

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.  
May 14, 1971

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In the Matter of	:	
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THE NATIONAL ASSOCIATION OF SMALL BUSINESS	:	FINDINGS
INVESTMENT COMPANIES	:	AND OPINION
537 Washington Building	:	OF THE
Washington, D. C.	:	COMMISSION
	:	
Investment Company Act of 1940 -	:	
Section 6(c)	:	
	:	
	:	

EXEMPTIONS

Transactions with Affiliates

Convertible Securities

Application by association of licensed small business investment companies, pursuant to Section 6(c) of Investment Company Act of 1940, for exemptions of small business investment companies so as not to require prior Commission approval of transactions with affiliates and so as to permit issuance by such investment companies of convertible securities, denied, the Commission finding that such blanket exemptions would be contrary to statutory scheme and interests of public investors in small business investment companies sought to be protected under Act.

Issuance of Stock Options

Application pursuant to Section 6(c) of Act for exemption so as to permit issuance of stock options by small business investment companies to their officers and employees, granted, subject to conditions for protection of investors.

APPEARANCES:

Sydney H. Mendelsohn and Paul R. Huard, for the Division of Corporate Regulation of the Commission.

Charles M. Noone, for The National Association of Small Business Investment Companies.

Eric W. Weinmann, Jerome Garfinkel and John J. Sharp, for the Small Business Administration.

Merle Thorpe, Jr. and Douglas A. Nadeau, of Hogan & Hartson, for Greater Washington Investors, Inc.

The National Association of Small Business Investment Companies ("NASBIC"), an association of Small Business Investment Companies ("SBICs") licensed by the Small Business Administration ("SBA") pursuant to the Small Business Investment Act of 1958 ("SBI Act"), applied on behalf of its members, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for exemption of all SBICs subject to registration under the Act from most of the provisions of the Act. 1/ A number of NASBIC members joined in the application, and the SBA supported it. Following a hearing, the hearing examiner issued an initial decision conditionally granting exemption from the prohibitions of Sections 17(a) and 17(d) against certain dealings between a registered investment company and an affiliated person, and from Sections 18(d), 19 and 23 to the extent that they prohibit the issuance of stock options by a registered investment company to its officers and employees. 2/

The Division of Corporate Regulation ("Division") filed a petition for review, which we granted, with respect to the examiner's grant of the aforesaid exemptions. In addition, NASBIC requested review of the examiner's denial of exemption from the statutory provisions restricting the issuance of convertible securities. Briefs were filed by the Division opposing the grant of any exemptions, by NASBIC and SBA in support of exemptions, and by Greater Washington Investors, Inc. ("GWI"), a registered closed-end investment company, in support of an exemption for stock options, which it requested be made available to all "venture capital" investment companies. 3/ We heard oral argument. Our findings are based upon an independent review of the record.

I

The Statutory Provisions

Section 17(a) of the Act in general prohibits an affiliated person of a registered investment company from selling to or buying from such company any securities or other property, or borrowing from such company money or other property, subject, however, to the provision

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- 1/ The application recited that NASBIC has 230 active members, of which 29 were registered under the Act as closed-end management investment companies, and estimated that its members account for 80% of the assets currently committed to the SBIC program.
  - 2/ The exemption from Sections 17(a) and 17(d) was subject to the condition that for a period of one year we be furnished copies of applications by SBICs registered with us for exemptions pursuant to SBA regulations and of the exemptive orders issued by SBA. The exemption for stock options was conditioned upon the adoption by SBA of regulations satisfactory to us with respect to the issuance of restricted stock options.
  - 3/ "Venture capital" investment companies, for which special treatment is provided in Section 12(e) of the Act, generally engage in the business of furnishing capital to industry, financing promotional enterprises, and purchasing securities of issuers for which no ready market exists.

in Section 17(b) that upon application we shall exempt any such proposed transaction from such prohibition if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching and the proposed transaction is consistent with the policy of each investment company involved and with the general purposes of the Act. Section 17(d) of the Act and Rule 17d-1 thereunder prohibit such an affiliated person from participating as a principal with such investment company in a joint enterprise or arrangement unless an application regarding such transaction is granted by us. 4/ Subject to the exceptions enumerated therein, Sections 18(d) and 23(a) of the Act prohibit, respectively, a registered management investment company from issuing warrants or rights to purchase its securities 5/ and a registered closed-end investment company from issuing any of its securities for services or for property other than cash or securities. 6/

