



SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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April 22, 1988

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Original in file

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
United States House of Representatives
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Dingell:

In your letter of April 11, 1988, you requested the Commission's views concerning H.R. 3392, the Corporation for Small Business Investment Charter Act. This legislation would create the Corporation for Small Business Investment ("COSBI"), a government-sponsored private corporation, to provide capital for small business. Because I wished to respond to you as expeditiously as possible, the views expressed in this letter are my own and have not been reviewed by the full Commission.

At the request of Congressman John L. LaFalce, Chairman of the House Committee on Small Business, the Commission staff has previously reviewed this legislation. The staff's comments were conveyed in a letter dated February 3, 1988, from the Commission's General Counsel to Chairman LaFalce. The staff noted that the Commission has taken no position with respect to the advisability of forming a federal instrumentality to issue securities backed by loans to small business. Accordingly, the staff did not comment on the merits of the proposal.

The staff did, however, consider that part of Section 4 of H.R. 3392 creating a new Section 355 of the Small Business Investment Act of 1958. New Section 355 provides that COSBI's stock and other obligations "shall be deemed to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission." The staff noted that the exemption provided by Section 355 appeared to be consistent with the exemption from the registration provisions of the Securities Act of 1933, provided by Section 3(a)(2) of that Act for securities issued or

guaranteed by

any person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States.

The staff also noted that the treatment afforded COSBI's securities would be consistent with the treatment accorded similar federally-sponsored entities, such as the Student Loan Marketing Association. 1/

The staff's view that proposed Section 355 is consistent with Section 3(a)(2) of the Securities Act, with the relevant provisions of the Exchange Act, and with the treatment afforded similar entities correctly compares the bill with existing law. Congress has made increasing use of these statutory exemptions to create federally-sponsored corporations issuing securities that, while not backed by the full faith and credit of the United States, are nevertheless exempt from the registration and reporting provisions of the federal securities laws.

I recognize that the COSBI legislation pursues the important goal of assisting small business financing, a goal I also support. 2/ Nevertheless, as the bill is currently drafted, investors in securities issued by COSBI would not enjoy the

1/ Under Section 3(a)(42) of the Securities Exchange Act of 1934, COSBI's securities would be "government securities" and therefore exempt from the periodic reporting provisions as securities "which are designated, by statute specifically naming [the issuer], to constitute exempt securities within the meaning of the laws administered by the Commission." Dealers in COSBI's securities would be regulated under the Government Securities Act of 1986.

2/ The SEC Annual Government Business Forum on Small Business Capital Formation, a conference hosted by but not a part of the Commission, endorsed COSBI in its 1986 recommendations. These recommendations were sent to Congress in the Forum's report dated January 1987.

protections of the disclosure requirements of the Securities Act and the Exchange Act. This may be of concern, particularly because the Department of the Treasury and the Small Business Administration have expressed reservations about the adequacy of federal oversight of the corporation's operations. Congress should carefully consider the policy implications, including the effects on the securities markets, resulting from an exemption from the disclosure requirements of the federal securities laws for a new class of quasi-governmental securities not accompanied by a full guarantee from the United States.

In your letter, you have also raised the question of whether proposed Section 9 of the bill would waive operation of the antifraud provisions of the federal securities laws. Section 9 provides:

Except as otherwise provided in this Act, or as otherwise provided by the Corporation or by the laws hereafter enacted by the Congress expressly in limitation of provisions of this Act, the powers and functions of the Corporation and of the Board of Directors shall be exercisable, and the provisions of this Act shall be applicable and effective, without regard to any other law.

I would strongly oppose any provision that would bar the application of the antifraud provisions of the federal securities laws to the securities to be issued by COSBI. However, I do not believe that Section 9 should be interpreted as doing so. Under traditional principles of statutory construction, the applicability of the federal securities laws to COSBI's securities would be controlled by the specific language of new Section 355, rather than the general language of Section 9.

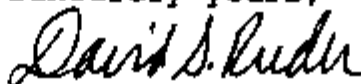
Under new Section 355, COSBI's securities would be exempt from the laws administered by the Commission "to the same extent" as are securities of the United States. As you know, Congress, the Commission, and the courts have consistently considered the antifraud provisions of the federal securities laws to apply to such securities. The language in the legislation could be clarified to avoid any possibility of an interpretation that the antifraud provisions do not apply. On balance, however, I do not recommend such a clarification, because it might lead to an erroneous

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construction of similar statutes, such as those authorizing Sallie Mae or the Federal National Mortgage Association, that do not specifically refer to the antifraud provisions.

Please let me know if I can be of further assistance in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "David S. Ruder".

David S. Ruder
Chairman