT MIDSTREAM RECOVERY FUND, L.P.

KAYNE GLOBAL INFRASTRUCTURE FUND, L.P.

KAYNE RENEWABLE ENERGY INCOME FUND, L.P.

KA SPECIAL K, L.P.

KANTI (QP), L.P.

KAYNE ANDERSON NON-TRADITIONAL INVESTMENTS, L.P.

KARBO, L.P.

KAYNE LIQUID CREDIT FUND, L.P.

By: Kayne Anderson Capital Advisors,  
L.P., General Partner

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior  
Managing Director

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KAYNE SENIOR CREDIT FUND III, L.P.

KAYNE SENIOR CREDIT III OFFSHORE  
FUND, L.P.

KAYNE KS CREDIT FUND, L.P.

KAYNE SOLUTIONS FUND, L.P.

KAYNE SOLUTIONS OFFSHORE FUND,  
L.P.

KAYNE MULTIPLE STRATEGY FUND,  
L.P.

KAYNE ANDERSON REAL ESTATE DEBT  
III, L.P.

By: Kayne Anderson Capital Advisors,  
L.P., General Partner

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior  
Managing Director

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KA CREDIT ADVISORS, LLC

By: Kayne Anderson Capital Advisors,  
L.P. Managing Member

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior  
Managing Director

KA FUND ADVISORS, LLC

By: Kayne Anderson Capital Advisors,  
L.P., Managing Member

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior  
Managing Director

KAYNE ANDERSON CAPITAL  
ADVISORS, L.P.

By: /s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior  
Managing Director

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## SCHEDULE A

	<b>Tax ID s</b>
<b><u>Energy Marketable Securities Funds</u></b>	
Kayne Anderson Capital Income Partners (QP), L.P.	95-4774040
Kayne Anderson Income Partners, L.P.	95-4774043
Kayne Anderson Infrastructure Income Fund, L.P.	27-1534640
Kayne Anderson Midstream Institutional Fund, L.P.	26-3885960
Kayne Anderson MLP Fund, L.P.	61-1437017
Kayne Anderson Real Assets Fund, L.P.	20-2532390
Kayne Equity Yield Strategies, L.P.	82-1057712
Kayne Select Midstream Recovery Fund, L.P.	47-5195808
Kayne Global Infrastructure Fund, L.P.	82-2327753
Kayne Renewable Energy Income Fund, L.P.	82-2743477
KA Special K, L.P.	46-3208397
<b><u>Real Estate Debt Funds</u></b>	
Kayne Anderson Real Estate Debt III, L.P.	82-2565426
<b><u>Private Debt Funds</u></b>	
Kayne Senior Credit Fund III, L.P.	35-2574749
Kayne Senior Credit III Offshore Fund, L.P.	98-1337992
Kayne Anderson BDC, LLC	83-0531326
Kayne KS Credit Fund, L.P.	35-2507517
Kayne Senior Credit III LoanCo, LLC	35-2584023
Kayne Solutions Fund, L.P.	82-0643445
Kayne Solutions Offshore Fund, L.P.	98-1391299
Kayne Multiple Strategy Fund, L.P.	83-1129577
<b><u>Other Funds</u></b>	
KANTI (QP), L.P.	46-2290393
Kayne Anderson Non-Traditional Investments, L.P.	95-4198602
KARBO, L.P.	46-3298658
Kayne Liquid Credit Fund, L.P.	81-4520409

EXHIBIT A-1

VERIFICATION

The undersigned states that he has duly executed the attached Application dated as of March 1, 2019 for and on behalf of Kayne Anderson MLP/Midstream Investment Company, Kayne Anderson Midstream/Energy Fund, Inc., and Kayne Anderson BDC, LLC; that he is the Secretary of each of these companies; and that all action necessary to authorize the undersigned to execute and file such instrument on behalf of each of these companies has been taken. The undersigned further states that he is familiar with such instrument and the contents thereof, and that the facts set forth are true to the best of his knowledge, information and belief.

