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Papers Regarding the Final Report of The Venture and Equity Capital Task Force

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TO: Members of the Venture and Equity Capital Task Force

SUBJECT: Final Report

I am pleased to enclose two (2) copies of the final Task Force Report, transmittal letter and news release by which it was released today.

On behalf of my associates at the SBA, please accept our sincere thanks for such a fine job and for your personal contribution of valuable time and effort.

The bigger job now lies ahead - having your recommendations implemented.

I remain, with optimism,

Sincerely,

Peter F. McNeish
Deputy Associate Administrator for Investment

P.S. We've discovered a few minor errors in the report which will be corrected in reprinting.
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NEW SOURCES OF VENTURE CAPITAL SOUGHT FOR SMALL BUSINESSES

WASHINGTON, D. C., February 1 ------ Concluding a six-month study, a panel of independent business executives has called for a series of innovative steps by the Government to stimulate the flow of equity and venture capital to small business.

The recommendations were contained in a report to the U. S. Small Business Administration by a 15-member panel appointed by Administrator Mitchell P. Kobelinski and chaired by William Casey, former President of the Export-Import Bank, Under Secretary of State and Chairman of the Securities and Exchange Commission.

In submitting the report, Task Force Chairman Casey said, "If these recommendations are favorably acted upon by the Administration and the Congress, critically needed new venture and equity capital will flow to the small business sector of our economy. This, in turn, will produce substantial increases in jobs, tax revenues and productivity.

- more -
"Implementation of the study's recommendations," Casey added, "can make a major contribution to the growth of the U. S. economy and the vitality of our free enterprise system."

A summary of recommendations of the Task Force on Venture and Equity Capital for Small Business is attached.

In addition to Casey, panel members are:


* * * * *
SUMMARY OF SPECIFIC RECOMMENDATIONS
MADE BY THE TASK FORCE

Tax Laws and Regulations

- - - Increase the corporate surtax exemption from the present level of $50,000 up to $100,000;
- - - Allow greater flexibility in depreciating the first $200,000 of assets;
- - - Permit investors in qualified small businesses to defer the tax on capital gains if the proceeds of the sale of a profitable small business investment are reinvested within a specified time in other qualified small business investments;
- - - Increase the deduction against ordinary income of capital losses in a small businesses investment made under Section 1244 of the Internal Revenue Code from $25,000 in annual deduction to $50,000, and increase the limit on an offering from $500,000 to $1,000,000 and on issuer size from $1,000,000 to $2,000,000 in equity capital;
- - - Permit underwriters of the securities of smaller businesses to deduct a loss reserve against the risks inherent in the underwriting and carrying of such securities;
- - - Revise methods by which revenue impact of tax changes are estimated to reflect revenue gains from the use of tax savings by the taxpayer and the stimulus to capital formation and economic activity.

Small Business Administration (SBA)

- - - Greater availability of long-term financing is more important to growing small businesses than financing cost. To lay a basis for this, SBA should require and encourage commercial banks to assume a larger portion of the risk in SBA loans and change its guarantee fee from a one-time fee of 1% of the amount of the guaranteed debt to an annual fee which more nearly reflects the value and cost of SBA's guarantee;
- - - Provide that some of the guaranteed borrowing available to SBICs take the form of debt, with the interest partially subsidized if the funds are used to make equity investments;
- - - Permit SBICs to deduct from ordinary income loss reserves on both equity and debt portions of their portfolios;
- - - Immediately make a substantial increase in the size standards for SBIC investments and also provide for an annual revision of these standards in line with broadly accepted price indicators;
- - - Substantially expand SBA's Secondary Market Program by creation of a "Certificate" system for the sale of SBA-guaranteed loans.

**Institutional Investors/Employee Retirement Income Security Act (ERISA)**

- - - Amend ERISA to declare a policy that pension funds may invest in a broad spectrum of American companies within the "prudent man" rule and that it applies to the total portfolio rather than any individual investment. Also create a "basket" of 5% of the assets of any plan within which investment managers can invest according to standards of prudence and liquidity appropriate to higher risk small business investments;
- - - The development of professionally managed pools of capital should be encouraged so that pension fund managers, otherwise constrained by time or expertise, may participate in the investment in new ventures and in growing smaller companies. These special funds should be specifically exempted from the provisions of the Investment Company Act of 1940;
- - - In cooperation with the SEC and other regulatory bodies, exempt the illiquid securities of small companies from "mark-to market" or "fair value" accounting treatment.

**Securities Laws and Regulations (SEC)**

- - - Increase the small offering exemption from $500,00 to $3,000,000;
- - - Enact the limited offering exemption as proposed in the American Law Institute project to codify the securities laws;
- - - Retain and simplify Rule 146;
- - - Amend Rule 144 to provide that the existing quantitative limits apply for only a three-month period rather than a six-month period. In addition, change those limits to one percent of outstanding shares or the average weekly volume, whichever is higher instead of whichever is lower;
- - - Develop procedures under which solicitation, with appropriate compensation to develop a market may be undertaken if buyers are provided with copies of financial data and other disclosures regularly filed with the SEC along with a supplement, any statement on mode of offering, identity of underwriters, price of securities offered, and information needed to update the data on file with the SEC.
Recommendation on ERISA

The Task Force on Venture and Equity Capital (Task Force) for small business has examined, directly and through expert advice, the effects of the Employee Retirement Income Security Act of 1975 (ERISA) on the ability and propensity of pension fund managers (fiduciaries) to invest in the securities of small business concerns.

The Task Force found that due to the prudent man definitions of ERISA and the liabilities and penalties built into the statute for violations of the prudent man rule with respect to investment risk, pension fund managers have chosen to avoid any liabilities by excluding small business securities from their portfolios. The caution being exercised by these managers is partially due to uncertainty as to how the courts will rule on suits brought under ERISA. Part of the basis for future Court decisions may be policy actions and utterances by the government agencies charged with administering ERISA.

The Office of Employee Benefits Security of the U.S. Department of Labor and the U.S. Department of Treasury have jurisdiction over the enforcement and administration of ERISA and, thus, the actions and policy utterances of these Agencies will be crucial to any Court's findings.

Therefore, it is recommended by the Task Force that the Administrator of the Small Business Administration request, through the Economic Policy Board or otherwise, that the abovenamed Agencies issue jointly an interpretive bulletin or policy statement to the effect that ERISA does not prohibit investment in small company securities and that such investments are as permissible and acceptable as any others within the meaning of the statute.

Need to expand:
1) 5% (Benison plan), exempt from ERISA (not)
2) Certain inactivity from ERISA needed
3) Special institutional interests considerations