

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the requests, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 511 Union Street, Nashville City Center, Suite 2310, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan and pursuant to the Plan, the automatic grant of options to purchase shares of applicant's common stock to each director who is neither an officer nor an employee of applicant ("non-employee director") and to each new non-employee director of applicant who may be elected or appointed in the future to applicant's board of directors. Applicant will submit the Plan to applicant's shareholders for their approval at the next meeting for shareholders to be held in the Spring of 1996. Applicant will implement the Plan subsequent to receiving approval by applicant's shareholders and an order of the SEC ("Approval Date").

2. Applicant states that its primary investment objectives are to achieve a

high level of current income and long-term growth in the value of its assets. Applicant is primarily engaged in the business of making loans to small, privately owned companies whose securities have no established public market. Applicant's investment decisions are made by a loan approval committee comprised of senior management of applicant in accordance with policies approved by applicant's board of directors. Applicant makes available to its investee companies significant managerial assistance, and helps its investee companies establish boards of directors. In addition, applicant assists its investee companies in obtaining necessary financing and increasing the value of the investee companies. Applicant does not have an external "investment adviser" within the meaning of the Act.

3. Each non-employee director of applicant receives \$1,000 for each board and committee meeting attended and reimbursement for expenses incurred in attending meetings. Non-employee directors receive no other compensation for their services to applicant.

4. Grants of options under the Plan would be limited to (a) 18,000 shares of applicant's common stock for non-employee directors elected prior to December 1, 1994, (b) 12,000 shares of applicant's common stock for non-employee directors elected between December 1, 1994 and the Approval Date, and (c) 6,000 shares of applicant's common stock for non-employee directors elected or appointed after the Approval Date. On the Approval Date, the aggregate amount of applicant's voting securities that would result from the exercise of all options issued or issuable under the Plan and applicant's existing employee stock option plan would be 614,000 shares, or approximately 6.7% of the 9,195,116 shares of applicant's common stock outstanding as of September 30, 1995. Applicant has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted or to be granted as of the Approval Date to its directors, officers, and employees pursuant to the executive compensation plans described in the application.

5. Pursuant to the terms of the Plan, the options would vest and become exercisable on the first anniversary of the date of grant. Options would be exercisable at any time after they become exercisable until the tenth anniversary of the date of the grant. The exercise price of the options would be 100% of the current market value of applicant's common stock on the date of issuance.

6. In the event of a non-employee director's death or disability during the director's service, all of the director's unexercised options would immediately become exercisable for a period of three years following the date of death or one year following the date of disability, but in no event after the expiration dates of the options. In the event of the termination of a non-employee director for cause, any options held by the director not exercised shall terminate immediately upon termination of service and may not be exercised thereafter. If a non-employee director's service is terminated for any reason other than by death, disability, or by applicant for cause, his or her options may be exercised within one year following the date of termination, but in no event after the expiration date of the options.

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 the issuance of the options, or if no such market exists, the then current net asset value of the underlying securities; (c) the proposal to issue such options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC 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 BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC'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 BDC'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 the BDC's directors,

¹ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.