

Rule 15c2-1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own transactions. Subject to certain exceptions and exemptions, Rule 15c2-1 prohibits a broker-dealer from: (1) Commingling under the same lien customer securities with other customer securities, without the written consent of each customer; (2) commingling under the same lien customer securities with non-customer securities (including those of the broker-dealer) for a loan made to the broker-dealer; and (3) hypothecating customer securities for a loan amount which exceeds all customers' aggregate indebtedness relating to securities carried in their accounts. Under Rule 15c2-1, a broker-dealer must collect information necessary to prevent the rehypothecation of customer securities in contravention of the Rule, (issue and retain copies of notices to) the pledgee of hypothecation of customer securities in accordance with the Rule, and collect written consents from customers in accordance with the Rule. The collection of information required by the Rule is necessary to ensure compliance with the Rule, and to advise customers of the Rule's protections. In addition, the collection of information is necessary to execute the Commission's mandate under the Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 177 respondents (*i.e.* broker-dealers that carry or clear customer accounts that also have bank loans) that must comply with the Rule. Each of these approximately 177 respondents make an estimated 45 annual responses, for an aggregate total of 7,965 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,983 burden hours. The approximate cost per hour is \$25 (based on an annual salary of \$52,000 for clerical labor), resulting in a total compliance cost of \$99,575 (3,983 hours @ \$25 per hour).

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: November 1, 1999.

Margaret H. McFarland,
Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24121; 812-11420]

Elk Associates Funding Corporation, et al.; Notice of Application

November 2, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application: (i) under sections 6(c), 12(d)(1)(J), and 57(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 12(d)(1)(A) and (C), 18(a), 21(b), 57(a)(1) through (a)(3), and 61(a) of the Act; (ii) under section 57(i) of the Act and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and (iii) under section 12(h) of the Securities Exchange Act of 1934 ("Exchange Act") for an exemption from section 13(a) of the Exchange Act.

SUMMARY OF THE APPLICATION: The requested order would permit a business development company ("BDC") to implement a reorganization plan under which it would become a wholly-owned subsidiary of a newly-formed BDC. The order would permit the two companies, and any additional wholly-owned BDC subsidiaries of the parent established in the future, to engage in certain transactions that would otherwise be permitted if the parent and its BDC subsidiaries were one company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

Applicants: Elk Associates Funding Corporation ("Elk"), Ameritrans Capital Corporation ("Ameritrans"), and Gary C. Granoff ("Granoff").

Filing Dates: The application was filed on November 27, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 29, 1999, and should be accompanied by proof of service on applicants 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 request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Applicants, c/o Stursberg & Veith, Attn: C. Walter Stursberg, Jr., 405 Lexington Avenue, Suite 4949, New York, NY 10174-4902.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942-0583, or Christine Y. Greenlees, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. Elk, a New York corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC, as defined in section 2(a)(48) of the Act.¹ Elk also is licensed as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("1958 Act"). Granoff is Elk's president and the chairman of its board of directors ("Board").

2. Ameritrans, a Delaware corporation, is a closed-end management investment company registered under the Act that has elected to be regulated as a BDC. Granoff, who also is a Ameritrans' president and the chairman of its Board, has purchased for \$10 the sole outstanding share of Ameritrans' common stock.

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

3. Applicants have proposed a reorganization in which Elk would become a wholly-owned subsidiary of Ameritrans. Ameritrans would acquire all of the outstanding voting capital stock of Elk by means of a share-for-share exchange with Elk's public shareholders ("Share Exchange"). Following the Share Exchange, Ameritrans will repurchase for \$10 the share of its stock owned by Granoff. Ameritrans will engage in lending and investment activities not subject to the restrictions of the 1958 Act. Elk will continue to operate as a BDC and an SBIC, making loans to or investments in small business concerns as permitted by the 1958 Act.

4. On September 22, 1998, Elk's Board approve the Share Exchange and voted to recommend that the proposal be submitted to Elk's shareholders for approval. On October 20, 1999, Ameritrans filed a proxy statement with the Commission. Applicants anticipate that Elk will distribute proxy materials to its shareholders on or about November 10, 1999, and hold the shareholder meeting on or about December 10, 1999.

