

ADAMS EXPRESS CO
Form 40-APP
April 22, 2014

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE
COMMISSION

File No.

In the Matter of
THE ADAMS EXPRESS COMPANY
and
PETROLEUM & RESOURCES
CORPORATION

Application for an Order Pursuant to
Section 6(c) of the Investment Company
Act of 1940 Granting an Exemption from
Sections 18(d) and 23(a) and (b) of the Act,
Pursuant to Section 23(c)(3) of the Act
Granting an Exemption from Section 23(c)
of the Act, and Pursuant to Rule 17d-1
Under the Act to Permit Certain Joint
Transactions Otherwise Prohibited by
Section 17(d) of the Act

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I. INTRODUCTION

The Adams Express Company, a Maryland corporation (“Adams”), and Petroleum & Resources Corporation, a Maryland corporation (“Petroleum”, Adams and Petroleum are also each individually referred to as the “Applicant” and collectively, as the “Applicants”), internally-managed, closed-end investment companies registered under the Investment Company Act of 1940 (the “Act”),¹ hereby submit this application (the “Application”) to the Securities and Exchange Commission (the “Commission”) for an order (the “Order”) pursuant to Sections 6(c) of the Act granting an exemption from Sections 18(d) and 23(a) and (b) of the Act, pursuant to Section 23(c)(3) of the Act granting an exemption from Section 23(c) of the Act, and pursuant to Rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by Section 17(d) of the Act.

This Application is for an Order granting relief to permit the adoption of The Adams Express Company 2015 Incentive Compensation Plan (the “2015 Adams Plan”) and the Petroleum & Resources Corporation 2015 Incentive Compensation Plan (the “2015 Petroleum Plan” and together with the 2015 Adams Plan, the “Plans”), substantially in the forms attached as Exhibits A and B.

¹ Unless otherwise indicated, all Section references are to the Act.

The Plans would permit the Applicants to issue stock options (“Options”), stock appreciation rights (including freestanding and tandem stock appreciation rights) (“Stock Appreciation Rights”), restricted shares of stock (“Restricted Stock”), restricted stock units (“Restricted Stock Units”), deferred stock units (“Deferred Stock Units”), shares of common stock granted as a bonus (“Bonus Stock”) and other equity-based compensation, including performance based awards (“Performance Awards”) and awards denominated in cash (“Cash Awards”) (each award is referred to individually as an “Award” and, collectively, as “Awards”), to Eligible Persons², subject to the terms and conditions discussed below. In addition, the Plans would permit dividend equivalents to be awarded in connection with any Awards under the Plans while the Awards are outstanding or otherwise subject to a restriction period on a like number of shares of common stock of the Applicants. Furthermore, certain Awards may be subject to performance conditions as may be specified by the respective Committees (as defined below).

²“Eligible Persons” is defined to mean any person, including officers, in the regular employment of the Applicants and/or their subsidiaries on a full-time basis or of both Adams (and/or any subsidiary thereof) and Petroleum (and/or any subsidiary thereof) on a combined full-time basis (“Employees”), and the respective directors of the Applicants who at the time an Award is to be granted under each Plan are not Employees (“Non-Employee Directors”). Any future subsidiaries of the Applicants will comply with the terms and conditions of any order granted pursuant to this application.

The adoption of the Plans and their operation raise issues under Sections 17(d), 18(d) and 23(a), (b) and (c) of the Act and Rule 17d-1 thereunder.

As discussed in greater detail below, the Applicants note that the relief sought in this Application is largely similar to the relief provided to Central Securities Corporation (“Central”) in an order granted to Central by the Commission on February 1, 2012 (the “2012 Order”), to the Applicants in an order granted to the Applicants on March 8, 2005 (the “2005 Order”), and to Baker, Fentress & Company (“Baker Fentress”) in an order granted to Baker Fentress by the Commission on December 22, 1998 (the “1998 Order”). The Applicants believe that the facts and circumstances relating to the 2012 Order, the 2005 Order and the 1998 Order are substantially similar to the facts and circumstances relating to the relief sought in this Application with respect to Adams and Petroleum.

II. BACKGROUND INFORMATION CONCERNING THE APPLICANTS

Each of the Applicants has been engaged in business as an internally-managed, closed-end investment company since 1929 and each is a registered closed-end investment company under the Act. Adams’ principal business is the ownership and management of its investment portfolio, which consists predominantly of equity securities. Petroleum’s principal business is also the ownership and management of its investment portfolio, which consists predominantly of equity securities and emphasizes investments in energy and natural resources companies.

Adams is currently authorized to issue one hundred fifty million (150,000,000) shares of common stock, par value \$0.001 per share (“Adams Stock”). As of March 31, 2014, 94,048,123 shares of Adams Stock were outstanding. These shares are listed on the New York Stock Exchange and are held by approximately 39,401 beneficial owners. In addition, Adams has ten million (10,000,000) authorized and unissued shares of preferred stock, par value \$0.001 per share. Other than for outstanding Awards under the previously-approved equity compensation plans, Adams does not have any other securities outstanding. Petroleum is currently authorized to issue fifty million (50,000,000) shares of common stock, par value \$0.001 per share (“Petroleum Stock”). As of March 31, 2014, 26,728,828 shares of Petroleum Stock were outstanding. These shares are listed on the New York Stock Exchange and are held by approximately 26,988 beneficial owners, including Adams, which beneficially owns approximately 8.2% of Petroleum stock as of March 31, 2014.³ In addition, Petroleum

³ Adams first acquired an ownership interest in Petroleum in 1929, and by 1940 Adams owned approximately 7.1% of the outstanding voting shares of Petroleum. Through continued ownership of these shares, with the additions from stock dividends and participation in rights offerings discussed below, Adams presently owns approximately 8.2% of the outstanding voting shares of Petroleum. Section 12(d) of the Act, as originally enacted, restricted the purchase or other acquisition, after the enactment of the Act, by investment companies of securities issued by other investment companies under specified circumstances. (Section 12(d) of the Act was amended in 1970, but still restricts the purchase or other acquisition by investment companies of securities issued by other investment companies under specified

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has five million (5,000,000) authorized and unissued shares of preferred stock, par value \$0.001 per share. Other than for outstanding Awards under the previously-approved equity compensation plans, Petroleum does not have any other securities outstanding.

