Effective Date but rather on the Order Date.[2]

3. Applicant's primary investment objective is to achieve long-term capital appreciation through investing in new and developing companies and in companies which are experiencing financial difficulties. Applicant does not have an external ''investment adviser'' within the meaning of the Act. Applicant's investment decisions are made by its officers and directors. Applicant typically provides a substantial commitment of capital to its investee companies and makes available to them significant managerial assistance.

4. Each non-employee director of applicant receives $1,500 for each Board meeting attended and reimbursement for expenses incurred in attending Board meetings. The non-employee directors do not receive any additional compensation for serving on applicant's audit or compensation committees. The non-employee directors do not receive compensation from applicant for providing managerial assistance to investees of applicant. Non-employee directors, may, however, receive nominal compensation from investee companies for serving on their boards of directors.

5. Each non-employee director of applicant, on the Order Date, will receive options to acquire 100,000 shares of applicant's common stock. Each person who becomes a non-employee director of applicant after the Order Date automatically will receive options to acquire 100,000 shares of applicant's common stock ninety days after the non-employee becomes a director. Currently, there are two non-employee directors who will be eligible to receive options under the Directors' Plan on the Order Date.

6. As of April 20, 1995, the aggregate amount of applicant's voting securities that would result from the exercise of all options issues or issuable under the Directors' Plan and applicant's existing employee stock option plan would be 1,289,786 shares, or approximately 19.99% of the 6,448,930 shares of applicant's common stock outstanding. Applicant has no warrants, options, or rights outstanding other than those granted to its directors, officers, and employees as part of its employee stock option plan.

7. Options granted under the Directors' Plan will expire within ten years from the date of grant. Fifty percent of the options granted will vest and become exercisable six months following the date of grant, with the remaining fifty percent of the options exercisable ratably on a monthly basis over the following eighteen months. The exercise price of options granted under the Directors' Plan will be the current market value of applicant's common stock on the date the option is granted.

8. If a non-employee director ceases to be a director or is removed as a director of applicant for cause, all options granted to that director will terminate on the date of his removal as a director. If a non-employee director dies while in office, all options granted to such director may be exercised by such person's estate at any time within one year after the director's death, but not later than the expiration of the original term of the option. If a non-employee director ceases to be a director of applicant for any reason other than cause or death, all options granted to such director will terminate three months after the date the director ceases to be a director.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of issuance; (c) the proposal to issue such options is approved by the company's shareholders, and is authorized by order of the Commission upon application; (d) the options are not transferable except for the dispositions by gift, will or intestacy; (e) no investment adviser of the company receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the company does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) provides that the amount of the company's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the company's outstanding voting securities except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, and employees pursuant to an executive compensation plan would exceed fifteen percent of the company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed twenty percent of the outstanding voting securities of such company.

4. Applicant asserts that the Directors' Plan and the stock options to be granted automatically to applicant's non-employee directors, and the stock options to be granted automatically to each new non-employee director of applicant who joins applicant's Board subsequent to the Order Date, pursuant to such plan would meet all applicable requirements of the Act: (a) The options will expire by their terms within ten years; (b) the exercise price of the options will not be less than the current market value of the underlying securities at the date of the issuance of the options; (c) the proposal to issue the options has been authorized by applicant's shareholders; (d) the options will not be transferable except for disposition by gift, will, or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan described in section 57(n). In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of applicant.

5. Applicant asserts that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program. Applicant believes that the skill and experience of its management and directors are critical to its success. Applicant asserts that it directors are actively involved in the oversight of applicant's affairs, and that it relies extensively on the judgment and experience of the directors. In addition, applicant represents that one or more of its officers and directors often are elected to the boards of directors of its portfolio companies.

6. Applicant submits that the terms of the Directors' Plan and the stock options

[2] Section 61(a)(3)(B) requires that the proposal to issue stock options to non-employee directors of a BDC, pursuant to an executive compensation plan, be authorized by SEC order before any such options are issued. Since the options initially were issued without the required SEC order, applicant cancelled the outstanding options and proposes to reissue them, in accordance with section 61(a)(3)(B), upon receiving the order requested hereby.