Section 6(c) is a general exemptive provision under which we may exempt any person or any class of persons from any provision of the Act 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 the Act. It was designed to afford us discretionary authority to deal equitably with situations which could not be foreseen at the time the legislation was enacted. 7/ The propriety of granting the relief sought "largely depends upon the purposes of the section from which an exemption is requested, the evils against which it is directed, and the end which it seeks to accomplish". 8/ We have noted that the power under Section 6(c) to free any person from any section of the Act is one which must be exercised with circumspection. 9/ The showing

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- 4/ Rule 17d-1(b) provides that in passing upon such an application, we will consider whether the participation of the investment company in such joint enterprise or arrangement is, among other things, "consistent with the provisions, policies and purposes of the Act."
- 5/ The convertibility feature of a convertible security has been held to be, in effect, a right to purchase prohibited by Section 18(d). Alleghany Corporation, 37 S.E.C. 424 (1956).
- 6/ Section 22(g) contains a similar prohibition with respect to a registered open-end investment company. Section 19 deals with the payment of dividends.
- 7/ The Great American Life Underwriters, Inc., 41 S.E.C. 1, 4 (1960).
- 8/ Transit Investment Corporation, 28 S.E.C. 10, 15-16 (1948).
- 9/ The Great American Life Underwriters, Inc., *supra*, p. 5; Variable Annuity Life Insurance Company of America, Investment Company Act Release No. 4686, p. 4 (August 25, 1966).

required in order to meet the public interest and related standards set forth in Section 6(c) is that the compliance from which exemption is sought is not necessary to accomplish the Act's objectives and policies. 10/

The SBI Act's prime purpose is to establish a program to stimulate and supplement the flow of private equity capital and long term loan funds to small business concerns and for this purpose SBA is authorized to license and lend money to SBICs which in turn can provide the loans and equity type fundings to small business concerns. 11/ The Investment Company Act is not applicable to an SBIC which does not have more than 100 securityholders and which is not making and does not presently propose to make a public offering of its securities, 12/ but other SBICs are subject to the Act as closed-end management investment companies. 13/

That SBICs may be subject to regulation both under our Act and the SBI Act is not an inadvertent result; Congress was aware of this situation at the time of the passage of the SBI Act in 1958, when it concluded that SBICs with a public investor interest should not be exempted from the basic provisions of the Investment Company Act. 14/ As the hearing examiner noted, as recently as 1967 Congress again recognized that SBICs were subject to regulation both by the SBA and by us and evidenced an intent not to totally exempt SBICs from our supervision and control when it amended the SBI Act to provide that SBA annual reports include information regarding actions undertaken by us to simplify compliance by SBICs with the Act and to eliminate overlapping regulation and jurisdiction. 15/

## II

### Prohibition Respecting Transactions by Affiliated Persons

In support of the exemption of SBICs from Sections 17(a) and 17(d), it has been stated that dual regulation of such companies by us and the SBA constitutes a serious burden upon and inhibits to a material extent the viability of the SBIC industry, that such exemptions would not result in a reduction of shareholder protection but would merely shift the administrative responsibility for it to the SBA, that SBA regulations appear to afford reasonably adequate protection against potential conflicts of interest, and that the term "public interest" as used in Section 6(c) includes consideration of the Congressional intent to facilitate the formation and growth of SBICs and of the hardship and difficulty incidental to compliance with the Act.

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- 10/ The Trust Fund Sponsored By The Scholarship Club, Inc., Investment Company Act Release No. 5524, p. 5 (October 25, 1968).
- 11/ See Sections 102, 301 and 303 of the SBI Act (15 U.S.C. 661, 681 and 683).
- 12/ Section 3(c)(1) of the Act.
- 13/ As of September 30, 1968, there were 422 SBA licensed SBICs, of which 44 were also registered as investment companies under the Act and accounted for about 40% of the assets of all SBICs.
- 14/ The SBI Act amended the Investment Company Act only by adding Section 18(k), providing that certain asset coverage conditions in Section 18(a)(1) on the issuance of senior securities not be applicable to investment companies operating under the SBI Act.