As of the date of this Application, Adams has eight directors (seven of whom are neither Employees nor “interested persons” of Adams as defined in Section 2(a)(19) of the Act (“Non-Interested Directors”)) and eighteen Employees (including five executive officers), and Petroleum has eight directors (seven of whom are Non-Interested Directors) and sixteen Employees (including five executive officers). The boards of Adams and Petroleum are comprised of the same individuals. Of the Employees identified above, there are fifteen Employees who serve both Adams and Petroleum.

On June 21, 1985, the Commission issued an exemptive order (the “1985 Order”) granting exemptions from Sections 17(d), 18(d) and 23(a), (b) and (c) of the Act to permit internally-managed, closed-end investment company members of the

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circumstances.) Section 12(d) of the Act, both as originally enacted and as amended to date, excepts from the restriction on acquisitions and purchases securities received as dividends. As noted above, Adams’ initial acquisition and ownership of shares of Petroleum pre-dated the Act. Since the Act became effective, Adams has not purchased or otherwise acquired shares of Petroleum other than through stock dividends, with the exception of acquisitions made in 1956 and 1969 in connection with certain rights offerings by Petroleum (each of which were made pursuant to exemptive orders issued by the Commission, see In the Matter of The Adams Express Company, Investment Company Act Release No. 2363 (May 28, 1956) and In the Matter of The Adams Express Company, Investment Company Release No. 5744 (July 16, 1969)).

Association of Publicly Traded Investment Funds (“APTIF”) to offer their key employees deferred equity compensation in the form of stock options or stock appreciation rights, subject to the representations and conditions set forth in APTIF’s application for exemption, as amended (the “APTIF Application”). Both Adams and Petroleum were members of APTIF, which voluntarily dissolved subsequent to the issuance of the 1985 Order, and are currently members of the Closed-End Division of the Investment Company Institute, into which the operations of APTIF were consolidated. At their respective annual meetings held in March 1986, the stockholders of the Applicants approved the Adams Stock Option Plan (the “1985 Adams Plan”) and the Petroleum Stock Option Plan (the “1985 Petroleum Plan”, and together with the 1985 Adams Plan, the “1985 Stock Plans”). The 1985 Stock Plans were adopted in reliance on the 1985 Order and drafted in compliance with the representations and conditions set forth in the APTIF Application. On March 8, 2005, the Commission issued the 2005 Order granting exemptions from Sections 17(d), 18(d) and 23(a), (b) and (c) of the Act to the Applicants. At their respective annual meetings held in April 2005, the stockholders of the Applicants approved the Adams 2005 Equity Incentive Compensation Plan (the “2005 Adams Plan”) and the Petroleum 2005 Equity Incentive Compensation Plan (the “2005 Petroleum Plan”, and together with the 2005 Adams Plan, the “2005 Incentive Plans”). The 2005 Incentive Plans were adopted in reliance on the 2005 Order and replaced the 1985 Stock Plans, which were terminated thereafter.

As of March 31, 2014, 3,045,014 shares of Adams Stock were available for future grant under the 2005 Adams Plan and 744,383 shares of Petroleum Stock were available for future grant under the 2005 Petroleum Plan. As of March 31, 2014, the number of shares subject to outstanding awards was approximately 190,433 shares of Adams Stock under the 2005 Adams Plan and approximately 59,979 shares of Petroleum Stock under the 2005 Petroleum Plan. The 2005 Incentive Plans expire by their terms on April 27, 2015 and no further grants would be made under the 2005 Incentive Plans following approval of the Plans by the Applicants' stockholders at the respective annual meetings expected to be held in April 2015. Existing awards made under the 2005 Incentive Plans would remain outstanding and would remain subject to the terms and conditions of the 2005 Incentive Plans.

III. REASONS FOR REQUEST

Because the investment management business is highly competitive, the Applicants believe that their successful operation will depend on their ability to attract, motivate and retain their employees with competitive compensation packages similar to those offered by their competitors. Many of the companies with whom the Applicants compete for management talent are not registered investment companies subject to the restrictions of the Act and are thus able to offer their directors, officers and other personnel various types of non-cash, deferred compensation, including opportunities for

equity participation in the enterprise, as well as cash incentive and performance based compensation. In the application for the relief provided by the 2005 Order, the Applicants noted the severe competitive disadvantage they would suffer if they were not permitted to provide equity-based compensation. Central, in its application for the relief provided by the 2012 Order, also noted that it would suffer similar competitive disadvantage if it were not permitted to provide equity-based compensation. The Applicants continue to believe that they could suffer such a disadvantage unless the Order sought in this Application is granted and thus are seeking the Order in order to adopt the Plans to replace the 2005 Incentive Plans that are expiring. Similar to the 2005 Incentive Plans, the Plans would, among other things, continue to give the Applicants the flexibility to offer other equity-based compensation to the Employees based on Adams Stock and Petroleum Stock, as applicable, including shares of Restricted Stock, Restricted Stock Units and Deferred Stock Units. The Plans also would permit the Applicants to issue Restricted Stock Units, Deferred Stock Units and dividend equivalents to Non-Employee Directors serving on the Applicants' boards of directors (the "Boards"), a compensation method widely regarded as a desirable way to ensure that director and stockholder interests are aligned.

IV. DESCRIPTION OF THE PLANS

The relief sought in the Application would:

- permit the Applicants to adopt and operate the Plans, pursuant to which incentive compensation based on Adams Stock and Petroleum Stock, as applicable, could be granted to Eligible Persons;
- permit the Applicants, pursuant to the Plans, to issue Awards that expire later than 120 days after their issuance and that are not issued exclusively and ratably to their existing stockholders;
 - permit the Applicants, pursuant to the Plans, to issue their securities for services;
- permit the Applicants, pursuant to the Plans, to issue shares of Adams Stock and Petroleum Stock, as applicable, to Eligible Persons at a price below the stock's net asset value on the date of issue;
- permit the Applicants, pursuant to the Plans, to repurchase their securities from participants in the Plans; and
- permit the Applicants, pursuant to the Plans, to pay performance-based compensation, including compensation satisfying the requirements of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code").

