

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**Form N-2**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933  
Pre-Effective Amendment No. 4  
Post-Effective Amendment No.

**FIDUS INVESTMENT CORPORATION**

*(Exact Name of Registrant as Specified in Charter)*

**Form N-5**

REGISTRATION STATEMENT OF SMALL BUSINESS  
INVESTMENT COMPANY  
UNDER  
THE SECURITIES ACT OF 1933  
AND  
THE INVESTMENT COMPANY ACT OF 1940  
Pre-Effective Amendment No. 4

**FIDUS MEZZANINE CAPITAL, L.P.**

*(Exact Name of Registrant as Specified in Charter)*

**1603 Orrington Avenue, Suite 820  
Evanston, Illinois 60201**  
*(Address of Principal Executive Offices)*  
**(847) 859-3940**  
*(Registrant's Telephone Number, including Area Code)*

**Edward H. Ross**  
Chief Executive Officer  
**1603 Orrington Avenue, Suite 820  
Evanston, Illinois 60201**  
*(Name and Address of Agent for Service)*

**WITH COPIES TO:**

**Jonathan H. Talcott**  
Nelson Mullins Riley & Scarborough LLP  
101 Constitution Avenue, NW, Suite 900  
Washington, D.C. 20001  
Telephone: (202) 712-2806  
Facsimile: (202) 712-2856

**Steven B. Boehm**  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2415  
Telephone: (202) 383-0100  
Facsimile: (202) 637-3593

**John A. Good**  
Bass, Berry & Sims PLC  
100 Peabody Place, Suite 900  
Memphis, Tennessee 38103-3672  
Telephone: (901) 543-5901  
Facsimile: (888) 543-4644

**Approximate date of proposed public offering:** As soon as practicable after the effective date of this Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box.

It is proposed that this filing will become effective (check appropriate box):

when declared effective pursuant to section 8(c)

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

**FIDUS INVESTMENT CORPORATION**

**EXPLANATORY NOTE**

The purpose of this Amendment No. 4 to the Registration Statement on Form N-2 and Form N-5 is solely to file a certain exhibit to the Registration Statement as set forth in Item 25(2) of Part C.

**PART C**

**Other Information**

**Item 25. Financial Statements and Exhibits**

**(1) Financial Statements**

The following financial statements of Fidus Mezzanine Capital, L.P. are provided in Part A of the Registration Statement:

Consolidated Statements of Assets and Liabilities — March 31, 2011 (unaudited) and December 31, 2010  
Consolidated Statements of Operations — Three Months Ended March 31, 2011 (unaudited) and 2010 (unaudited)  
Consolidated Statements of Changes in Net Assets — Three Months Ended March 31, 2011 (unaudited) and 2010 (unaudited)  
Consolidated Statements of Cash Flows — Three Months Ended March 31, 2011 (unaudited) and 2010 (unaudited)  
Consolidated Schedules of Investments — March 31, 2011 (unaudited) and December 31, 2010

Notes to Consolidated Financial Statements (unaudited)

Consolidated Statements of Assets and Liabilities — December 31, 2010 and 2009  
Consolidated Statements of Operations — Years Ended December 31, 2010, 2009 and 2008  
Consolidated Statements of Changes in Net Assets — Years Ended December 31, 2010, 2009 and 2008  
Consolidated Statement of Cash Flows — Years Ended December 31, 2010, 2009 and 2008  
Consolidated Schedules of Investments — December 31, 2010 and 2009

