

This program, hard pressed at best to find persons possessing the unique talents necessary to the successful operation of an SBIC, can ill afford to lose proven managerial talent to other industries simply by virtue of its inability to utilize stock options in compensating the people responsible for ensuring the success of their companies.

On February 20, 1962, NASBIC submitted a Proposed Rule 18d-1 to permit the issuance of "restricted stock options". Attached hereto (Exhibit B) is the text of the Proposed Rule 18d-1 as previously filed with the Commission. We request herewith that the Commission now exempt SBICs from those provisions of the 1940 Act which the Commission regards as prohibiting the issuance of stock options, or, in the alternative, that the Commission reconsider the Proposed Rule 18d-1 as submitted by NASBIC under date of February 20, 1962.

Sections 19 and 20 of the 1940 Act, relating respectively to Dividends and Proxies, could, if deemed necessary by the Commission, be incorporated in suitable SBA regulations.

The restrictions of Section 21 of the 1940 Act, relating to Loans, are now, in our view, adequately covered by SBA Reg. 107.1004 (33 Fed. Reg. 334 (1968)) relating to conflicts of interest and thus the need for applying Section 21 of the 1940 Act to SBICs is obviated.

Section 22 of the 1940 Act, titled Distribution, Redemption, and Repurchase of Redeemable Securities, deals with matters which are of no regulatory importance insofar as SBICs are concerned.

Section 23 of the 1940 Act, titled Distribution and Repurchase of Securities: Closed-End Companies, forbids such a company to issue any of its securities for services. With respect to the implied prohibition against stock options in this section, we incorporate herewith by reference our previous comments relating to Section 18 of the 1940 Act.

The same section also regulates the manner in which closed-end companies may repurchase their shares. SBA provides controls in this area under its Reg. 107.902 (33 Fed. Reg. 333 (1968)) governing voluntary capital decreases, and thus again, in our view, Section 23 of the 1940 Act need not be applied to SBICs.

Section 24 of the 1940 Act relates to the Registration of Securities Under Securities Act of 1933. We do not propose to exempt SBICs from the requirements of the Securities Act of 1933 and are of the view that the provisions of this section otherwise applicable to SBICs are now adequately treated under the 1958 Act and SBA's regulations thereunder.

Section 25 of the 1940 Act, relating to Plans of Reorganization, covers the same matters now subject to stringent regulation by SBA under its Reg. 107.701 (33 Fed. Reg. 331 (1968)) relating to changes in ownership or control of an SBIC. Accordingly, we see no need for the duplicative application of Section 25 of the 1940 Act to SBICs.

Sections 26, 27, 28 and 29, relating respectively to Unit Investment Trusts, Periodic Payment Plans, Face-Amount Certificate Companies and Bankruptcy of Face-Amount Certificate Companies, all deal with matters which are of no regulatory importance insofar as SBICs are concerned.

Sections 30, 31 and 32 of the 1940 Act, relating respectively to Periodic and Other Reports, Accounts and Records and Accountants and Auditors, are all extensively covered by Section 310 of the 1958 Act (15 U.S.C. § 687b (Supp. II, 1965-66)) and by SBA Regs. 107.1101 and 107.1102 (33 Fed. Reg. 335-36 (1968)). Thus, in our view, the application of Sections 30, 31 and 32 of the 1940 Act to SBICs is not necessary.

Section 33 of the 1940 Act, titled Settlement of Civil Actions, requires certain reports relative to litigation, a subject expressly and adequately covered under SBA Reg. 107.1102(g) (33 Fed. Reg. 335-35 (1968)). Accordingly, the application of Section 33 of the 1940 Act to SBICs would appear to be unnecessary.

Sections 34, 35, 36 and 37 of the 1940 Act, relating respectively to Destruction and Falsification of Reports and Records, Unlawful Representations and Names, Injunctions Against Gross Abuse and Larceny and Embezzlement, are now adequately covered, in our view, by Sections 313, 314, 315 and 316 of the 1958 Act, all by virtue of the Small Business Investment Act Amendments of 1966 (80 Stat. 1359-65 (1966)) 15 U.S.C. §§ 687e-h (Supp. II, 1965-66)). Accordingly, the application of the cited sections of the 1940 Act to SBICs is clearly unnecessary.

Sections 38, 39, 40 and 41 of the 1940 Act, relating respectively to (i) Rules, Regulations, and Orders; General Powers of Commission; (ii) Rules and Regulations; Procedure for Issuance; (iii) Orders; Procedure for Issuance; and (iv) Hearings by Commission, all basically relating to internal procedural matters