Section 17, sometimes referred to as the "self-dealing" section, is intended, in general, to prevent abuses and unfair transactions by insiders of investment companies by requiring prior independent scrutiny by this Commission for the protection of investors of transactions with investment companies by officers, directors and similar persons associated with such companies. 16/ As such the Section is a keystone in the statutory scheme enacted for the protection of investors and implements the Congressional declaration in Section 1(b) that it is the policy and purpose of the Act to prevent the operation of investment companies in the interest of affiliated persons rather than in the interest of all securityholders. It is true, as pointed out by the hearing examiner, that the SBA has adopted certain regulations designed to protect SBICs and their shareholders against conflicts of interest. 17/ As the examiner noted, however, the SBA regulations have a coverage narrower than that of Section 17 and our rules thereunder. 18/ In declining to remove SBICs from the purview of the Investment Company Act, Congress indicated that it did not wish to reduce the protection given public SBIC securityholders. The primary concern under the Investment Company Act for the protection of public investors is at least as important in the case of SBICs which are engaged in the speculative activity of financing small enterprises 19/ as it is in other types of investment companies. Although the SBI Act now also concerns itself with the protection of SBIC shareholders, its primary thrust, of course, is to encourage the formation and growth of SBICs through financing assistance.

While compliance with the Investment Company Act does entail some increased costs and inconvenience to registered SBICs, or any other type of investment company, such consequence is a necessary incident to regulatory oversight and is not of itself a justification for a blanket exemption from this or any other section of the Act for an entire industry. We have by rule granted to SBICs two specific exemptions from Sections 17(a) and 17(d) in recognition of particular problems incident to SBIC activities. One such exemption covers situations where a registered SBIC invests in a small business concern, which by virtue of that very transaction becomes an affiliate of the SBIC. Under Section 17(a) any additional investment in the concern by the SBIC would require an application for our prior approval. Rule 17a-6 was adopted to eliminate this requirement by providing an

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16/ Transit Investment Corporation, 28 S.E.C. 10, 16 (1948).

17/ 13 CFR 107.1004 and 1005.

18/ For example, SBA Regulation 13 CFR 107.3 defines an "associate" to include a person who owns or controls 10% or more of any class of stock of an SBIC, while under Section 2(a)(3) of the Act the comparable test is 5% of the outstanding voting securities.

19/ The underlying investments of SBICs are generally made on a long term basis in unregistered and unmarketable securities of speculative companies. SBA Regulations, 13 CFR 107.301, require generally that SBICs finance small business concerns for a minimum period of five years.

exemption for any transaction between an SBIC and such portfolio company except where an officer, director or other person having a specified relationship to the SBIC is also a party to such transaction or has a financial interest in the portfolio company. The second exemption covers instances where a bank becomes an investor in an SBIC and an affiliate of the SBIC. As an affiliate, the bank was prohibited from participating in a joint enterprise or arrangement by making an investment in a small business concern in which the bank-affiliated SBIC made an investment without first filing an application for and receiving approval of such transaction under Rule 17d-1(a). Rule 17d-1(d) (3) was adopted to eliminate the requirement of such a prior application and substituted a requirement that an information report be submitted subsequent to the investment. 20/

The adoption of these rules, which in the areas covered enable SBICs to avoid the application procedure, has considerably minimized the impact of Sections 17(a) and 17(d) on the normal operations of SBICs. The SBA also has taken action to minimize the impact of dual regulation under these Sections and under the SBA regulations. 21/

The failure of Congress in 1961 to act on certain proposals for limited statutory exemptions of SBICs from Sections 17(a) and 17(d) might be attributed to statements made by a former Commission Chairman that the Commission was seeking to deal with the same areas with which those proposals dealt through the adoption of rules, and as we have shown above, amendments to our rules were in fact issued to provide exemptions in those areas. However, at no time did Commission officials represent that the exemption power under Section 6(c) would be used to exempt SBICs except in accordance with the standards and conditions of that Section. After consideration of all the circumstances, we conclude that the grant in this case to all registered SBICs of a blanket exemption from the self-dealing requirements of Sections 17(a) and 17(d) would not constitute an appropriate exercise of our discretion to grant exemptions under Section 6(c). 22/

### III

#### Issuance of Stock Options

The examiner was of the view that registered SBICs should be allowed to issue stock options to officers and employees, subject to the adoption by SBA of regulations acceptable to this Commission with

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20/ See Form N-17D-1, prescribed by Rule 17d-2 as the form for reports required by Rule 17d-1(d) (3).