Each Plan, in its proposed form (substantially in the form attached as Exhibits A and B), has been approved by the applicable Board, including a majority of the Non-Interested Directors of the applicable Applicant, which directed the filing of this Application with the Commission. To the extent any material revisions are made to the proposed form of a Plan before its becoming final, the revised form of the Plan will be subject to final approval by the applicable Board, including a majority of the Non-Interested Directors of each Applicant. Subject to receipt of the Order, each Applicant's Board is expected to approve the submission of the respective Plan, in its final form, to

stockholders for approval at each Applicant's annual meeting expected to be held in April 2015 or as soon thereafter as practicable. The Plans, in their final forms, will become effective upon approval by stockholders. In addition, each Applicant will submit its respective Plan to stockholders for approval once every five years.

A. Administration and Specifications of the Plans.

Each of the Plans will be administered by the Compensation Committee comprised of members of the sponsoring Applicant's Board (the "Committees"). Each Committee is and will be composed solely of three or more directors who (i) are Non-Interested Directors of the relevant Applicant, (ii) are "non-employee directors" within the meaning of Rule 16b-3 under the Securities Exchange Act of 1934 (the "Exchange Act") and (iii) are "outside directors" as defined under Section 162(m) of the Code. Currently, each Committee is composed of four directors, each of whom satisfies these criteria.

The Plans permit the applicable Committee to approve, subject to the ratification by the respective Board, the grants of Awards.

Grants under each Plan may be made only to Eligible Persons. In any thirty-six month period during which a Plan is in effect, an Eligible Person may not be granted Awards under that Plan relating to more than (i) 300,000 shares of stock in respect of Options, (ii) 300,000 shares of stock in respect of Stock Appreciation Rights, (iii) 300,000 shares of stock in respect of Restricted Stock, (iv) 300,000 shares of stock in respect of Restricted Stock Units, (v) 300,000 shares of stock in respect of Deferred

Stock Units and (vi) 300,000 shares of stock in respect of Bonus Stock. Outstanding awards granted under the 2005 Incentive Plans would not be taken into account in calculating these limitations. In addition, in no event may the total number of shares of Adams Stock or Petroleum Stock, as the case may be, with respect to which all types of Awards denominated by reference to shares of Adams Stock or Petroleum Stock, as applicable, may be granted to an Eligible Person under the applicable Plan exceed 300,000 shares of stock within any thirty-six month period during which the Plan is in effect. These limitations are intended to meet the technical requirements imposed by the Code. In any event, no Eligible Person may be granted Awards denominated by reference to Adams Stock or Petroleum Stock or be issued Adams Stock or Petroleum Stock in settlement of Awards not initially denominated by reference to Adams Stock or Petroleum Stock that in the aggregate exceed 35% of the shares of Adams Stock or Petroleum Stock, as the case may be, reserved for issuance under the Plans, subject to adjustments under the Plans. Cash Awards that are settled in cash will not count against the limit described in the preceding sentence.

The type and amount of Awards that may be made to Non-Employee Directors under the Plans are limited and are described below.

B. Shares Available Under the Plans; Terminating the 2005 Incentive Plans.

The total number of shares of each Applicant's stock reserved and available for delivery in connection with Awards under the applicable Plan (other than any shares of Adams Stock or Petroleum Stock, as applicable, issued in payment of dividend

equivalents) is 4% of the outstanding shares of the applicable Applicant as of the effective time of the Plan. As of March 31, 2014, this represents 3,761,925 shares of Adams Stock and 1,069,153 shares of Petroleum Stock. As discussed in greater detail below, the 4% limitation is lower than the 4.4% threshold approved by the Commission in the 2012 Order, the same as the 4% threshold approved by the Commission in the 2005 Order and significantly lower than the 10% threshold approved by the Commission in the 1998 Order and the 7½% threshold approved by the Commission in the 1985 Order.

In the event that a dividend, capital gain distribution or other distribution, recapitalization, forward or reverse stock split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange, liquidation, dissolution or other similar corporate transaction affects the common stock of an Applicant, then the relevant Committee will, in such manner as it may deem equitable, adjust any or all of (i) the aggregate number of shares subject to the relevant Plan; (ii) the number and kind of shares which may be delivered under the relevant Plan; (iii) the number and kind of shares by which per-person Award limitations are measured; (iv) the number and kind of shares subject to or deliverable in respect of outstanding Awards; and (v) the exercise price or grant price relating to any Award. In addition, after the occurrence of any such corporate transaction, the relevant Committee will also have the authority to make provision for payment of cash or other property in respect of an Award. Furthermore, in the event a capital gains distribution is made to the Applicants' stockholders, the exercise price of outstanding Options and the grant price of outstanding stock appreciation rights

issued under the Plans may be reduced to reflect any such distribution made after the date of grant (provided that no such reduction will be made that would reduce the exercise price or grant price below zero). However, no adjustments will be made in the case of a cash income dividend.

In addition, the Plans provide that shares of Adams Stock and Petroleum Stock, as the case may be, subject to Awards under the Plans that are canceled, expired, forfeited, settled in cash or otherwise terminated without a delivery of shares to an Eligible Person, plus (i) the number of shares withheld in payment of any exercise or purchase price of an Award or taxes relating to any Award and (ii) the number of shares surrendered in payment of any exercise or purchase price of an Award or taxes relating to any Award, will again be available for Awards under the relevant Plan, except that if any such shares could not again be available for Awards to a particular Eligible Person under any applicable law or regulation, such shares will be available exclusively for Awards to Eligible Persons who are not subject to such limitation. Notwithstanding the foregoing, any shares of Adams Stock and Petroleum Stock subject to an Option (or part thereof) that is canceled upon exercise of a stock appreciation right will be treated as if the Option itself were exercised and such shares will no longer be available for Awards under the relevant Plan.

As noted above, 3,045,014 shares of Adams Stock currently remain available for future grants under the 2005 Adams Plan and 744,383 shares of Petroleum Stock currently remain available for future grants under the 2005 Petroleum Plan as of March

31, 2014. The 2005 Incentive Plans expire by their terms on April 27, 2015 and no further grants would be made under the 2005 Incentive Plans following approval of the Plans by stockholders at the respective annual meetings. However, outstanding awards under each 2005 Incentive Plan would remain outstanding and would remain subject to the terms and conditions of the respective 2005 Incentive Plan.

