

### Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owning investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items). The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. The Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1996. The requested order would extend the exemption granted by the Prior Orders.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as: (a) whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. The Company believes that it meets these criteria.

4. The Company believes that its failure to become primarily engaged in a non-investment business by December 30, 1995 is a result of factors beyond its control. The existence of the FDIC Claims and the OTS Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the OTS Claims and the potential threat that the FDIC and the OTS would seek to enjoin any utilization of the company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims and the OTS Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company believes that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims and the OTS Claims make it necessary for the Company to seek relief extending the relief granted by the Prior Orders. This would allow the Company to seek an FDIC and OTS settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the tax loss.

7. The Company believes that the issuance of an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1996 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

### Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a-7(a)(10) under the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) if the Company become subject to the jurisdiction of the bankruptcy court, the Company needed not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) the Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions, and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or

series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f-2

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

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## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new information collection.

**DATES:** Comments should be submitted on or before December 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629. Copies of this collection can also be obtained.

### SUPPLEMENTARY INFORMATION:

*Title:* Characteristics of High-Technology Firms Study.

*Type of Request:* New Information Collection.

*Description of Respondents:* Small and large high-technology businesses.

*Burden Per Response:* 30 minutes.

*Annual Responses:* 960.

*Annual Burden:* 500.

*Comments:* Send all comments regarding this information collection to Edward Starr, Small Business Administration, Office of Advocacy, 409 3rd Street, S.W., Suite 5800, Washington, D.C. 20416. Phone Number: 202-205-6530. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Georgia Greene,

Chief, Administrative Information Branch.

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