5. Ameritrans may in the future establish additional wholly-owned subsidiaries (collectively, "Future Subsidiaries"), some of which may be regulated as BDCs ("Future BDC Subsidiaries"). Any Future Subsidiary that is not a BDC will not be an investment company. Elk and the Future Subsidiaries collectively are referred to in this notice as the "Subsidiaries." Any Future Subsidiary that relies on the requested order will do so only in accordance with the terms and conditions of the application.

6. Applicants request an order to permit the Share Exchange. The requested order also would permit Ameritrans, Elk, and any Future BDC Subsidiaries to engage in certain transactions that otherwise would be permitted if Ameritrans, Elk, and the Future BDC Subsidiaries were a single company, adhere to modified asset coverage requirements, and file certain reports on a consolidated basis.

Applicants' Legal Analysis

A. The Share Exchange

1. Sections 57(a) (1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes any director of officer of a BDC and any person who directly or indirectly controls a BDC. Applicants state that Ameritrans could

be deemed to be an affiliate of Elk under section 57(b)(1) because Ameritrans is controlled by Granoff, an officer and director of Elk. Applicants state that the transfer of Ameritrans' shares to the shareholders of Elk may be deemed to be a prohibited sale of securities to Elk within the meaning of section 57(a)(1). Applicants accordingly request relief under section 57(c) of the Act from section 57(a)(1) to permit such transfer as part of the Share Exchange.

2. Section 57(c) provides, in relevant part, that the Commission will exempt a proposed transaction from the prohibitions in section 57(a)(1) if the terms of the proposed transaction are reasonable and fair and do not involve overreaching of the BDC or its shareholders on the part of any person concerned, and the proposed transaction is consistent with the policy of the BDC and the general purposes of the Act. Applicants submit that the requested relief meets this standard.

3. Applicants state that the Share Exchange will benefit Elk's shareholders because Ameritrans will be able to take advantage of business opportunities not otherwise available to Elk as an SBIC. Applicants also state that there will be no threat of overreaching because Granoff is the nominal owner of a single Ameritrans share, which share will be repurchased for its original purchase price of \$10 following the Share Exchange.

B. Operation as One Company

Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities that a BDC, or a company controlled by the BDC, may hold of other investment companies. Section 12(d)(1)(C) of the Act, which also applies to BDCs by reason of section 60, limits the amount of securities of a registered closed-end investment company that a BDC, or a company controlled by the BDC, may require.

2. Applicants state that any acquisition of the debt or equity securities of, or any contribution to capital of, a Future BDC Subsidiary by Ameritrans may violate sections 12(d)(1)(A) and (C).² Applicants state that these provisions also may preclude each Subsidiary from: (i) acquiring debt securities issued by Ameritrans or any

other Subsidiary, and (ii) making loans or advances to Ameritrans or any other Subsidiary. Applicants request relief from sections 12(d)(1)(A) and (C) in order to permit these types of transactions, but only to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of Ameritrans and not a separate company.

3. Section 12(d)(1)(J) of the Act, in relevant part, provided that the Commission may exempt transactions from any provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants submit that the requested relief meets this standard.

4. Applicants state that the proposed transactions among Ameritrans and the Subsidiaries will not entail the types of abuses that the provisions of sections 12(d)(1)(A) and (C) were designed to prevent. Applicants further state that Ameritrans, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of any Subsidiary.

Sections 57(a)(1) and (2)

1. As discussed above, sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases of securities or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person under common control with a BDC. Each Subsidiary could be deemed to be an affiliate of each other Subsidiary under section 57(b) because they will be under the common control of Ameritrans.