C. Dilution Resulting from the Plans.

The maximum potential dilution to an Applicant's stockholders (in terms of net asset value per share) that would result from grants of Awards under a Plan would be approximately 3.85%. This assumes that immediately after the effective date of the Plan, Awards covering all shares of the Applicant's stock available under the Plan are granted as Restricted Stock (which will have the same potential dilutive impact on the Applicants' stock as would the issuance of the Applicants' common shares). The Applicants note, however, that Options may also be granted under the Plans which would limit dilution to the Applicants' stockholders as the exercise price of Options must be at least 100% of the Fair Market Value⁴ of the stock on the date of grant, subject to adjustment to reflect capital gains distributions after the date of grant.

⁴For purposes of the Plans, "Fair Market Value" of an Applicant's stock equals the mean of the high and low sale prices per share of the stock of the Applicant as reported on the New York Stock Exchange—Composite Transactions (or such other national securities exchange or automated inter-dealer quotation system on which the

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Awards granted and outstanding under the 2005 Incentive Plans were not factored into the determination of maximum potential dilution under the Plans. As of March 31, 2014, outstanding awards under the 2005 Incentive Plans consisted of the following: (i) 154,160 shares of Restricted Stock with respect to Adams Stock and 42,046 shares of Restricted Stock with respect to Petroleum Stock, (ii) rights to receive 15,750 shares of Adams Stock pursuant to Restricted Stock Units and rights to receive 8,400 shares of Petroleum Stock pursuant to Restricted Stock Units, and (iii) rights to receive 20,523 shares of Adams Stock pursuant to Deferred Stock Units and rights to receive 9,533 shares of Petroleum Stock pursuant to Deferred Stock Units. This represents only 0.20% and 0.22% of the currently outstanding shares of Adams Stock and Petroleum Stock on a fully diluted basis, respectively. Moreover, the 2005 Incentive Plans will expire by their terms on April 27, 2015 and no further grants would be made under the 2005 Incentive Plans following approval of the Plans by stockholders at the respective annual meetings. Based on the foregoing, the Applicants believe that the potential dilutive effect of outstanding grants under the 2005 Incentive Plans is de minimis.

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stock has been duly listed and approved for quotation and trading) on the relevant date, or if no sale of the stock is reported for such date, the next preceding day for which there is a reported sale.

D. Awards under the Plans.

1. Types of Awards.

The Plans are flexible and permit the relevant Committee, subject to ratification by the applicable Board, to grant various types of Awards to Eligible Persons who are Employees, subject to the limitations summarized below. Grants under the Plans to Non-Employee Directors are limited to those described in Section IV.D.3 below:

- **Stock Options.** The relevant Committee may grant Options to Eligible Persons, provided that the per share exercise price of such Options is not less than the Fair Market Value of a share of the Applicant's stock on the date of the grant, except as such price is adjusted to reflect certain corporate actions. The relevant Committee will determine the time or times at which, or the circumstances under which, an Option may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the methods by which such exercise price may be paid or deemed to be paid (e.g., when an Eligible Person is permitted to pay the exercise price using stock, but is not required physically to deliver a stock certificate, the Eligible Person can attest to the "deemed delivery" of his/her stock certificate), the form of such payment (which may include cash or stock) and the methods by or forms in which common stock will be delivered or deemed to be delivered to Eligible Persons. Except as the applicable Committee determines otherwise, Options will become exercisable after the first anniversary of the date of grant, subject to the Eligible Person's continued employment or service with the applicable Applicant. Options issued under the Plans will expire no later than ten years from the date of grant. In addition, if and to the extent provided for in the applicable Award agreement, the Option price per share may be reduced after grant of the Option to reflect capital gains distributions to an Applicant's stockholders made after the date of grant, provided that no such reduction will be made which will reduce the

Option price below zero.⁵ Unless otherwise determined by the applicable Committee, if (w) an Eligible Person's employment with an Applicant terminates by reason of death or disability, all of the Eligible Person's Options will be exercisable for one year or until the expiration date set forth in the applicable Award agreement if earlier; (x) an Eligible Person's employment with an Applicant terminates by reason of retirement (and, except as otherwise determined by the applicable Committee, the Eligible Person executes a non-competition, non-solicitation, non-disclosure and non-disparagement agreement in a form satisfactory to the Applicant), the Eligible Person's vested Options will be exercisable for three years or until the expiration date set forth in the applicable Award agreement if earlier; (y) an Applicant terminates the Eligible Person's employment without cause, the Eligible Person voluntarily resigns or, in the case of an Eligible Person principally employed by a subsidiary of the Applicant, the subsidiary is divested and as a result thereof the Eligible Person is no longer employed by the Applicant or another subsidiary of the Applicant, the Eligible Person's vested Options will be exercisable for three months or until the expiration date set forth in the applicable Award agreement if earlier; or (z) an Eligible Person's employment with an Applicant terminates for any other reason (including termination for cause), the Eligible Person's Options will terminate and cease to be exercisable immediately.

- **Stock Appreciation Rights.** The applicable Committee may grant Stock Appreciation Rights to Eligible Persons. A Stock Appreciation Right is a right to receive, upon exercise, the excess of (i) the Fair Market Value of one share of an Applicant's stock, as the case may be, on the date of exercise over (ii) the Stock Appreciation Right's grant price. The applicable Committee will determine at the date of grant or thereafter, the time or times at which and the circumstances under which a Stock

⁵ As described in the application for the 1985 Order, these adjustments reflect the unique nature of investment companies which, as "regulated investment companies", may distribute up to 100% of their realized net long and short term capital gains and thus be relieved of federal income tax obligations on these gains at the investment company level. As a result of these adjustments, under current Code provisions, the grants would not qualify as incentive stock options.

