

We shall be pleased to supply such additional information as you may desire with respect to these and other matters relating to the SBIC industry.

Sincerely yours,

CHARLES M. NOONE, *General Counsel.*

APPLICATION FOR EXEMPTION FROM PROVISIONS OF THE INVESTMENT COMPANY ACT OF 1940 OF NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES

APPLICATION

Applicant

The National Association of Small Business Investment Companies ("NASBIC") is a trade association the active membership of which consists of 30 small business investment companies ("SBICs") licensed by the Small Business Administration ("SBA") pursuant to the provisions of the Small Business Investment Act of 1958, as amended ("1958 Act").

Of the 230 active members of NASBIC, 29 are registered as closed-end management investment companies under the Investment Company Act of 1940 ("1940 Act").

While the 230 SBICs belonging to NASBIC represent only half of the 462 SBICs whose licenses remain outstanding, it is estimated that the assets of NASBIC member companies account for 80% of the assets currently committed to the SBIC program.

Purpose of Application

The purpose of this Application is to secure an exemption for SBICs from those provisions of the 1940 Act not applicable to SBICs and to transfer to SBA the administration of those provisions of the 1940 Act deemed applicable to SBICs. The Application is submitted pursuant to the provisions of Section 6(c) of the 1940 Act on behalf of member companies of NASBIC registered under the 1940 Act.

Statutory Basis For Requested Exemption

Section 6(c) of the 1940 Act provides as follows:

"The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

Statement of Grounds for Application

We submit that the requested exemption is "necessary" and "appropriate in the public interest", as required by Section 6(c), for the following reasons:

1. It is recognized that the thrust of the 1940 Act is investor protection. The thrust of the 1958 Act, as set forth in Section 102 of that Act (15 U.S.C. § 661 (1964)), is the establishment of "a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization * * *."

The administration of the 1940 Act by the Commission and the administration of the 1958 Act by SBA has resulted in conflicting and dual regulation which in our view impedes the ability of SBICs to accomplish their statutory mission. We submit therefore that the investor protection goal of the 1940 Act and the financing mission of SBICs under the 1958 Act must be accommodated in such a fashion as to eliminate the present system of dual regulation. This can best be accomplished by transferring to SBA, the agency with the primary responsibility for the administration of the SBIC program, responsibility for administering those provisions of the 1940 Act deemed applicable to SBICs, thereafter exempting SBICs from SEC regulation under the 1940 Act so long as and to the extent that they comply with applicable SBA regulations. We explain below why we believe this can be done without compromising the Commission's responsibility for investor protection.

2. In the calendar year 1967, SBICs accounting for approximately one hundred million dollars of paid-in capital and surplus, nearly one-third of the total paid-in capital and surplus of the entire industry, announced their intention to leave the SBIC program. While this mass exodus can be attributed to a variety of factors,