2. Applicants request relief from sections 57(a)(1) and (2) under section 57(c) to exempt any transaction between Ameritrans and Elk or a Future BDC Subsidiary, and any transaction between Elk or a Future BDC Subsidiary, on the one hand, and any other Subsidiary on the other hand, with respect to the purchase or sale of securities or other property. Applicants also request relief from sections 57(a)(1) and (2) to exempt any purchase or sale transaction between Ameritrans and a controlled portfolio affiliate of Elk or a Future BDC Subsidiary, and any purchase or sale transaction between Elk or a Future BDC Subsidiary and a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies. Applicants submit that the requested relief meets the

² Rule 60a-1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of an SBIC licensed under the 1958 Act that is operated as a wholly-owned subsidiary of the BDC. The rule exempts Ameritrans' acquisition of Elk's securities, and any loans or advances from Ameritrans to Elk, from the limits in sections 12(d)(1)(A) and (C).

section 57(c) standard because it would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would otherwise permit if Elk and the Future BDC Subsidiaries were part of Ameritrans and not separate companies.

Sections 21(b) and 57(a)(3)

1. Section 57(a)(3) of the Act generally prohibits the borrowing of money or other property from a BDC by a person related to the BDC within the meaning of section 57(b), except as permitted under section 21(b) of the Act. Section 21(b) (made applicable to BDCs by section 62 of the Act, with certain exceptions) generally prohibits loans from a BDC to a person who controls or is under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of Ameritrans and, therefore, will be affiliated with each other Subsidiary within the meaning of section 57(b).

2. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any borrowing of money or other property from Elk or a Future BDC Subsidiary by Ameritrans or any other Subsidiary. Applicants also request relief from section 21(b) under section 6(c) of the Act to exempt any lending of money or other property by Elk or a Future BDC Subsidiary to Ameritrans or another Subsidiary. Applicants state that the proposed transactions will have no substantive economic effect because they will be among Ameritrans and its wholly-owned subsidiaries.

3. Applicants state that it may be in the interests of Ameritrans' shareholders for Ameritrans, Elk, or any Future BDC Subsidiary to loan money or other property to portfolio companies controlled by any other of Ameritrans, Elk, and the Future BDC Subsidiaries. Accordingly, applicants also request relief from sections 21(b) and 57(a)(3) to exempt any lending of money or other property from Elk or a Future BDC Subsidiary to a controlled portfolio affiliate of Ameritrans or of another Future BDC Subsidiary or Elk, but only to the extent that any such transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, such exemption is necessary or 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. Applicants state that the proposed lending transactions discussed above will satisfy the standards for relief in sections 6(c) and 57(c). Applicants note that the requested relief would permit Ameritrans, Elk, and the Future BDC Subsidiaries to do what the Act would permit if they were one company.

Section 57(a)(4) and Rule 17d-1

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint arrangements involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) of the Act provides that the rules and regulations under section 17(d) will apply to transactions subject to section 57(a)(4) in the absence of rules under that section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standard set forth in rule 17d-1 governs applicants' request for relief.

2. Applicants state that a joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participates may be prohibited under section 57(a)(4). Applicants request relief under section 57(i) and rule 17d-1 to permit any joint transaction in which Elk or a Future BDC Subsidiary and Ameritrans or another Subsidiary participate, but only to the extent that the transaction would not be prohibited if Elk and the Future BDC Subsidiaries were deemed to be part of Ameritrans and not separate companies.

3. In determining whether to grant an order under section 57(i) and rule 17d-1, the Commission may consider whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the transaction. Applicants state that this standard is satisfied because the requested relief would simply permit Ameritrans and the Subsidiaries to conduct their operations as if they were one company.

Section 18(a)

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in that section. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in sections 18(a)(1)(A) and (B). Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications.

2. Applicants state that Ameritrans, Elk, and the Future BDC Subsidiaries may be required to comply with the asset coverage requirements of section 18(a), as modified by section 61(a) for BDCs, on a consolidated basis if Ameritrans were deemed to be an indirect issuer of any class of senior security issued by the Subsidiaries. Applicants request relief under section 6(c) from sections 18(a) and 61(a) to permit Ameritrans to exclude from its consolidated asset coverage ratio any senior security representing indebtedness that is issued by Elk.

3. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, to the extent that any Subsidiary is entitled to rely on section 18(k) for an exemption from the asset coverage requirements of sections 18(a) and 61(a), there is no policy reason to deny Ameritrans the benefit of that exemption when Ameritrans consolidates its assets with those of the Subsidiaries for the purpose of compliance with those requirements.