Notes to Consolidated Financial Statements

Consolidated Schedule of Investments in and Advances to Affiliates

**(2) Exhibits**

- (a)(1) Form of Amended and Restated Articles of Incorporation of Fidus Investment Corporation(1)
- (a)(2) Amended and Restated Certificate of Limited Partnership of Fidus Mezzanine Capital, L.P.(2)
- (b)(1) Bylaws of Fidus Investment Corporation(1)
- (b)(2) Amended and Restated Agreement of Limited Partnership for Fidus Mezzanine Capital, L.P.(2)
- (c) Not applicable
- (d) Form of Stock Certificate of Fidus Investment Corporation(1)
- (e) Form of Dividend Reinvestment Plan(1)
- (f)(1) Debentures Guaranteed by the SBA(2)
- (f)(2) Agreement to Furnish Certain Instruments(2)
- (g) Form of Investment Advisory Agreement between Registrant and Fidus Investment Advisors, LLC(1)
- (h) Form of Underwriting Agreement(1)
- (i) Not applicable
- (j) Form of Custodian Agreement(2)
- (k)(1) Form of Administration Agreement between Registrant and Fidus Investment Advisors, LLC(1)
- (k)(2) Form of Trademark License Agreement between Registrant and Fidus Partners, LLC(2)
- (k)(3) Form of Indemnification Agreement by and between Registrant and each of its directors(3)
- (l) Opinion and Consent of Nelson Mullins Riley & Scarborough, LLP(1)
- (m) Not applicable
- (n)(1) Consent of McGladrey & Pullen, LLP(2)
- (n)(2) Consent of Proposed Director - Wayne F. Robinson(1)
- (n)(3) Consent of Proposed Director - Charles D. Hyman(1)
- (n)(4) Consent of Proposed Director - Charles G. Phillips(1)
- (o) Not applicable
- (p) Not applicable
- (q) Not applicable
- (r) Code of Ethics of Registrant, Fidus Mezzanine Capital L.P. and Fidus Investment Advisors, LLC(2)

(1) Previously filed in connection with Fidus Investment Corporation's registration statement on Form N-2 Pre-Effective Amendment No. 2 (File No. 333-172550) filed on April 29, 2011.

(2) Previously filed in connection with Fidus Investment Corporation's registration statement on Form N-2 Pre-Effective Amendment No. 3 (File No. 333-172550) filed on May 26, 2011.

(3) Filed herewith.

**Item 26. Marketing Arrangements**

The information contained under the heading "Underwriting" on this Registration Statement is incorporated herein by reference.

**Item 27. Other Expenses of Issuance and Distribution**

Securities and Exchange Commission registration fee	\$ 9,404
FINRA filing fee	8,550
Nasdaq Global Market listing fees	75,000
Printing expenses	150,000(1)
Legal fees and expenses	1,000,000(1)
Accounting fees and expenses	317,750(1)
Miscellaneous	89,296(1)
Total	<u>\$ 1,650,000(1)</u>

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(1) These amounts are estimates.

All of the expenses set forth above shall be borne by the Company.

**Item 28. *Persons Controlled by or Under Common Control***

None

**Item 29. *Number of Holders of Securities***

The following table sets forth the approximate number of record holders of our common stock as of April 30, 2011.

<u>Title of Class</u>	<u>Number of Record Holders</u>
Common Stock, \$0.001 par value	0

**Item 30. *Indemnification***

Maryland law permits a Maryland corporation to include in its articles of incorporation a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our articles of incorporation contain such a provision that eliminates directors' and officers' liability to the maximum extent permitted by Maryland law, subject to the requirements of the 1940 Act.

Our articles of incorporation authorize us, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in any such capacity.

Our bylaws obligate us, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in any such capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her service in any such capacity. Our bylaws also provide that, to the maximum extent permitted by Maryland law, with the approval of our board of directors and provided that certain conditions described in our bylaws are met, we may pay certain expenses incurred by any such indemnified person in advance of the final disposition of a proceeding upon receipt of an undertaking by or on behalf of such indemnified person to repay amounts we have so paid if it is ultimately determined that indemnification of such expenses is not authorized under our bylaws.

