

measures of quality service. Surveys will involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

**ADDITIONAL INFORMATION OR COMMENTS:**

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,  
Clearance Officer.

[FR Doc. 97-5533 Filed 3-5-97; 8:45 am]

BILLING CODE 7905-01-M

**Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program**

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (16 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1997, 31.5 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.5 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 25, 1997.

By Authority of the Board.

Beatrice Ezerski,  
Secretary to the Board.

[FR Doc. 97-5484 Filed 3-5-97; 8:45 am]

BILLING CODE 7905-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-22534; 812-9450]

**Capital Southwest Corporation, et al.;  
Notice of Application**

February 28, 1997.

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

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Capital Southwest Corporation ("CSC") and Capital Southwest Venture Corporation ("CSVC")

**RELEVANT ACT AND EXCHANGE ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 18(a), 18(c), 30, and 61(a) of the Act, under sections 17(d) and 57(a)(4) of the Act and rule 17d-1 thereunder to permit certain joint transactions, under section 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 57(c) of the Act for an exemption from section 57(a) of the Act.

**SUMMARY OF APPLICATION:** The order would permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order.

**FILING DATES:** The application was filed on January 23, 1995, and amended on October 25, 1995, August 22, 1996, and February 27, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1997, 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 of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, 12900 Preston Road, Suite 700, Dallas, Texas 75230.

**FOR FURTHER INFORMATION CONTACT:**

Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Mercer E. Bullard, 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 at the SEC's Public Reference Branch.

**Applicants' Representations**

1. CSC is a business development company ("BDC"), as defined under section 2(a)(48) of the Act,<sup>1</sup> organized under the laws of Texas. CSVC, a wholly-owned subsidiary of CSC, is a Nevada corporation and is registered under the Act as a closed-end management investment company. CSVC is also licensed by the Small Business Administration ("SBA") as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. CSC's principal business is to make, directly and through CSVC, loans and equity-type investments in small businesses.

2. Applicants request an order to permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order obtained by CSC, which, among other things, permits CSC and CSVC to engage in certain joint transactions.<sup>2</sup>

**Applicants' Legal Analysis**

**A. Section 18**

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class or senior security unless the company complies with the asset coverage requirements set forth in section 18. "Asset coverage" is defined in section 19(h) to mean the ratio which the value of the total assets of an issuer, less all

<sup>1</sup> Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Investment Company Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

<sup>2</sup> Investment Company Act Release Nos. 5640 (Mar. 25, 1969) (notice) and 5827 (Sept. 30, 1969) (order).

liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Under section 18(a), senior securities of closed-end investment companies representing indebtedness must have an asset coverage of 300% immediately after their issuance and senior securities of such companies representing stock must have an asset coverage of 200%. Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

2. CSC and CSVC are subject to the requirements of section 18(a) (as modified by section 61 with respect to CSC). Applicants request relief from section 18(a) to the extent necessary to provide that senior securities issued by CSVC that are excluded from CSVC's individual asset coverage ratio by section 18(k) will be excluded from CSC's consolidated asset coverage ratio.

3. Applicants believe that CSC may be required to comply with applicable asset coverage requirements on a consolidated basis with CSVC. Applicants state that this would mean that CSC would treat as its own any liabilities of CSVC (with intercompany receivables and liabilities eliminated), including liabilities of CSVC with respect to senior securities as to which CSVC is exempt from the provisions of section 18(a) by virtue of section 18(k). Applicants state that section 18(k) is intended to benefit SBICs by permitting them to issue a greater amount of senior securities representing indebtedness than is otherwise permitted under section 18(a). Applicants further state that if senior securities representing indebtedness issued and sold by CSVC are treated as CSC's for purposes of section 18(a), then the consolidated entity (CSC and CSVC) would lose the benefits of section 18(k) to which CSVC is entitled as a SBIC.

#### *B. Sections 17(a) and 57(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and certain affiliated persons of that company. Paragraphs (1), (2), and (3) of section 57(a) impose substantially the same prohibitions between BDCs and certain of their affiliates as described in sections 57(b) of the Act.

2. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, or under common control with, such investment company. Applicants state that CSC is an affiliated person of CSVC, and therefore subject to section 17(a) with

respect to transactions between it and CSVC, because CSC owns one hundred percent of CSVC's voting stock. Section 57(b)(2) of the Act describes certain persons to which section 57(a) applies. Such persons includes a person directly or indirectly controlling, controlled by, or under common control with a BDC. Applicants state that they share a common board of directors and are under common control of persons serving as officers and directors of both CSC and CSVC. Accordingly, applicants state that CSVC is "controlled by" CSC for purposes of section 57(b)(2).

3. Applicants believe that, under sections 17(a) and 57(a), the acquisition by CSC of the capital stock of CSVC in exchange for part of CSC's investment portfolio may be considered as (a) a sale of a security of an investment company (CSVC's capital stock) to a BDC (CSC); (b) a sale of a security (part of CSC's investment portfolio) to an investment company; (c) a purchase from an investment company of a security by an affiliate; and (d) a purchase from a BDC of a security by an affiliate. Likewise, loan transactions between CSC and CSVC may be deemed to be purchases and sales of securities representing indebtedness by an affiliate of a BDC or an affiliate of an investment company, as applicable. In addition, applicants contend that there may be circumstances when it is in the interest of CSC and its shareholders that CSVC invest in securities of an issuer that may be deemed to be an affiliate of CSC or that CSC invest in securities of an issuer that may be deemed to be an affiliate of CSVC, as in the case of a portfolio company deemed to be affiliated with either CSC or CSVC as a result of its ownership of five percent or more of the portfolio company's outstanding voting securities.