21/ SBA's Regulation 13 CFR 107.1004(e) provides that a registered SBIC which has been granted an exemption by this Commission under the Act or rules, for a transaction which would otherwise be subject to certain SBA prohibitions against conflicts of interest, shall be exempt from SBA's prohibitions, provided, however, that it report our action to the SBA and give public notice thereof.

22/ The cases of First National City Bank, Investment Company Act Release No. 4538 (March 9, 1969) and Ampal-American Palestine Trading Corporation, 25 S.E.C. 24 (1947), cited in support of the requested exemptions, do not aid applicants. Aside from the fact

respect to the issuance of restricted stock options. 23/ In support of that exemption, it is asserted that stock options are a widely used form of executive compensation, and that the inability of registered SBICs to offer such options has placed them at a competitive disadvantage in the personnel market and was responsible in part for their inability in certain instances to attract and retain high level officials, and constituted a serious burden upon registered SBICs. While the SBI Act does not bar the issuance of stock options by SBICs, 24/ the Investment Company Act, as noted above, contains various provisions prohibiting registered investment companies from issuing stock options or from issuing any securities except for cash or securities. 25/

In our opinion a conditional limited exemption to permit the issuance by registered SBICs of "qualified" stock options under the Internal Revenue Code and subject to the adoption of SBA regulations satisfactory to us imposing appropriate limitations on SBIC employee stock option plans, would not offend the policies and purposes of the Act. 26/

It cannot be disputed that stock options are today extensively employed as an element in management compensation, and we see no basis in the record for disagreeing with the SBA's view that the ability to issue such options would assist in alleviating personnel problems. The adverse factors which have been stated as resulting from the issuance of options are not in our opinion persuasive in the case of SBICs. The potential dilution of equity and voting power inherent in options is applicable to operating as well as investment companies, and has not prevented the use of options in companies outside the purview of the Act. And the assertions that stock options tend to encourage speculative portfolio investments and to introduce complexity and uncertainty into the capital structure are not peculiarly applicable to SBICs. Unlike investment companies generally, SBICs normally make, and indeed are designed to make, investments on a long

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22 Continued/

that each of these cases involved an application for exemption by one applicant, the fact situations are so different as to be clearly distinguishable from the instant application.

23/ Restricted stock options which qualify under Section 422 of the Internal Revenue Code of 1954 as amended are entitled to certain special tax treatment.

24/ SBA Regulations, 13 CFR 107.805, permit licensed SBICs to issue stock options to management and employees for, among other things, "services previously rendered to the Licensee not to exceed fair value thereof."

25/ See, e.g., Sections 18(d), 23(a) and 22(g).

26/ We agree with the Division that GWI's request to extend any exemption to all venture capital investment companies is not properly an issue in this case, having been belatedly raised by GWI in the brief which it filed after we granted the limited review of the initial decision requested by the Division.

term basis in unmarketable securities of marginal companies and their own securities are not sold on the basis of net asset value.

Moreover, we note that the restrictions placed on "qualified" options under Section 422 of the Internal Revenue Code contain a number of safeguards. In general options are qualified under the Code only if they are issued to employees pursuant to a plan, approved by the stockholders, which sets forth the aggregate number of shares which may be issued under options and the employees eligible to receive them, and such options may not be transferable and may not be exercisable after five years, their option price must be at least 100% of the fair market value of the shares at the time the option is granted, and the recipient may not own more than 10% of the voting power or value of all stock and may not resell his shares within three years of their acquisition. In any event, such further safeguards as may seem necessary for the protection of investors in SBICs would be provided through regulations to be adopted by SBA with respect to the issuance of options. We note that the brief of the SBA in this proceeding states there is no reason to doubt that our staff and the SBA staff can accommodate our requirements in this area. 27/

#### IV

#### Restrictions on Convertible Securities

The hearing examiner concluded that no showing had been made that it was necessary or appropriate in the public interest that an exemption be granted from the restrictions on the issuance of convertible securities. In its reply to the Division's brief on review, NASBIC requested review of the denial of an application for exemption to permit the issuance of convertible securities and, in support of such exemption, asserted that SBICs had encountered difficulties in seeking to make offerings of securities because of the restrictions on such issuances. The Division opposes NASBIC's request on the merits and also contends that the issue concerning convertible securities was not brought up for review and is therefore not properly before us.

