NASBIC
America's Small Business Partners

October 8, 2007

Securities and Exchange Commission
c/o Nancy M. Morris, Secretary
100 F Street, N.E.
Washington, DC 20549-1090

Via E-Mail *(rule-comments@sec.gov)*

Re: File Number S7-18-07

Dear SEC Commissioners:

This letter responds to the request for comments made in Release No. 33-8828; IC-27922 with respect to proposed revisions to Regulation D, including proposed additional protections for investors in pooled investment vehicles.

I write to you as President of the National Association of Small Business Investment Companies ("NASBIC"). NASBIC is the national trade association for Small Business Investment Companies ("SBICs"), representing an industry currently made up of 370 SBICs managing more than $19 billion in committed capital resources. In FY 2007, SBICs invested $2.6 billion in 2,057 U.S. small businesses that met size and operational standards promulgated by the government. As you may know, SBICs are government-licensed, government-regulated, but privately managed venture capital funds whose statutory mission is to provide "private equity capital and long-term loan funds [to government-qualified small business concerns] which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply." Small Business Investment Act of 1958, PL 85-699, as amended (hereinafter "SBIA.").

NASBIC's comments with respect to the proposed rules are as follows:

A. SBICs should be specifically excluded as pooled investment vehicles that require natural persons to meet a standard higher than that for accredited investors generally.

As originally proposed, the more restrictive definition of a "natural" accredited investor would not apply to venture capital funds. As we previously wrote to you, NASBIC supports this exclusion. We wish to reiterate our belief that SBICs, as government-licensed and government-regulated venture mission entities, should be excluded by specific reference. The proposed definition of a venture capital fund is multi-faceted and, therefore, potentially subject to misinterpretation. Given that fact, it is possible that not all licensed SBICs would always be considered to qualify for all purposes under this proposed definition notwithstanding their statutory mission and the fact that prior to licensing all SBIC business plans, management teams, and private investors are subject to rigorous government review and approval. If the government finds that a fund meets the statutory and regulatory requirements for receiving an SBIC license, or is in the process of applying for such a license, that should be binding in all cases for the purposes of the proposed rule. We note, for example, that Rule 3c-2 promulgated under the Investment Company Act sets forth a special rule for determining beneficial ownership of SBICs.

B. <u>There is no need to increase the amounts specified for net worth and income criteria applicable to accredited investors under Regulation D as currently written, and certainly no need to change the definition for government regulated SBICs as a subset of venture funds.</u>

My earlier letter to you stressed the importance of maintaining the current Regulation D accredited investor definition for SBICs. In raising capital SBICs often compete with private equity funds that raise considerably greater pools of money. The private capital of SBICs range from a statutory minimum of $5 million to usually not more than approximately $60 million, with $100 million a likely practical ceiling applicable to only a very few SBICs. On average, approximately 50% to 60% of that capital is raised from high net worth individuals; and for individual funds the percentage can be higher. Because the field for raising private capital is already competitive, NASBIC is always concerned if the pool of private investors available to invest in SBICs is further limited. Any change in the definition of accredited investor that increases the qualification thresholds would significantly and adversely affect the ability of SBICs to raise capital.

NASBIC does not believe that there is a sound rationale for requiring higher qualifications. We believe the complexity of SBICs today is the same as in the early 1980s. Operating companies formed as limited liability companies appear to us often to have operating agreements that are as complex as or more complex than limited partnership agreements of venture funds like SBICs. We also note that, in contrast to an operating company, a venture fund provides a diversification for the funds invested, whereas an operating company lacks that type of diversification. An SBIC is prohibited without SBA approval from investing more than 20% of its private capital in any one company and its affiliates, even when it has total capital to invest of three times its private capital because an SBIC can qualify for government funding in an amount equal to twice its private capital.

Finally, we believe that investments in government-licensed and government-regulated SBICs should be accorded a lower risk profile than unregulated investment funds. While no venture capital or other private equity fund is without risk, certainly SBICs (100% of whose management teams are vetted prior to licensing and 100% of whose operations are subject to close regulation and examination) should be accorded a lower risk rating than others. The licensing, regulatory, and examination processes all are designed to enable the policy behind the program to be "carried out in such manner as to ensure the maximum participation of private financing sources" as require by §102 of the SBIA.

C. <u>A broadened definition of "accredited investor" to include an investment test is reasonable, provided the current tests for qualification of that status are not changed.</u>

We note that the new proposed definitions of "accredited investor" would add an investment test as an alternative to the current tests. We support that addition, but would oppose the addition if it were anything but an alternative test. The proposal, we believe, provides an additional manner for entities and individuals who have the needed investment sophistication to qualify. We also believe that the investment levels proposed for both entities and individuals are reasonable.

D. <u>Adding an investment test to the definition of accredited investor and creating a definition of large accredited investor could help portfolio companies of venture funds raise capital.</u>

Most portfolio companies of SBICs generally raise money by relying on the exemptions in Regulation D. NASBIC, therefore, believes that the addition of the investment test to the definition of accredited investor and the creation of a special exemption for offerings to large accredited investors is likely to have a salutary affect on the ability of these companies to raise money.

Thank you for your consideration of our views. Please contact me if you wish additional information or wish further clarification of our position.

Sincerely,

Lee W. Mercer

Lee W. Mercer
President