certain affiliated companies. In addition, the order would permit Private Equities and MorAmerica Capital to file certain reports required by the Exchange Act on a consolidated basis.

Applicants' Legal Analysis

## Capital Structure

- 1. Section 12(d) of the Investment Company Act
- a. Section 12(d)(1) of the Investment Company Act, made applicable to BDC's by section 60, limits the amount of securities a registered investment company may hold of other investment companies. Rule 60a-1 exempts a BDC's acquisition of the securities of a whollyowned SBIC from sections 12(d)(1) (A) and (C). Thus, the transfer of assets from Private Equities to MorAmerica Capital is exempt from these provisions. Section 12(d)(1), however, also applies to the activities of MorAmerica Capital, and loans made by Private Equities to MorAmerica Capital may violate section 12(d)(1) if such loans were considered purchases by MorAmerica Capital of the securities of Private Equities. Accordingly, applicants request an exemption from section 12(d)(1) to permit MorAmerica Capital's acquisition of those securities of Private Equities representing indebtedness.
- 2. Sections 57(a) (1), (2), and (3)
- a. Sections 57(a) (1), (2), and (3) of the Investment Company Act prohibit certain affiliated persons of a BDC from engaging in certain transactions with the BDC. Such affiliated persons include, with limited exceptions not relevant here, entities which control, are controlled by, or under common control with the BDC. Because Private Equities is the sole equity holder of MorAmerica Capital, Private Equities and MorAmerica Capital are affiliated persons of each other. Thus, applicants request an exemption from sections 57(a) (1), (2), and (3) for any transaction solely between Private Equities and MorĂmerica Capital.

b. In addition, Private Equities and/or MorAmerica Capital may wish to invest in certain Portfolio Companies that may be considered affiliates of the other investing company as a result of the other's ownership of five percent or more of the Portfolio Company's stock. Applicants will not in all instances be able to rely on rule 57b-1, which exempts from section 57(a) transactions between BDC's and specific downstream affiliates. Thus, applicants request an order to exempt any transaction from section 57(a) involving Private Equities and/or MorAmerica Capital and any Portfolio Company affiliated with either

or both, but only to the extent that any such transaction would not be prohibited if MorAmerica Capital and Private Equities were not separate companies.

- 3. Sections 18 and 61 of the Investment Company Act
- a. Section 18(a) of the Investment Company Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in the section. "Asset coverage" is defined in section 18(h) to mean the ratio which the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Section 61 makes section 18, with certain modifications, applicable to a BDC. Private Equities may be required to comply with the asset coverage requirements of section 18 on a consolidated basis because it may be an indirect issuer of senior securities with respect to MorAmerica Capital's indebtedness. Accordingly, applicants request relief exempting Private Equities and MorAmerica Capital from section 18(a) and 61(a) to permit the following transactions: (a) Private Equities and MorAmerica Capital to issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes, or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement; (b) MorAmerica Capital to obtain financing that the Small Business Administration permits for SBIC's; (c) MorAmerica Capital to borrow from Private Equities and Private Equities to borrow from MorAmerica Capital; and (d) Private Equities to guarantee any borrowings by MorAmerica Capital.
- 4. Sections 57 (a)(4) and (d) of the Investment Company Act and Rule 17d– 1 Thereunder
- a. Sections 57 (a)(4) and (d) of the Investment Company Act prohibit certain affiliated persons specified in section 57 (b) and (e), respectively, from participating in joint transactions with a BDC in contravention of rules and regulations prescribed by the SEC. Rule 17d-1 under the Act applies to transactions prohibited under sections 57 (a)(4) and (d) through section 57(i). Rule 17d-1 prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting such transaction.

b. Applicants request an order under sections 57 (a)(4) and (d) and rule 17d–1 to permit Private Equities or MorAmerica Capital to invest in Portfolio Companies in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if MorAmerica Capital were deemed to be part of Private Equities and not a separate company.

## Co-Investing

- 1. Section 57(a)(4) of the Investment Company Act and Rule 17d–1 Thereunder
- a. Applicants request an order to permit Private Equities and/or MorAmerica Capital to co-invest with companies managed by InvestAmerica and the Venture Group, including the Iowa Fund ("Managed Affiliates") now or in the future. Because InvestAmerica and the Venture Group are under common control, a Managed Affiliate also would be under common control with Private Equities and MorAmerica Capital. Thus, a Managed Affiliate would be affiliated with Private Equities and MorAmerica Capital under section 2(a)(3) of the Investment Company Act. Accordingly, applicants and the Managed Affiliates, absent an exemptive order, would be prohibited under section 57(a)(4) of the Investment Company Act from engaging in coinvestment transactions.

## Consolidated Reporting

- 1. Section 54 of the Investment Company Act and Section 12 of the Exchange Act
- a. Section 54 of the Investment Company Act provides that a closed-end company may elect BDC treatment under the Investment Company Act, if the company has either a class of equity securities registered under section 12 of the Exchange Act or has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. Section 12(g) of the Exchange Act requires certain issuers to register under the Exchange Act. Private Equities will have securities registered under section 12 of the Exchange Act. In order to elect BDC treatment, MorAmerica Capital must register its securities under the Exchange Act, even though it is not required to do so by section 12(g) of the Exchange Act.
- b. By filing a registration statement under section 12 of the Exchange Act, absent an exemption, MorAmerica Capital would be required by section 13(a) of the Exchange Act to file periodically with the SEC, even though