While it would appear that review of the issue as to convertible securities was not sought in compliance with our Rules of Practice, in any event, we see no basis for disagreeing with the hearing examiner's conclusion that no showing has been made that it is necessary or appropriate in the public interest under the standards of Section 6(c) of the Act to grant this exemption.

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27/ We recognize that in 1961 Commission representatives opposed a proposed statutory amendment which would have permitted registered SBICs to issue stock options, and that Congress failed to enact such proposal into law. It does not follow from such failure to provide general statutory authorization for stock options that Congress was opposed to the exercise of the Commission's exemptive powers under Section 6(c) to permit such options under appropriate conditions. In fact, in an earlier report of the Senate Select Committee on Small Business, on review of the operations of the SBI Act, that Committee recommended that the Commission permit the use of restricted stock options by SBICs. Senate Report No. 1293, 86th Cong. 2d Sess., page 17 (1960).



Accordingly, an order will issue providing for a conditional exemption to permit the issuance of stock options by SBICs, and denying the other requested exemptions.

By the Commission (Chairman CASEY and Commissioners OWENS, SMITH, NEEDHAM and HERLONG), with Commissioners OWENS and HERLONG dissenting from Part III of the opinion relating to stock options in a separate statement, and Commissioners SMITH and NEEDHAM dissenting from Part II of the opinion relating to transactions with affiliates in a separate statement.

Theodore L. Humes  
Associate Secretary

Commissioners OWENS and HERLONG, concurring in part and dissenting in part:

We join in the views expressed in the Commission's opinion other than those in Part III granting SBICs exemption from the statutory prohibition relating to the issuance of stock options. We believe that such exemption is inconsistent with the purposes and policies of the Act, which as noted in the Commission's opinion contains various provisions prohibiting registered investment companies from issuing stock options or from issuing any securities except for cash or securities. 1/ The Commission has previously considered that the issuance of stock options by registered investment companies entails various consequences militating against the interests of investors which the Act seeks to protect, and also runs counter to the policy of the Act to prevent favored treatment to insiders as against securityholders as a whole. Among other factors, such options create a potential dilution of the equity and voting power, tend to encourage speculative portfolio investments, introduce complexity and uncertainty into the capital structure, and may impede future efforts to raise additional capital. For all of these reasons the Commission has consistently refused to permit issuance of stock options by registered investment companies. In doing so, it has concluded that the restrictions placed on stock options qualifying under Section 422 of the Code do not eliminate the dangers of harm to stockholders at which the Act is directed and are not sufficient to overcome the mandate manifest in the various provisions of the Act to keep the capital structure of an investment company free of such securities. 2/

With specific reference to SBICs, the Commission has stated these views to Congressional Committees in hearings on bills which would have permitted publicly held SBICs to issue restricted stock options, and such provisions were never adopted. 3/ In view of the failure of

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1/ See e.g., Sections 18(d), 23(a) and 22(g).

2/ See State Bond & Mortgage Company, Investment Company Act Release No. 4685 (August 25, 1966); Variable Annuity Life Insurance Company of America, Investment Company Act Release No. 4684 (August 25, 1966).

3/ See Hearings on S. 902, before a Subcommittee of the Senate Committee on Banking and Currency, 87th Cong., 1st Sess., pp. 115-117 (1961); Hearings on H.R. 6672, before Subcommittee No. 2 of the House Committee on Banking and Currency, 87th Cong., 1st Sess., pp. 82-84 (1961).

Congress to act on the proposals for legislative authorization, it would not seem appropriate for the Commission to grant such exemption by administrative action.

While we recognize that SBICs may differ in certain respects from certain other types of investment companies, particularly with respect to the pricing of securities and the nature of operations and investments, we do not consider that such differences affect the overall considerations set forth above. Again, as in the case of the requested exemption from Section 17, which the Commission has in this case denied, it is clear that while SBICs, as any other group of investment companies, would be relieved of various requirements if they were not subject to regulation under the Act, that fact in itself is not a sufficient basis for an exemption. We see no reason why it is more essential for registered SBICs to be able to issue stock options than for some other registered investment companies. Whatever benefits may be derived from the ability to issue options in terms of providing inducements to attract and retain management personnel, such benefits are outweighed by the potential abuses to which such options are subject and the Congressional policy against their use in the investment company field.