Maryland law requires a corporation (unless its articles of incorporation provide otherwise, which our articles of incorporation do not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the

director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received, unless in either case a court orders indemnification, and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

The Registrant has obtained primary and excess insurance policies insuring our directors and officers against some liabilities they may incur in their capacity as directors and officers. Under such policies, the insurer, on the Registrant's behalf, may also pay amounts for which the Registrant has granted indemnification to the directors or officers.

The Investment Advisory Agreement provides that, absent willful misfeasance, bad faith or gross negligence in the performance of its duties or by reason of the reckless disregard of its duties and obligations, Fidus Investment Advisors, LLC and its and its affiliates' officers, directors, members, managers, stockholders and employees are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of Fidus Investment Advisors, LLC's services under the Investment Advisory Agreement.

The Administration Agreement provides that, absent willful misfeasance, bad faith or negligence in the performance of its duties or by reason of the reckless disregard of its duties and obligations, Fidus Investment Advisors, LLC and its and its affiliates' officers, directors, members, managers, stockholders and employees are entitled to indemnification from us for any damages, liabilities, costs and expenses (including reasonable attorneys' fees and amounts reasonably paid in settlement) arising from the rendering of Fidus Investment Advisors, LLC's services under the Administration Agreement or otherwise as our administrator.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act.

Insofar as indemnification for liability arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of ours in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**Item 31. Business and Other Connections of Investment Advisor.**

A description of any other business, profession, vocation or employment of a substantial nature in which Fidus Investment Advisors, LLC, and each managing director, director or executive officer of Fidus Investment Advisors, LLC, is or has been during the past two fiscal years, engaged in for his or her own account or in the capacity of director, officer, employee, partner or trustee, is set forth in Part A of this Registration Statement in the section entitled "Management." Additional information regarding the Fidus Investment Advisors, LLC and its officers and directors is set forth in its Form ADV, as filed with the SEC (File No. 801-72285), and is incorporated herein by reference.

**Item 32. Location of Accounts and Records.**

All accounts, books and other documents required to be maintained by Section 31(a) of the 1940 Act, and the rules thereunder are maintained at the offices of:

- (1) Fidus Investment Corporation, 1603 Orrington Avenue, Suite 820, Evanston, Illinois 60201;
- (2) the Transfer Agent, American Stock Transfer & Trust Company, LLC, 59 Maiden Lane, Plaza Level, New York, New York 10038;
- (3) the Custodian, U.S. Bank National Association, Corporate Trust Services, One Federal Street, 3<sup>rd</sup> Floor, Boston, Massachusetts 02110; and
- (4) Fidus Investment Advisors, LLC, 1603 Orrington Avenue, Suite 820, Evanston, Illinois 60201.

**Item 33. Management Services**

Not Applicable.

**Item 34. Undertakings**

(1) We undertake to suspend the offering of shares until the prospectus is amended if (a) subsequent to the effective date of its registration statement, the net asset value declines more than 10% from its net asset value as of the effective date of the registration statement; or (b) the net asset value increases to an amount greater than the net proceeds as stated in the prospectus.

(2) Not applicable.

(3) Not applicable.

(4) Not applicable.

(5) We undertake that:

(a) For the purpose of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by us pursuant to Rule 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(b) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(6) Not applicable.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Amendment No. 4 to the Registration Statement on Form N-2 to be signed on its behalf by the undersigned, thereunto duly authorized, in Evanston, Illinois, on the 10th day of June, 2011.

Fidus Investment Corporation

By: /s/ EDWARD H. ROSS

Name: Edward H. Ross

Title: Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 4 to the Registration Statement on Form N-2 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ EDWARD H. ROSS</u> Edward H. Ross	Chairman and Chief Executive Officer (Principal Executive Officer)	June 10, 2011
<u>/s/ CARY L. SCHAEFER</u> Cary L. Schaefer	Chief Financial Officer (Principal Financial and Accounting Officer)	June 10, 2011
<u>*</u> Thomas C. Lauer	Director	June 10, 2011

\*By: /s/ EDWARD H. ROSS

Edward H. Ross

Attorney-in-Fact

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Amendment No. 4 to the Registration Statement on Form N-5 to be signed on its behalf by the undersigned, thereunto duly authorized, in Evanston, Illinois, on the 10th day of June, 2011.