Appreciation Right may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the method of exercise, the method of settlement, the form of consideration payable in settlement, the method by or forms in which the stock will be delivered or deemed to be delivered to Eligible Persons, whether or not a Stock Appreciation Right is granted as a tandem award⁶ and any other terms and conditions of any Stock Appreciation Right. Except as the applicable Committee determines otherwise, Stock Appreciation Rights will become exercisable after the second anniversary of the date of grant, subject to the Eligible Person's continued employment or service with the applicable Applicant. Stock Appreciation Rights issued under the Plans will expire no later than ten years from the date of grant, except that, unless otherwise determined by the applicable Committee, they will be subject to substantially the same termination provisions as for Options described above. In addition, if and to the extent provided for in the applicable Award agreement, the grant price of a Stock Appreciation Right may be reduced after grant of the Stock Appreciation Right to reflect capital gains distributions to an Applicant's stockholders made after the date of grant, provided that no such reduction will be made which will reduce the grant price of the Stock Appreciation Right below zero. Grant of a Stock Appreciation Right will be treated as issuance of a share of stock of the issuing company for purposes of determining the number of shares available under the Plan as long as that Stock Appreciation Right is outstanding. Stock issued when a Stock Appreciation Right is settled (or, in the case of a Stock Appreciation Right settled in cash, stock that would have been issued if the Stock Appreciation Right were settled in stock) will be deducted from the number of shares available under the Plan. The grant of a tandem Stock Appreciation Right with an Option will not be treated as an additional issuance of stock because the exercise of the Option or the tandem Stock Appreciation Right would cancel the other. Thus, the grant of a tandem

6A Tandem Award is an Award granted in tandem with another Award, usually to provide an alternative form of compensation of comparable economic value. For example, an Option may be granted in tandem with a Stock Appreciation Right, with the exercise of either canceling the other.

stock appreciation right with an option will be treated under the Plans as one share not two shares.

- **Restricted Stock.** Each Plan permits the applicable Committee to make grants of Restricted Stock of the Applicant's stock, as the case may be, to Eligible Persons. Restricted Stock is stock that is subject to restrictions on transferability, risk of forfeiture and/or other restrictions. Except to the extent restricted under the terms of the Plans and any Award agreement relating to the Restricted Stock, an Eligible Person granted Restricted Stock has all the rights of a stockholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restricted period applicable to the Restricted Stock, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the Eligible Person. Except as the applicable Committee determines otherwise, restrictions on Restricted Stock will lapse in three equal installments after each of the first, second and third anniversaries of the date of grant, subject to the Eligible Person's continued employment or service with the applicable Applicant. Except as the applicable Committee determines otherwise, effective immediately after termination of an Eligible Person's employment during the applicable restriction period, Restricted Stock that is at that time subject to restrictions will be forfeited and reacquired by the relevant Applicant, provided that the Committee may provide, by rule or regulation or in any Award agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part the forfeiture of Restricted Stock.
- **Restricted Stock Units.** Each Plan permits the applicable Committee to make grants of Restricted Stock Units to Eligible Persons. Restricted Stock Units represent rights to receive stock and are subject to certain restrictions and a risk of forfeiture. Except as the applicable Committee determines otherwise and except with respect to Restricted Stock Units granted to Non-Employee Directors as described below, restrictions on Restricted Stock Units will lapse and stock in respect of the Eligible Person's Restricted Stock Units will be delivered to the Eligible Person in three equal installments after the first, second and third anniversaries of the date of grant, subject to the Eligible Person's continued employment or service with the applicable Applicant. Except as the applicable Committee determines otherwise, effective immediately after termination

of an Eligible Person's employment or service during the applicable restriction period, Restricted Stock Units that are at that time subject to restrictions will be forfeited and reacquired by the applicable Applicant, provided that the Committee may provide, by rule or regulation or in any Award agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part the forfeiture of Restricted Stock Units.

- **Deferred Stock Units.** Each Plan permits the applicable Committee to grant Deferred Stock Units to Eligible Persons, which are rights to receive stock, cash or a combination thereof at the end of a deferral period specified by the applicable Committee (or if permitted by the Committee, as elected by the Eligible Person). Deferred Stock Units may or may not be subject to restrictions (which may include a risk of forfeiture), which restrictions will lapse at the expiration of the specified deferral period or at earlier times, as determined by the applicable Committee. Except as the applicable Committee determines otherwise, effective immediately after termination of an Eligible Person's employment during the applicable deferral period or portion thereof to which forfeiture conditions apply, all Deferred Stock Units that are at that time subject to deferral (other than a deferral at the election of an Eligible Person) will be forfeited, provided that the Committee may provide, by rule or regulation or in any Award agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Deferred Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part the forfeiture of Deferred Stock Units.
- **Bonus Stock.** Each Plan permits the applicable Committee to make grants of Bonus Stock. Except as otherwise determined by the applicable Committee, Bonus Stock will vest immediately and shall not be subject to any restrictions.
- **Cash Awards.** The applicable Committee is also authorized to grant Cash Awards. A Cash Award confers on the Eligible Person to whom it is granted a right to receive cash (subject to the last sentence hereof), the amount of which may be based on the achievement, over a specified period of time, of performance goals. Cash Awards may be satisfied in cash, by delivery of the number of Shares valued at the Fair Market Value

on the payout date (or, in the discretion of the applicable Committee, the day immediately preceding that date), or a combination thereof, as determined by the applicable Committee at the date of grant or thereafter.

In addition, the Plans permit, to the extent provided for in the applicable Award agreement, recipients of Awards to receive dividend equivalents in respect of such Awards or any portion thereof as specified in the applicable Award agreement equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of common stock. Any such dividend equivalents will be paid in shares of common stock, cash or a combination thereof as and when provided for in the applicable Award agreement.

2. Performance Awards.

Under the Plans, the right of an Eligible Person to receive a settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the applicable Committee. "Performance Awards" are defined under the Plans as Awards granted to Eligible Persons that are conditioned upon satisfaction, during a period of at least one year but no more than ten years, of performance criteria established by the relevant Committee. For Performance Awards that are designated by the applicable Committee to qualify as "performance-based compensation" for purposes of Code Section 162(m), the grant, exercise and/or settlement of such Award will be contingent upon the achievement of pre-established performance goals, which will consist of one or more business criteria set by the Committee and a targeted level or levels of performance. The performance goals will be objective and will otherwise meet

the requirements of Code Section 162(m), including the requirement that the level or levels of performance targeted by the applicable Committee results in the achievement of performance goals being “substantially uncertain”. Achievement of a performance goal may be measured over a performance period of up to ten years for a Performance Award. The relevant Committee may reduce the amount of a payment to be made in connection with a Performance Award, but may not increase such amount unless the Committee determined at the time of grant that the Award was not intended to qualify as “performance based compensation” for purposes of Code Section 162(m).