Commissioners SMITH and NEEDHAM, concurring in part and dissenting in part:

We join in the Commission's opinion except for Part II, which rejects an exemption of SBICs from the prohibitions of Sections 17(a) and 17(d) relating to transactions with affiliates. We are unable to conclude that the purposes and policies of the Act would be offended by conditionally granting such exemption. We would exempt an SBIC from those Sections with respect to any transaction for which an exemption is granted by the SBA under its conflict of interest regulations, subject to the conditions that the SBA regulations are amended so that "associate" is defined therein as broadly as its counterpart, affiliate, is defined under the Act, and that for a period of two years copies of applications by registered SBICs for exemptions pursuant to SBA regulations and of the exemptive orders issued by it be furnished to us.

In our opinion the term public interest, as used in Section 6(c) of the Act, includes consideration of any hardship and difficulty incidental to compliance with the Act and of the Congressional intent to facilitate the formation and growth of SBICs. The exemptions we would grant are consistent with and reflect the intention of Congress that dual regulation be eliminated by us within the standards and limitations of Section 6(c). 1/ We believe that with the adoption of a broader definition of the term "associate" SBA regulations would afford SBIC shareholders reasonably adequate protection against potential

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1/ As noted in the Commission's opinion, Congress directed as recently as 1967 that SBA annual reports include information regarding actions undertaken by the Commission to simplify compliance by SBICs with the Act and to eliminate overlapping regulation and jurisdiction.

conflicts of interest. Although SBA is concerned with encouraging the formation and growth of SBICs primarily through financing assistance, we would assume that it would also effectively supervise and regulate SBICs in a manner consistent with the protection of investors that is provided by us under the Act entrusted to our administration. In any event, the two-year reporting requirement that we would attach would afford the Commission an opportunity to examine exemptions granted by SBA and reconsider the question of exemption from our Act if that should appear necessary.

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-1825

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
May 14, 1971

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In the Matter of	:	
	:	ORDER GRANTING
THE NATIONAL ASSOCIATION OF SMALL BUSINESS	:	CONDITIONAL
INVESTMENT COMPANIES	:	EXEMPTION,
537 Washington Building	:	DENYING OTHER
Washington, D. C.	:	EXEMPTIONS, AND
	:	DECLARING
Investment Company Act of 1940 -	:	INITIAL DECISION
Section 6(c)	:	EFFECTIVE IN
	:	PART
	:	

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The National Association of Small Business Investment Companies, an association of Small Business Investment Companies licensed by the Small Business Administration ("SBICs"), applied pursuant to Section 6(c) of the Investment Company Act of 1940, for exemption of SBICs from various provisions of the Act. Following a hearing, the hearing examiner filed an initial decision in which he conditionally granted exemptions from Sections 17(a) and 17(d) prohibiting an affiliated person from engaging in certain dealings with an investment company and from Sections 18(d), 19 and 23 to the extent said Sections prohibit the issuance of stock options to officers and employees, and denied all other requests. The Division of Corporate Regulation of the Commission filed a petition for review, which was granted by the Commission, with respect to the hearing examiner's grant of exemptions. The Association requested review of the examiner's denial of exemption from the statutory restrictions respecting the issuance of convertible securities and Greater Washington Investors, Inc. requested that the exemption respecting the issuance of stock options be extended to all registered venture capital investment companies. Briefs in opposition to the grant of any exemptions were filed by the Division, briefs in support of exemptions for SBICs were filed by the Association and the Small Business Administration, and oral argument was presented to the Commission.

The Commission having this day issued its Findings and Opinion, on the basis of said findings and opinion;

IT IS ORDERED that the requests for exemptions from Sections 17(a), 17(d), 18, 19 and 23 of the Investment Company Act of 1940 to the extent the aforesaid provisions prohibit certain dealings by an affiliated person and the issuance of convertible securities be, and they hereby are, denied.

IT IS FURTHER ORDERED that the request for an exemption from Sections 18, 19 and 23 of the Act to permit the issuance by registered Small Business Investment Companies of stock options to officers and employees be, and it hereby is, granted, subject to the condition

that the exemption be limited to such options as qualify under Section 422 of the Internal Revenue Code as amended, and to the further condition that such exemption not be effective until notice is given of the adoption by the Small Business Administration of regulations satisfactory to this Commission with respect to the issuance of qualified options by Small Business Investment Companies.

FURTHER, the initial decision of the hearing examiner with respect to the requests for exemptions from other provisions of the Investment Company Act is hereby declared final and effective.

By the Commission.

Theodore L. Humes  
Associate Secretary

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