Fidus Mezzanine Capital, L.P.

By: Fidus Mezzanine Capital GP, LLC, its General Partner

By: /s/ EDWARD H. ROSS  
Name: Edward H. Ross  
Title: Manager

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 4 to the Registration Statement on Form N-5 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ EDWARD H. ROSS</u> Edward H. Ross	Manager (Principal Executive Officer) of the General Partner	June 10, 2011
<u>/s/ CARY L. SCHAEFER</u> Cary L. Schaefer	Chief Financial Officer (Principal Financial and Accounting Officer) of the General Partner	June 10, 2011

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## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this “*Agreement*”) is made and entered into this [ · ] day of [ · ], 2011, by and between Fidus Investment Corporation, a Maryland corporation (the “*Company*”), and the undersigned (“*Indemnitee*”).

WHEREAS, at the request of the Company, Indemnitee currently serves as a director of the Company and may, therefore, be subjected to claims, suits or proceedings arising as a result of his service; and

WHEREAS, as an inducement to Indemnitee to continue to serve as such director, the Company has agreed to indemnify and to advance expenses and costs incurred by Indemnitee in connection with any such claims, suits or proceedings, to the fullest extent permitted by law, except as otherwise expressly provided for herein; and

WHEREAS, the parties by this Agreement desire to set forth their agreement regarding indemnification and advance of expenses.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Company and Indemnitee do hereby covenant and agree as follows:

**Section 1. Definitions.**

For purposes of this Agreement:

(a) “*Change of Control*” shall mean the occurrence of any of the following events after the Effective Date of this Agreement:

(i) the sale or other disposition of all or substantially all of the Company’s assets; or

(ii) the acquisition, whether directly, indirectly, beneficially (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “*1934 Act*”) or of record, as a result of a merger, consolidation or otherwise, of securities of the Company representing twenty percent (20%) or more of the aggregate voting power of the Company’s then-outstanding common stock by any “person” (within the meaning of Sections 13(d) and 14(d) of the 1934 Act), including, but not limited to, any corporation or group of persons acting in concert, other than (i) the Company or its subsidiaries and/or (ii) any employee pension benefit plan (within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974) of the Company or its subsidiaries, including a trust established pursuant to any such plan; or

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(iii) the individuals who were members of the Board of Directors as of the Effective Date (the "**Incumbent Board**") cease to constitute at least two-thirds (2/3) of the Board; *provided, however*, that any director appointed by at least two-thirds (2/3) of the then Incumbent Board or nominated by at least two-thirds (2/3) of the Nominating and Corporate Governance Committee of the Board of Directors (a majority of the members of the Nominating and Corporate Governance Committee shall be members of the then Incumbent Board or appointees thereof), other than any director appointed or nominated in connection with, or as a result of, a threatened or actual proxy or control contest, shall be deemed to constitute a member of the Incumbent Board.

(b) "**Corporate Status**" means the status of a person who is or was a director, trustee, officer, employee or agent of the Company or any of its subsidiaries, or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for which such person is or was serving at the request of the Company.

(c) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(d) "**Effective Date**" means the date set forth in the first paragraph of this Agreement.

(e) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in a Proceeding.

(f) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. If a Change of Control has not occurred, Independent Counsel shall be selected by the Board of Directors, with the approval of Indemnitee, which approval will not be unreasonably withheld. If a Change of Control has occurred, Independent Counsel shall be selected by Indemnitee, with the approval of the Board of Directors, which approval will not be unreasonably withheld.

(g) "**Proceeding**" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative (including on appeal), except one (i) initiated by an Indemnitee pursuant to Section 11 of this Agreement to enforce his rights under this Agreement or (ii) pending or completed on or before the Effective Date, unless otherwise specifically agreed in writing by the Company and Indemnitee.