/s/ David Shladovsky  
Name: David Shladovsky  
Title: Secretary



EXHIBIT A-2

VERIFICATION

The undersigned states that he has duly executed the attached Application dated as of March 1, 2019 for and on behalf of Kayne Anderson Capital Advisors, L.P.( *KACALP* ), acting in its capacity as General Partner/Managing Member of each of the Affiliated Funds listed on Schedule A hereto as Applicants in this Application; that he is the General Counsel and Senior Managing Director of KACALP; and that all action necessary to authorize the undersigned to execute and file such instrument on behalf of the Affiliated Funds has been taken. The undersigned further states that he is familiar with such instrument, and the contents thereof, and that the facts set forth are true to the best of his knowledge, information and belief.

/s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior Managing  
Director

EXHIBIT A-3

VERIFICATION

The undersigned states that he has duly executed the attached Application dated as of March 1, 2019 for and on behalf of KA Credit Advisors, LLC ( *KA Credit* ), KA Fund Advisors, LLC ( *KAFA* ), and Kayne Anderson Capital Advisors, L.P.( *KACALP* ); that he is the General Counsel and Senior Managing Director of KACALP, which is the sole Managing Member of KA Credit and KAFA; and that all action necessary to authorize the undersigned to execute and file such instrument on behalf of KA Credit, KAFA and KACALP has been taken. The undersigned further states that he is familiar with such instrument, and the contents thereof, and that the facts set forth are true to the best of his knowledge, information and belief.

/s/ David Shladovsky  
Name: David Shladovsky  
Title: General Counsel and Senior Managing  
Director

EXHIBIT B

RESOLUTIONS OF BOARD OF DIRECTORS OF

KAYNE ANDERSON MLP/MIDSTREAM INVESTMENT COMPANY

KAYNE ANDERSON MIDSTREAM/ENERGY FUND, INC.

KAYNE ANDERSON BDC, LLC

The undersigned hereby certifies that he is the Secretary of each of Kayne Anderson MLP/Midstream Investment Company ( *KYN* ) and Kayne Anderson Midstream/Energy Fund, Inc. ( *KMF* ), each a Maryland corporation registered with the Securities and Exchange Commission ( *SEC* ) as a closed-end investment company, and Kayne Anderson BDC, LLC, a Delaware limited liability company that intends to elect pursuant to Section 54 of the Investment Company Act of 1940, as amended (the *1940 Act* ) to be regulated as a business development company ( *KA BDC* and, together with KYN and KMF, the *Funds* ); that with respect to the attached Application (the *Application* ) for exemption from certain provisions of the Investment Company Act of 1940, as amended (the *1940 Act* ), all actions necessary to authorize the execution and filing of the Application under the respective certificate of incorporation and by-laws of each Fund have been taken and the person filing the Application on behalf of each Fund is fully authorized to do so; and that the board of directors of each Fund (the *Board* ), at a meeting held on June 27, 2018, has duly adopted the following resolutions:

RESOLVED, that filing of an application (each, an *Application* ) with the SEC pursuant to Rule 17d-1 under the 1940 Act, as well as Sections 57(a)(4) and 57(i) of the 1940 Act, for an order of exemption from the provisions of Section 57(a)(4) of and Rule 17d-1 under the 1940 Act to permit each of the Funds to engage in certain joint transactions that otherwise may be prohibited by Section 57(a)(4) and Rule 17d-1, as applicable, is hereby approved, authorized and directed; and

FURTHER RESOLVED, that the appropriate officers of the Funds, be, and each of them hereby is, authorized, empowered and directed to take all steps necessary to prepare, execute and file such documents, including any amendments thereto, as such officer may deem necessary, appropriate or convenient to carry out the intent and purpose of the foregoing resolution, including filing any further amendment to the Applications.

By: /s/ David Shladovsky  
Secretary