4. Applicants request an order from the provisions of sections 17(a) and 57(a) (1), (2), and (3) to exempt (a) any transaction solely between CSC and CSVC with respect to the purchase or sale of securities or other property or the borrowing of any money or other property including the guarantee by CSC of CSVC's debts and (b) any transaction involving CSC and/or CSVC and portfolio affiliates of either or both of CSC and/or CSVC, but only to the extent that any such transaction would not be prohibited if CSVC (and all of its asset and liabilities) were deemed to be part of CSC, and not a separate company.

#### *C. Sections 17(d) and 57(a)(4) and Rule 17d-1*

1. Section 17(d) and rule 17d-1 make it unlawful for an affiliated person of a

registered investment company or any affiliated person of such person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company or a company controlled by it is participant, unless an order permitting such transaction has been granted by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standards set forth under rule 17d-1 govern the requested order.

2. As noted above, CSC and CSVC are affiliated persons of each other. Applicants state that there may be circumstances when it is in the interest of CSC and its shareholders that CSC and CSVC invest in securities of the same issuer, either simultaneously or sequentially, in the same or different securities of such issue, and to deal with their investments separately or jointly. Accordingly, applicants request an order under sections 57(a)(4) rule 17d-1 to permit CSC or CSVC to invest in any portfolio company in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if CSVC were deemed to be part of CSC and not a separate company.

#### *D. Reporting Requirements*

1. Sections 30 (a) and (d) of the Act and rules 30a-1, 30b-1, and 30d-1 thereunder require that certain information be filed with the SEC and be transmitted to shareholders on an annual or semi-annual basis. As a registered investment company, CSVC must file the reports required by the SEC under section 30. Section 13(a) of the Securities Exchange Act of 1934 requires any issuer of a security subject to section 12 thereof, such as CSC, to file such documents and information as the SEC may require to keep such issuer's registration current and such annual or other periodic reports as the SEC may prescribe.

2. Applicants state that the filing of separate reports and financial statements of CSVC with respect to its individual operations, in addition to such filings by CSC with respect to the consolidated operations of CSC and CSVC, is unduly burdensome and is not necessary to protect the investing public. Accordingly, applicants request an order granting relief to CSVC from

section 30 and rules 30a-1, 30b1-1, and 30-d to the extent necessary to permit CSC to file consolidated reports to the SEC and CSC's shareholders as provided in condition number four below.

#### *E. Standards for Relief*

1. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if 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 of the Act. Applicants state that the operation of CSC as a BDC with a wholly-owned SBIC subsidiary is intended to permit CSC to expand the scope of its operations beyond that which would be permitted to it as an SBIC. Applicants further state that the requested exemptions would permit CSC and CSVC to operate effectively as one company even though they will be divided into two legal entities. Accordingly, applicants believe that the requested relief meets the section 6(c) standards.

2. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 57(c) permits the SEC to exempt a proposed transaction from sections 57(a)(1), (2), and (3) using substantially the same standard imposed by section 17(b). Applicants believe that the requested relief from sections 17(a) and 57(a) meets these standards.

3. In passing upon applications filed pursuant to rule 17d-1, the SEC considers whether the participation of the registered investment company in a joint enterprise or arrangement 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. Applicants believe that the requested authorization under sections 57(a)(4) and rule 17d-1 is appropriate.

#### *Applicants' Conditions*

Applicants agree that the order granting the requested relief will be conditioned upon the following:

1. CSC will at all times own and hold, beneficially and of record, all of the outstanding capital stock of CSVC.

2. CSVC will have fundamental investment policies not inconsistent with those of CSC as set forth in CSC's registration statement; CSVC will not engage in any action described in section 13(a) of the Act, unless such action shall have been authorized by CSC after approval of such action by a vote of a majority (as defined in the Act) of the outstanding voting securities of CSC.

3. No person shall serve or act as investment adviser to CSVC unless the directors and shareholders of CSC shall have taken the action with respect thereto also required to be taken by the directors and sole shareholder of CSVC.

4. CSC shall (a) file with the SEC, on behalf of itself and CSVC, all information and reports required to be filed with the SEC under the Securities Exchange Act of 1934 and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC, and (b) provide to its shareholders such information and reports required to be disseminated to CSC's shareholders, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC. Notwithstanding anything in this condition, CSC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of CSVC required by rule 6-03(c) of Regulation S-X.

5. CSC and CSVC may file on a consolidated basis pursuant to condition (4) above only so long as the amount of CSC's total consolidated assets invested in assets other than (a) securities issued by CSVC or (b) securities similar to those in which CSVC invests, does not exceed 10%.

6. No person shall serve as a director of CSVC unless elected as a director of CSC at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on CSC's board of directors will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the board of directors of CSVC will be elected by CSC as the sole shareholder of CSVC, and such board will be composed of the same persons that serve as directors of CSC.

7. CSC will not itself issue, and CSC will not cause or permit CSVC to issue,

any senior security or sell any senior security of which CSC or CSVC is the issuer, unless immediately after the issuance or sale of any such senior securities, CSC and CSVC on a consolidated basis, and CSC individually, shall have the asset coverage that would be required by section 18(a) if CSC and CSVC had each elected to become a BDC pursuant to section 54 of the Act (except that, in determining whether CSC and CSVC, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by CSVC pursuant to section 18(k) of the Act shall not be considered senior securities and, for purposes of the definition of asset coverage in section 18(h), shall not be treated as indebtedness not represented by senior securities).

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97-5524 Filed 3-5-97; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 22532; 811-5855]

#### **Conestoga Family of Funds; Notice of Application**

February 27, 1997.

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

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Conestoga Family of Funds.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Application requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on November 12, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1997, and should be accompanied by proof of service on the applicant, 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 of a hearing by writing to the SEC's Secretary.