**Section 2. Services by Indemnitee.**

Indemnitee will serve as a director of the Company. However, this Agreement shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

**Section 3. Indemnification — General.**

The Company shall indemnify, and advance Expenses to, Indemnitee (a) as provided in this Agreement and (b) otherwise to the fullest extent permitted by Maryland law in effect on the date hereof and as amended from time to time; *provided, however*, that no change in Maryland law shall have the effect of reducing the benefits available to Indemnitee hereunder based on Maryland law as in effect on the date hereof. The rights of Indemnitee provided in this Section 3 shall include, without limitation, the rights set forth in the other sections of this Agreement, including any additional indemnification permitted by Section 2-418(g) of the Maryland General Corporation Law ("**MGCL**"). Notwithstanding anything to the contrary in this Section 3 or any other section of this Agreement, for so long as the Company is subject to the Investment Company Act of 1940, as amended, and the regulations promulgated thereunder (the "**Investment Company Act**"), the Company shall not indemnify or advance Expenses to Indemnitee to the extent such indemnification or advance would violate the Investment Company Act.

**Section 4. Proceedings Other Than Proceedings by or in the Right of the Company.**

Indemnitee shall be entitled to the rights of indemnification provided in this Section 4 if, by reason of his Corporate Status, he is, or is threatened to be, made a party to or a witness in any threatened, pending, or completed Proceeding, other than a Proceeding by or in the right of the Company. Pursuant to this Section 4, Indemnitee shall be indemnified against all judgments, penalties, fines and amounts paid in settlement and all Expenses actually and reasonably incurred by him or on his behalf in connection with a Proceeding by reason of his Corporate Status unless it is established that (i) the act or omission of Indemnitee was material to the matter giving rise to the Proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, (ii) Indemnitee actually received an improper personal benefit in money, property or services, or (iii) in the case of any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful.

**Section 5. Proceedings by or in the Right of the Company.**

Indemnitee shall be entitled to the rights of indemnification provided in this Section 5 if, by reason of his Corporate Status, he is, or is threatened to be, made a party to or a witness in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 5, Indemnitee shall be indemnified against all amounts paid in settlement and all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding unless it is established that (i) the act or omission of Indemnitee was material to the matter giving rise to such a Proceeding and (a) was

committed in bad faith or (b) was the result of active and deliberate dishonesty or (ii) Indemnitee actually received an improper personal benefit in money, property or services.

**Section 6. Court-Ordered Indemnification.**

Notwithstanding any other provision of this Agreement, a court of appropriate jurisdiction, upon application of Indemnitee and such notice as the court shall require, may order indemnification in the following circumstances:

- (a) if it determines Indemnitee is entitled to reimbursement under Section 2-418(d)(1) of the MGCL, the court shall order indemnification, in which case Indemnitee shall be entitled to recover the expenses of securing such reimbursement; or
- (b) if it determines that Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not Indemnitee (i) has met the standards of conduct set forth in Section 2-418(b) of the MGCL or (ii) has been adjudged liable for receipt of an improper personal benefit under Section 2-418(c) of the MGCL, the court may order such indemnification as the court shall deem proper. However, indemnification with respect to any Proceeding by or in the right of the Company or in which liability shall have been adjudged in the circumstances described in Section 2-418(c) of the MGCL shall be limited to Expenses.