3. Non-Employee Director Awards.

25% of the value of each Non-Employee Director's total base annual retainer for each calendar year (which amount will be pro-rated in the event such Non-Employee Director has not served as such since the beginning of such year) shall be paid in the form of an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum, as applicable, valued at the Fair Market Value of the Adams Stock or Petroleum Stock, as applicable, on the date of grant. This annual grant shall be made each calendar year immediately following each of the respective annual meetings of stockholders, except with respect to any Non-Employee Director whose initial election to the applicable Board occurs after the date of the annual meeting of stockholders for such year in which case this annual grant for such Non-Employee Director for such year shall be made on the effective date of such initial election. In addition to the annual grants described above, at the effective date of any Non-Employee Director's initial election to the Board, the Non-

Employee Director will be granted an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum, as applicable, that is equal in value to 25% of the total value of the full-year base annual retainer for Non-Employee Directors for the year in which such election occurs, with such Restricted Stock Units valued at the Fair Market Value of the Adams Stock or Petroleum Stock, as applicable, on the date of grant. Non-Employee Directors will also receive dividend equivalents in respect of such Restricted Stock Units equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of common stock. The Restricted Stock Units and related dividend equivalents will vest (and become non-forfeitable) and be paid (in the form of shares of common stock) one year from the date of grant. In addition, Non-Employee Directors may elect each year, not later than December 31 of the year preceding the year as to which the annual grant of Restricted Stock Units is to be applicable, to defer to a fixed date or pursuant to a specified schedule payment of all or any portion of the annual grant of Restricted Stock Units. Any modification of the deferral election may be made only upon satisfaction of any conditions that the relevant Committee may impose.

Under the Plans, Non-Employee Directors may also elect each year, not later than December 31 of the year preceding the year as to which deferral of fees is to be applicable, to defer to a fixed date or pursuant to a specified schedule all or any portion of the cash retainer to be paid for Board or other service related to Board activities in the following calendar year through the issuance of Deferred Stock Units, valued at the Fair

Market Value of the relevant Applicant's stock on the date when each payment of such retainer amount would otherwise be made in cash. Any modification to the deferral election may be made only upon satisfaction of any conditions that the relevant Committee may impose.

E. Operation of the Plans.

In the discretion of the relevant Committee and at any time as the relevant Committee deems appropriate, an Award may be granted (subject to final ratification by the applicable Board) either alone or in addition to, in tandem with, or in substitution or exchange for (these Awards are commonly known as "stand alone", "additional", "tandem" and "substitute" Awards), any other Award or any award granted under another plan of the applicable Applicant, any subsidiary of the applicable Applicant, or any business entity to be acquired by the applicable Applicant or any subsidiary of the applicable Applicant, or any other right of an Eligible Person to receive payment from the applicable Applicant or any subsidiary of the applicable Applicant (a "Non-Plan Award"). If an Award is granted in substitution or exchange for another Award or Non-Plan Award, the relevant Committee will require the surrender of such other Award or Non-Plan Award in consideration for the grant of the new Award.

Except as otherwise determined by the relevant Committee, an Option will become exercisable or settleable after the first anniversary of the date of grant, a Stock Appreciation Right will become exercisable or settleable after the second anniversary of the date of grant and a grant of Restricted Stock or Restricted Stock Units (other than

grants to Non-Employee Directors) will become settleable in three equal installments after each of the first, second and third anniversaries of the date of grant (provided the Eligible Person continues to be employed by the relevant Applicant).

The Committees will determine the term of each Award, which for any Option or Stock Appreciation Right will not exceed ten years.

Subject to the terms of each Plan and any applicable Award agreement, payments to be made by an Applicant upon the exercise or settlement of an Award may be made in such forms as the applicable Committee will determine (subject to applicable legal restrictions), including, without limitation, cash or stock, and may be made in a single payment or transfer, in installments or on a deferred basis. The relevant Committee may accelerate the settlement of any Award and pay cash in lieu of delivering stock in connection with such settlement.

Generally, Awards are not transferable, except to a beneficiary upon an Eligible Person's death or by will or the laws of descent and distribution, and each Award generally must be exercised by an Eligible Person during the Eligible Person's lifetime. While the relevant Committee has the power to permit broader transfers, this authority is limited to circumstances in which an Eligible Person desires to make a transfer to a family member, family trust or family partnership to facilitate estate planning. In addition, Awards may be transferred pursuant to a qualified domestic relations order.

Although each Applicant's Board may amend or terminate the Applicant's Plan or the relevant Committee's authority to approve grants of Awards under the Plan at

any time, it may not adversely change the terms of any Award previously granted to an Eligible Person without the Eligible Person's consent. Adoption of each Plan is subject to final approval by the applicable Board and approval of the applicable Applicant's stockholders. In addition, any amendment to a Plan will be subject to the approval of the applicable Applicant's stockholders to the extent such approval is required by applicable laws or regulations, including exchange rules, or as the relevant Board otherwise determines. Each Applicant's Board is required to review the applicable Plan at least annually.

V. APPLICABLE STATUTORY PROVISIONS

The provisions of the Act set forth below and the applicable rules thereunder currently operate to prohibit the Applicants from granting Awards to Eligible Persons.

A. Section 18(d) and Sections 23(a), (b) and (c).

Section 18(d) of the Act prohibits any registered management investment company from issuing warrants or rights to subscribe to or purchase its securities, except those issued ratably to a class of the company's security holders with an exercise period of up to 120 days or in exchange for warrants in connection with a reorganization. The Applicants' granting of certain Awards to Eligible Persons would not satisfy these statutory exceptions because no corresponding warrants or rights would be issued to the Applicants' stockholders and because the Awards would not be issued in connection with a reorganization. Consequently, the granting of such Awards is expressly prohibited by this section.

