

it is clear to NASBIC that a dominant factor was and is the great difficulty of attempting to operate an SBIC subject to dual regulation by SEC and SBA. Such dual regulation inhibits the proper operation of an SBIC, and the continued failure to eliminate the dual regulation could well bring an end to the SBIC program. Such an end would benefit no one. The small business concerns of the nation who are the intended beneficiaries of the 1958 Act would clearly be the losers. The responsible regulatory agencies clearly have a duty to reverse the recent trend toward contraction of the SBIC program and to encourage its growth.

3. By virtue of Section 308(g)(2) of the 1958 Act as enacted in 1967 (Public Law 104, 90th Cong., 1st Sess. (Oct. 11, 1967)), SBA is now required to submit to the Congress in its annual report "full and detailed accounts" relating to certain matters including the following:

"(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch."

The granting of the exemptions from the 1940 Act requested herein would be responsive to the foregoing statutory directive.

We likewise submit that the requested exemption would be "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title", as required by Section 6(c) of the 1940 Act, for the following reasons:

1. As proposed hereinafter, we submit that the "protection of investors" in SBICs is already subject to administration by SBA. Implicit in SBA's statutory authority to license and regulate SBICs is its authority to ensure the protection of investors in SBICs. In addition, SBA Reg. 107.1004 (33 Fed. Reg. 334 (1968)) specifically provides, "Self-dealing to the prejudice of a small business concern, or of a Licensee or its shareholders, or of SBA, is prohibited." (emphasis added).

To the extent the Commission feels SBA regulations need modification to ensure additional protection for investors in SBICs, Section 6(c) of the 1940 Act vests in the Commission adequate authority to support its cooperation with SBA to that end.

2. SBICs are the only Federally licensed and regulated entities subject to regulation under the 1940 Act. Indeed, Section 3(c) of that Act specifically exempts from its operations a number of financial institutions not dissimilar from SBICs. For example, Section 3(c)(3) exempts "Any bank or insurance company; any saving and loan association, building and loan association, cooperative bank, homestead association, or similar institution . . .", and Section 3(c)(5) exempts "Any persons substantially all of whose business is confined to making small loans, industrial banking, or similar businesses." (emphasis added).

We submit that had SBICs been in being when the legislation leading to the enactment of the 1940 Act was in Congress, SBICs would likewise have been expressly exempted from the provisions of the 1940 Act.

In short, it is our position that the regulation of SBICs under the 1940 Act was not and is not now one of the "purposes fairly intended by the policy and provisions of this title" as specified in Section 6(c) of the 1940 Act, and that certainly it was never intended that SBICs be subject to dual regulation by the Commission and SBA.

Applicability of 1940 Act to SBICs

The 1940 Act contains 53 sections. It deals with five types of investment companies and contains sections intended to regulate each of such types. For purposes of the 1940 Act, an SBIC falls within the type of company designated as a "closed-end management investment company." Relatively few sections of the Act are applicable to this type of company, and thus the vast majority of the sections of the 1940 Act have no applicability whatever to SBICs. Where sections of the 1940 Act are applicable to SBICs, as hereinafter noted, SBA has promulgated regulations which in our view are either sufficient in their present form or adaptable to meet 1940 Act requirements.

As previously noted, the thrust of the 1940 Act is investor protection. The companies which the 1940 Act was intended to regulate are mutual funds which invest almost exclusively in outstanding securities of well-known companies. As a group, mutual funds have contributed little new capital to industry. Their purpose is solely to provide an investment medium in outstanding securities for