**Section 7. Indemnification for Expenses of a Party Who is Wholly or Partly Successful.**

Notwithstanding any other provision of this Agreement, and without limiting any such provision, to the extent that Indemnitee is, by reason of his Corporate Status, made a party to and is successful, on the merits or otherwise, in the defense of any Proceeding, he shall be indemnified for all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee under this Section 7 for all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter, allocated on a reasonable and proportionate basis. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**Section 8. Advance of Expenses.**

The Company shall advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding to which Indemnitee is, or is threatened to be, made a party or a witness, within ten days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written affirmation by Indemnitee of Indemnitee's good faith belief that the

standard of conduct necessary for indemnification by the Company as authorized by law and by this Agreement has been met and a written undertaking by or on behalf of Indemnitee, in substantially the form attached hereto as Exhibit A or in such form as may be required under applicable law as in effect at the time of the execution thereof, to reimburse the portion of any Expenses advanced to Indemnitee relating to claims, issues or matters in the Proceeding as to which it shall ultimately be established that the standard of conduct has not been met and which have not been successfully resolved as described in Section 7. For so long as the Company is subject to the Investment Company Act, any advancement of Expenses shall be subject to at least one of the following as a condition of the advancement: (a) Indemnitee shall provide a security for his or her undertaking; (b) the Company shall be insured against losses arising by reason of any lawful advances; or (c) a majority of a quorum of the Disinterested Directors of the Company, or Independent Counsel in a written opinion, shall determine, based on a review of readily available facts (as opposed to a full-trial-type inquiry), that there is reason to believe that Indemnitee ultimately will be found entitled to indemnification. To the extent that Expenses advanced to Indemnitee do not relate to a specific claim, issue or matter in the Proceeding, such Expenses shall be allocated on a reasonable and proportionate basis. The undertaking required by this Section 8 shall be an unlimited general obligation by or on behalf of Indemnitee and shall be accepted without reference to Indemnitee's financial ability to repay such advanced Expenses and without any requirement to post security therefor.

**Section 9. Procedure for Determination of Entitlement to Indemnification.**

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 9(a) hereof, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall promptly be made in the specific case: (i) if a Change of Control shall have occurred, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall not have occurred, (A) by the Board of Directors (or a duly authorized committee thereof) by a majority vote of a quorum consisting of Disinterested Directors, or (B) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee, or (C) if so directed by a majority of the members of the Board of Directors, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such

determination. Any costs or Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company shall indemnify and hold Indemnitee harmless therefrom.

**Section 10. Presumptions and Effect of Certain Proceedings.**

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making of any determination contrary to that presumption.

(b) The termination of any Proceeding by judgment, order, settlement, conviction, a plea of *nolo contendere* or its equivalent, or an entry of an order of probation prior to judgment, does not create a presumption that Indemnitee did not meet the requisite standard of conduct described herein for indemnification.

**Section 11. Remedies of Indemnitee.**

(a) If (i) a determination is made pursuant to Section 9 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advance of Expenses is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 9(b) of this Agreement within 30 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 7 of this Agreement within ten days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Maryland, or in any other court of competent jurisdiction, of his entitlement to such indemnification or advance of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a); *provided, however*, that the foregoing clause shall not apply to a proceeding brought by Indemnitee to enforce his rights under Section 7 of this Agreement.

(b) In any judicial proceeding or arbitration commenced pursuant to this Section 11 the Company shall have the burden of proving that Indemnitee is not entitled to indemnification or advance of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 9(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 11,

absent a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification.

(d) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company for, any and all Expenses actually and reasonably incurred by him in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that Indemnitee is entitled to receive part but not all of the indemnification or advance of Expenses sought, the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

**Section 12. Defense of the Underlying Proceeding.**

(a) Indemnitee shall notify the Company promptly upon being served with or receiving any summons, citation, subpoena, complaint, indictment, information, notice, request or other document relating to any Proceeding which may result in the right to indemnification or the advance of Expenses hereunder; *provided, however*, that the failure to give any such notice shall not disqualify Indemnitee from the right, or otherwise affect in any manner any right of Indemnitee, to indemnification or the advance of Expenses under this Agreement unless the Company's ability to defend in such Proceeding or to obtain proceeds under any insurance policy is materially and adversely prejudiced thereby, and then only to the extent the Company is thereby actually so prejudiced.