Issuance of Awards to Eligible Persons also would be prohibited under Section 23 of the Act. Section 23(a) generally prohibits a registered closed-end investment company from issuing any of its securities for services or for property other than cash or securities. Section 23(b) prohibits a registered closed-end investment company from selling any common stock of which it is the issuer at a price below the stock's current net asset value, except with the consent of a majority of the company's common stockholders at the time of issuance or under certain other enumerated circumstances not applicable to the securities transactions that are the subject of this Application.

Because Awards are forms of compensation, issuance of stock-based Awards to Eligible Persons would constitute the issuance of securities for "services" and, therefore, absent an exemption, would fall within the prohibitions of Section 23(a). Additionally, Options will be issued with an exercise price that is not less than the Fair Market Value, and other Awards based on common stock of the Applicants are generally valued at Fair Market Value. The stock of the Applicants has often traded at a discount to their net asset value, and the Applicants expect that their stock may continue to do so. Consequently, on the date of grant and date of exercise, an Option's or Stock Appreciation Right's exercise price may be less than the net asset value of a share of the Applicants' stock on such dates.

Section 23(c) generally prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market,

pursuant to tenders, or “under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased”. No rule of the Commission addresses repurchases in connection with the exercise of stock options or the vesting of restricted stock, restricted stock units or deferred stock units. Thus, to the extent that payment for a stock option with previously acquired shares of stock of the Applicants or where shares are withheld by the Applicants or delivered by an Eligible Person in payment of the exercise price, or to the extent that the withholding of shares by the Applicants or the delivery of shares by an Eligible Person in satisfaction of withholding taxes is considered to be a “purchase” by the Applicants of their own securities, Section 23(c) would prohibit the transaction.

B. Section 17(d) and Rule 17d-1.

Section 17 of the Act establishes standards and requirements for transactions between registered investment companies and certain affiliates. Section 17(d) of the Act and Rule 17d-1(a), taken together, generally prohibit an affiliated person of a registered investment company (a “first-tier affiliate”), or an affiliated person of such affiliated person (a “second-tier affiliate”), from participating in, or effecting a transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the registered investment company is a participant unless an application regarding the joint enterprise, arrangement, or profit-sharing plan has been filed with the

Commission and has been granted by an order. Paragraph (c) of Rule 17d-1 defines “joint enterprise or other joint arrangement or profit-sharing plan” to include “any written or oral plan . . . whereby a registered investment company or a controlled company thereof and any affiliated person . . . have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan. . . .” Section 2(a)(3) of the Act defines an “affiliated person” of another person to include, among others, (i) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of such other person’s outstanding voting securities; (ii) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (iv) any officer, director, partner, copartner or employee of such other person; or (v) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

Because all Eligible Persons are either directors or Employees of the Applicants or their subsidiaries, the Eligible Persons fall within the scope of Section 17(d) and Rule 17d-1 and, consequently, are prohibited from participating in the Plans, absent grant of the relief sought in this Application.

VI. DISCUSSION OF AUTHORITIES

The provisions of the Act and the rules thereunder outlined above preclude the Applicants from granting Awards to Eligible Persons absent relief from the Commission. For the reasons set forth below, the Applicants believe that the requested Order would be in the best interests of the Applicants and their stockholders and meets the standard for relief under the Act. Moreover, the grant of the Order would be consistent with other longstanding Commission orders and regulations concerning equity-based and other incentive compensation. The Applicants submit that the forms of Awards that the Applicants may grant under the Plans do not present any issues that are not presented by the precedents discussed below.

A. Prior Commission Orders and Regulations.

The Commission and Congress have recognized the need for certain types of investment companies, including closed-end investment companies, small business investment companies (“SBICs”) and business development companies (“BDCs”), to offer their employees equity-based compensation as well as incentive and performance-based cash compensation and to offer their non-employee directors equity-based compensation. The Applicants believe that the ability to offer those types of compensation is as necessary for them to attract and retain management talent as it was for the other investment companies for whom Congress or the Commission has granted relief.

1. Orders Relating to Use of Equity-Based Compensation by Internally-Managed Closed-End Investment Companies.

The important role that equity compensation such as the Awards can play in attracting and retaining qualified personnel has been expressly recognized by the Commission with respect to internally-managed, closed-end investment companies.

In 2005, the Commission issued the 2005 Order which granted the Applicants exemptive relief from Sections 17(a) and (d), 18(d), and 23(a), (b) and (c) of the Act and Rule 17d-1 under the Act. See In the Matter of The Adams Express Company, et al., Investment Company Act Release No. 26780 (March 8, 2005). The 2005 Incentive Plans were adopted in compliance with all of the terms and conditions set forth in the 2005 Order. The relief sought in this Application, and the Plans to be adopted by the Applicants if the Commission issues the requested Order, are substantially similar to the application for the 2005 Order and the 2005 Incentive Plans. The principal differences are:

the Plans provide for grants of Bonus Stock and Cash Awards to Eligible Persons (whereas the 2005 Incentive Plans did not provide for grants of bonus stock and cash performance awards but did provide for the grant of stock options, stock appreciation rights and deferred stock units); and

the Plans provide that (i) a fixed percentage (25%) of the value of the total base annual retainer for each Non-Employee Director for each calendar year will be paid in the form of an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum (together with dividend equivalents with respect thereto) and (ii) at his or her initial election to the Board, each Non-Employee Director will receive an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum equal to a fixed percentage (25%) of the total value of the full-year base annual retainer for Non-Employee Directors (whereas the 2005 Incentive Plans

provided for a fixed number of initial and annual restricted stock unit grants to non-employee directors).

More recently, in 2012 the Commission granted the 2012 Order, recognizing that the adoption of an equity-based compensation plan such as the one approved by Central “is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act”. See In the Matter of Central Securities Corporation, Investment Company Act Release No. 29940 (February 1, 2012). The relief sought in this Application, and the Plans to be adopted by the Applicants if the Commission issues the requested Order, are substantially similar to the application for the 2012 Order and the plan approved by Central pursuant thereto. The principal differences are:

the Plans provide for grants of Options, Stock Appreciation Rights and Deferred Stock Units to Eligible Persons (whereas the plan adopted by Central did not provide for grants of stock options, stock appreciation rights or deferred stock units but did provide for grants of bonus stock and cash performance awards);

each Plan provides that 4% of the outstanding shares of the applicable Applicant will be reserved and available for delivery (as opposed to 4.4% of outstanding shares permitted in the 2012 Order) and

the Plans provide that (i) a fixed percentage (25%) of the value of the total base annual retainer for each Non-Employee Director for each calendar year will be paid in the form of an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum (together with dividend equivalents with respect thereto) and (ii) at his or her initial election to the Board, each Non-Employee Director will receive an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum equal to a fixed percentage (25%) of the total value of the full-year base annual retainer for Non-Employee Directors (whereas the plan adopted by Central

provided for a fixed number of initial and annual grants of bonus stock without restrictions to non-employee directors).