C. Consolidated Reporting

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the Commission. Applicants request an order under section 12(h) of the Exchange Act to exempt Elk and each Future BDC Subsidiary from the reporting requirements of section 13(a) of the Exchange Act so that Ameritrans, Elk, and the Future BDC Subsidiaries may file consolidated reports. Absent the requested relief, Elk and each Future BDC Subsidiary, on an unconsolidated basis, would have to make periodic filings with the Commission, even though Ameritrans will be the sole equity holder of each such Subsidiary.

2. Section 12(h) of the Exchange Act provides that the Commission may exempt an issuer from section 13 of the Exchange Act if the Commission finds that the exemption is not inconsistent with the public interest and the protection of investors. Applicants state that the requested exemption meets this standard because applicants will be providing the same information required by the Exchange Act's reporting requirements on a consolidated basis.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Ameritrans will at all times own and hold beneficially and of record all of the outstanding voting capital stock of Elk and the Future Subsidiaries.

2. Elk and any Future BDC Subsidiaries will have the same fundamental investment policies as Ameritrans, as set forth in Ameritrans' registration statement, and will not engage in any other activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Ameritrans.

3. No person will serve or act as investment adviser or principal underwriter to Elk or any Future BDC Subsidiary unless the directors and shareholders of Ameritrans will have taken the action with respect thereto also required to be taken by the directors and sole shareholder of such Subsidiary.

4. Ameritrans will not itself issue or sell any senior security and Ameritrans will not cause or permit Elk or any Future BDC Subsidiary to issue or sell any senior security of which Ameritrans, Elk, or any Future BDC Subsidiary is the issuer, except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of Ameritrans, Elk, or any Future BDC Subsidiary of any such notes or evidences of indebtedness, Ameritrans and its Subsidiaries on a consolidated basis, and Ameritrans individually, will have the asset coverage required by section 18(a) of the Act (as modified by section 61(a) for Ameritrans), except that, in determining whether Ameritrans and its Subsidiaries on a consolidated basis have the asset coverage required by section 18(a) of the Act, as modified by section 61(a), any Small Business Administration ("SBA") preferred stock interest in Elk and the Future BDC Subsidiaries and any borrowings by Elk and any Future BDC Subsidiaries will

not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), will be treated as indebtedness not represented by senior securities.

5. No person shall serve as a director of Elk or of a Future Subsidiary unless elected as a director of Ameritrans at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on Ameritrans' Board will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the Board of Elk and of any Future Subsidiary will be elected by Ameritrans as the sole shareholder of such Subsidiary, and such Board will be composed of the same persons that serve as directors of Ameritrans.

6. Ameritrans and any Subsidiary will acquire securities representing indebtedness of Elk or of any Future BDC Subsidiary operating as a SBIC only if, in each case, the prior approval of the SBA has been obtained. In addition, Elk or any Future BDC Subsidiary operating as a SBIC, on the one hand, and Ameritrans or any other Subsidiary on the other hand, will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

7. Ameritrans will: (i) File with the Commission, on behalf of itself, Elk, and any Future BDC Subsidiaries, all information and reports required to be filed with the Commission under the Exchange Act and other federal securities laws, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries; and (ii) provide to its shareholders such information and reports required to be disseminated to Ameritrans' shareholders, including information and financial statements prepared solely on a consolidated basis as to Ameritrans, Elk, and any Future BDC Subsidiaries, such information and reports to be in satisfaction of any separate reporting obligations of Elk and any Future BDC Subsidiaries. Notwithstanding anything in this condition, Ameritrans will not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statements of Elk and any Future BDC Subsidiaries required by rule 6-03(c) of Regulation S-X.

8. Ameritrans, Elk, and any Future BDC Subsidiaries may file on a consolidated basis under condition 7

above only so long as the amount of Ameritrans' total consolidated assets invested in assets other than securities issued by Elk and any Future BDC Subsidiaries, or securities similar to those in which Elk and any Future BDC Subsidiaries invest, does not exceed ten percent.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 8, 1999.

A closed meeting will be held on Wednesday, November 10, 1999, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 10, 1999, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.