(b) Subject to the provisions of the last sentence of this Section 12(b) and of Section 12(c) below, the Company shall have the right to defend Indemnitee in any Proceeding which may give rise to indemnification hereunder; *provided, however*, that the Company shall notify Indemnitee of any such decision to defend within 15 calendar days following receipt of notice of any such Proceeding under Section 12(a) above. The Company shall not, without the prior written consent of Indemnitee, which shall not be unreasonably withheld or delayed, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee or (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee. This Section 12(b) shall not apply to a Proceeding brought by Indemnitee under Section 11 above or Section 18 below.

(c) Notwithstanding the provisions of Section 12(b) above, if in a Proceeding to which Indemnitee is a party by reason of Indemnitee's Corporate Status, (i) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that he may have separate defenses or counterclaims to assert with respect to any issue which may not be consistent with other defendants in such Proceeding, (ii) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that an actual or apparent conflict of interest or potential conflict of interest exists between Indemnitee

and the Company, or (iii) if the Company fails to assume the defense of such Proceeding in a timely manner, Indemnitee shall be entitled to be represented by separate legal counsel of Indemnitee's choice, subject to the prior approval of the Company, which shall not be unreasonably withheld, at the expense of the Company. In addition, if the Company fails to comply with any of its obligations under this Agreement or in the event that the Company or any other person takes any action to declare this Agreement void or unenforceable, or institutes any Proceeding to deny or to recover from Indemnitee the benefits intended to be provided to Indemnitee hereunder, Indemnitee shall have the right to retain counsel of Indemnitee's choice, subject to the prior approval of the Company, which shall not be unreasonably withheld, at the expense of the Company (subject to Section 11(d)), to represent Indemnitee in connection with any such matter.

**Section 13. Non-Exclusivity; Survival of Rights; Subrogation; Insurance; Investment Company Act.**

(a) The rights of indemnification and advance of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Amended and Restated Articles of Incorporation of the Company (as amended from time to time, the "**Charter**") or the Amended and Restated Bylaws of the Company (as amended from time to time, the "**Bylaws**"), any agreement or a resolution of the stockholders entitled to vote generally in the election of directors or of the Board of Directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal.

(b) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(c) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable or payable or reimbursable as expenses hereunder if and to the extent that (i) Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise, or (ii) for so long as the Company is subject to the Investment Company Act, indemnification or payment or reimbursement of expenses would not be permissible under the Investment Company Act.

**Section 14. Insurance.**

The Company will use its reasonable best efforts to acquire directors and officers liability insurance, on terms and conditions deemed appropriate by the Board of Directors of the Company, with the advice of counsel, covering Indemnitee or any claim made against Indemnitee for service as a director or officer of the Company and covering the Company for any indemnification or advance of Expenses made by the Company to Indemnitee for any claims



made against Indemnitee for service as a director or officer of the Company. Without in any way limiting any other obligation under this Agreement, the Company shall indemnify Indemnitee for any payment by Indemnitee arising out of the amount of any deductible or retention and the amount of any excess of the aggregate of all judgments, penalties, fines, settlements and reasonable Expenses incurred by Indemnitee in connection with a Proceeding over the coverage of any insurance referred to in the previous sentence.

**Section 15. Indemnification for Expenses of a Witness.**

Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding, whether instituted by the Company or any other party, and to which Indemnitee is not a party, he shall be advanced all reasonable Expenses and indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

**Section 16. Duration of Agreement; Binding Effect.**

(a) This Agreement shall continue until and terminate ten years after the date that Indemnitee's Corporate Status shall have ceased; *provided, that* the rights of Indemnitee hereunder shall continue until the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advance of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 11 of this Agreement relating thereto.