Furthermore, in 1998 the Commission granted the 1998 Order, which also provided exemptive relief from Sections 17(a) and (d), 18(d), and 23(a), (b) and (c) of the Act and Rule 17d-1 under the Act to Baker Fentress. See In the Matter of Baker, Fentress & Company, Investment Company Act Release No. 23619 (December 22, 1998). The relief sought in this Application, and the Plans to be adopted by the Applicants if the Commission issues the requested Order, are substantially similar to the application for the 1998 Order and the plan approved by Baker Fentress pursuant thereto. The principal differences are:

the Plans provide for grants of Restricted Stock Units and Deferred Stock Units to Eligible Persons (although the plan approved by Baker Fentress provided for restricted stock and deferred stock grants). The Applicants view Deferred Stock Units as substantially similar to deferred stock. In addition, Restricted Stock Units are substantially similar to Restricted Stock and are widely used forms of compensation and have additional advantages with respect to tax and accounting treatment;

each Plan provides that 4% of the outstanding shares of the applicable Applicant will be reserved and available for delivery (as opposed to 10% of outstanding shares permitted in the 1998 Order);

the Plans provide that (i) a fixed percentage (25%) of the value of the total base annual retainer for each Non-Employee Director for each calendar year will be paid in the form of an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum (together with dividend equivalents with respect thereto) and (ii) at his or her initial election to the Board, each Non-Employee Director will receive an award of Restricted Stock Units of Adams and Restricted Stock Units of Petroleum equal to a fixed percentage (25%) of the total value of the full-year base annual retainer for Non-Employee Directors (whereas the plan adopted by Baker

Fentress provided for a fixed number of initial and annual option grants to non-employee directors); and

the Plans provide that Non-Employee Directors may defer all or a portion of their cash retainer through the issuance of Deferred Stock Units in an effort to encourage director stock ownership and align the directors' interests with those of stockholders.

In 1985, the Commission granted the 1985 Order to APTIF exempting its members ("Members"), including the Applicants, which were neither SBICs nor BDCs, from the provisions of Sections 17(d), 18(d) and 23(a), (b) and (c) of the Act and the rules thereunder to the extent necessary to permit Members to offer their employees, including certain employees of their wholly-owned subsidiaries, equity compensation in the form of stock options and stock appreciation rights. Association of Publicly Traded Investment Funds, Investment Company Act Release Nos. 14541 (May 28, 1985) and 14594 (June 21, 1985). As described above, the 1985 Stock Plans were terminated upon the adoption of the 2005 Incentive Plans and were originally adopted in compliance with all of the terms and conditions set forth in 1985 Order.

In order to serve the broader goals of the Plans, the Plans' terms (like the terms of the plans approved by the Commission under the 1998 Order, 2005 Order and the 2012 Order) are more flexible and permit types of equity-based compensation not available under the 1985 Order. Although the plans permitted under the 1985 Order contain different methods of providing equity-based compensation than those contemplated by the Plans, the fundamental purpose of each is similar — awarding

individuals equity-based compensation for competitive purposes — and each is deemed ultimately to benefit the stockholders of the underlying investment company.

The Commission's recognition of the importance to internally-managed, closed-end registered investment companies of the ability to offer equity-based incentive compensation is further evidenced by its grant of exemptive relief to Bando McGlocklin Capital Corporation from Sections 17(d), 18(d) and 23(a), (b) and (c) of the Act and the rules thereunder to the extent necessary to permit it to offer its employees incentive stock options within the meaning of Section 422 of the Code. See Bando McGlocklin Capital Corporation, Investment Company Act Release Nos. 17837 (November 1, 1990) and 17879 (November 27, 1990).

2. Orders and Regulations Relating to Use of Equity-Based Compensation by SBICs.

Even before the 1985 Order, the Commission recognized the important role that stock options can play in attracting and retaining qualified personnel with respect to SBICs. In 1971, the Commission granted an exemption under Section 6(c) of the Act to permit SBICs registered under the Act as closed-end investment companies to issue "qualified" stock options (the predecessors of incentive stock options) to their employees. See National Association of Small Business Investment Companies, Investment Company Act Release No. 6523 (May 14, 1971). (The order issued to the National Association of

Small Business Investment Companies (“NASBIC”) is hereinafter referred to as the “NASBIC Order”).⁷ In taking this action, the Commission acknowledged the claims of the applicant, NASBIC, that stock options were a widely used form of management compensation and that the inability of registered SBICs to offer such options had placed them at a competitive disadvantage in the personnel market and was responsible, in part, for their inability in certain instances to attract and retain high level officers, thereby imposing a serious burden upon registered SBICs.

3. Statutory Provisions Relating to Use of Equity-Based Compensation by BDCs.

Congress recognized the importance of equity-based compensation as a means of attracting and retaining qualified management personnel, including non-employee directors, in the Small Business Investment Incentive Act of 1980 (the “1980 Amendments”). The 1980 Amendments to the Act permit BDCs to issue to their directors, officers, employees and general partners warrants, options and rights to

⁷The NASBIC Order exempted stock options granted by SBICs from the provisions of Sections 18, 19 and 23 of the Act. Because a question remained as to whether an SBIC seeking to rely on the NASBIC Order was required to file an application for an exemptive order under Rule 17d-1, the Commission promulgated Rule 17d-1(d)(4) in 1974 to permit the grant of such options without a prior Commission order. See Adoption of Amendment to Rule 17d-1, Under the Investment Company Act of 1940 Exempting Certain Transactions Involving Registered Investment Companies, including SBIC Stock Option Plans, from the Application Requirements of the Rule, Investment Company Act Release No. 8542 (October 15, 1974).