(b) The indemnification and advance of Expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, trustee, officer, employee or agent of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the written request of the Company, and shall inure to the benefit of Indemnitee and his spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(c) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

**Section 17. Severability.**

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any

section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

**Section 18. Exception to Right of Indemnification or Advance of Expenses.**

Notwithstanding any other provision of this Agreement, Indemnitee shall not be entitled to indemnification or advance of Expenses under this Agreement with respect to any Proceeding brought by Indemnitee, unless (a) the Proceeding is brought to enforce indemnification under this Agreement or otherwise or (b) the Company's Bylaws, the Charter, a resolution of the stockholders entitled to vote generally in the election of directors or of the Board of Directors or an agreement approved by the Board of Directors to which the Company is a party expressly provide otherwise.

**Section 19. Identical Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. One such counterpart signed by the party against whom enforceability is sought shall be sufficient to evidence the existence of this Agreement.

**Section 20. Headings.**

The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

**Section 21. Modification and Waiver.**

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

**Section 22. Notices.**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and received for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

- (a) If to Indemnitee, to: The address set forth on the signature page hereto.

(b) If to the Company, to:

Fidus Investment Corporation  
1603 Orrington Avenue, Suite 820  
Evanston, Illinois 60201

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

**Section 23. Governing Law.**

The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, (i) the laws of the State of Maryland applicable to contracts formed and to be performed entirely within the State of Maryland, without regard to its conflicts of laws rules, to the extent such rules would require or permit the application of the laws of another jurisdiction, and (ii) the Investment Company Act. To the extent the applicable laws of the State of Maryland or any applicable provision of this Agreement shall conflict with the applicable provisions of the Investment Company Act, the latter shall control.

**Section 24. Miscellaneous.**

Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

\_\_\_\_\_

FIDUS INVESTMENT CORPORATION

By: \_\_\_\_\_ (SEAL)  
Name:  
Title:

WITNESS:

\_\_\_\_\_

INDEMNITEE

\_\_\_\_\_  
Name:  
Title:  
Address:

EXHIBIT A

FORM OF UNDERTAKING TO REPAY EXPENSES ADVANCED

The Board of Directors of Fidus Investment Corporation

**Re: Undertaking to Repay Expenses Advanced**

Ladies and Gentlemen:

This undertaking is being provided pursuant to that certain Indemnification Agreement (the "**Indemnification Agreement**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Fidus Investment Corporation (the "**Company**") and the undersigned Indemnitee ("**Indemnitee**"), pursuant to which I am entitled to advance of expenses in connection with [**Description of Proceeding**] (the "**Proceeding**").

Terms used herein and not otherwise defined shall have the meanings specified in the Indemnification Agreement.

I am subject to the Proceeding by reason of my Corporate Status or by reason of alleged actions or omissions by me in such capacity. I hereby affirm that at all times, insofar as I was involved as director of the Company, in any of the facts or events giving rise to the Proceeding, I (1) acted in good faith and honestly, (2) did not receive any improper personal benefit in money, property or services and (3) in the case of any criminal proceeding, had no reasonable cause to believe that any act or omission by me was unlawful.

In consideration of the advance of Expenses by the Company for reasonable attorneys' fees and related expenses incurred by me in connection with the Proceeding (the "**Advanced Expenses**"), I hereby agree that if, in connection with the Proceeding, it is established that (1) an act or omission by me was material to the matter giving rise to the Proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, or (2) I actually received an improper personal benefit in money, property or services, or (3) in the case of any criminal proceeding, I had reasonable cause to believe that the act or omission was unlawful, then I shall promptly reimburse the portion of the Advanced Expenses relating to the claims, issues or matters in the Proceeding as to which the foregoing findings have been established and which have not been successfully resolved as described in Section 7 of the Indemnification Agreement. To the extent that Advanced Expenses do not relate to a specific claim, issue or matter in the Proceeding, I agree that such Expenses shall be allocated on a reasonable and proportionate basis.

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IN WITNESS WHEREOF, I have executed this Affirmation and Undertaking on this \_\_\_day of \_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_ (SEAL)