

### Availability of Forms

The Postal Service expects the revised hard copy PS Form 8125 to be available to mailers this summer from local post offices. The Postal Service is not printing a hard copy Form 8125-C. Both Form 8125 and Form 8125-C will be available on the U.S. Postal Service website at <www.usps.com> use by mailers in creating facsimile documents. A future Postal Bulletin article will include both forms and language revising references to these forms in the Domestic Mail Manual.

### Date of Use

Mailers are encouraged to begin using facsimiles of the revised PS Form 8125 and the new PS Form 8125-C facsimile (July 1998) immediately. Effective January 10, 1999, mailers must use only the July 1998 versions of Forms 8125 and 8125-C. Also effective January 10, 1999, Periodicals mailers may no longer use Form 2866-IP, In-Plant Verification for Second-and Fourth-Class Matter, for publications paid under the CPP system.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23331; International Series Rel. No. 1148; 812-11026]

### Industrial Development Bank of India;

### Notice of Application

July 24, 1998.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from all provisions of the Act.

**SUMMARY OF THE APPLICATION:** Applicant Industrial Development Bank of India ("IDBI"), an industrial development financial institution, requests an order exempting it from all provisions of the Act in connection with the offer and sale of its securities in the United States.

**FILING DATES:** The application was filed on February 24, 1998. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

**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 August 18, 1998, and should be accompanied by proof of service on 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 by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, Attn: Pierre de Saint Phalle.

**FOR FURTHER INFORMATION CONTACT:** Rachel H. Graham, Senior Counsel, Christine Y. Greenlees, Branch Chief, (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 SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

### Applicant's Representations

1. Applicant, a specialized development bank, was established in 1964 by the government of India ("Government") pursuant to the Industrial Development Bank of India Act ("IDBI Act"). Applicant states that it is the largest industrial development financial institution in India and is a charge of coordinating the activities of all institutions engaged in the financing, promotion, or development of industry throughout India.

2. IDBI has been designated as a Development Bank under the IDBI Act. As a result, IDBI's financing objectives are largely influenced by Government policies. IDBI also has been designated as a Public Financial Institution under the Indian Companies Act of 1956, which entitles it to certain benefits under the tax code and other laws.

3. IDBI primarily provides direct financing to traditional (e.g., manufacturing) and non-traditional (e.g., tourism) enterprises for the establishment, expansion, diversification, and modernization of medium and large-scale industrial projects. IDBI's other direct financing activities include equipment loans and leasing, asset credit, direct discounting of bills of exchange and promissory notes, foreign exchange loans, long-term working capital loans, venture capital financing, and short-term general corporate financing. IDBI also provides indirect assistance, such as loan

refinancing, through banks and various regional financial institutions. IDBI generally does not acquire loans or investments in the secondary market and has traditionally held its loans and investments until their maturity.

4. Under the IDBI Act, IDBI has had access to low cost funds from the Government and the Reserve Bank of India ("RBI") for the purpose of granting loans at concessional rates. IDBI also has borrowed, directly and indirectly, from such institutions as the World Bank and the Asian Development Bank, and it has contracted lines of credit with the Export-Import Bank of Japan and Government-sponsored export credit agencies through European banks.

5. IDBI's credit exposure to individual companies or business groups is kept below ceilings mandated by the RBI for Public Financial Institutions (such as IDBI) and for commercial banks. In addition, IDBI generally does not bear any exchange rate risk with respect to its foreign currency loans, because it matches the currency of the loans with its sources of funds. In certain cases, the Government bears the exchange rate risk either as primary borrower under loans from multilateral agencies or under government-sponsored exchange risk pools.

6. In addition to its lending activities, IDBI underwrites securities issued by industrial concerns and, to some extent, subscribes directly to their capital issues. Through its in-house merchant banking division, IDBI provides fee-based services such as capital market issue management, loan/guarantee syndication, and advisory services for corporate restructuring, mergers, and acquisitions. IDBI also offers foreign exchange and debenture trustee services. In addition, due to deregulation of the Indian financial sector, IDBI has established separate subsidiaries to engage in commercial banking, stockbroking, and asset management.

7. IDBI is administered in accordance with the provisions of the IDBI Act as well as other provisions of Indian law applicable to business enterprises. IDBI also is subject to extensive regulations by both the RBI and the Securities and Exchange Board of India ("SEBI"). The RBI regulates IDBI as a Public Financial Institution and not as a banking institution or trust company. Specifically, the RBI regulates IDBI's commercial lending, issuance of certificates of deposit and finance letters of credit, and foreign currency trading. IDBI adheres to RBI-issued capital adequacy guidelines for non-bank financial institutions, which are

designed to protect the solvency of such institutions by limiting the amount of leverage that they may incur. IDBI also is subject to specific RBI guidelines relating to income recognition and asset allocation, periodic reports, and rates payable on "fixed" deposits (generally, interest-bearing instruments).

8. The SEBI regulates IDBI's underwriting, merchant banking, asset management, and debenture trusteeship activities. The SEBI prescribes conditions for the registration of these activities and establishes standards of obligations and responsibilities. SEBI regulations also set forth requirements for underwriters and underwriting agreements, require the adoption of codes of ethics, and prohibit conflicts of interest and insider trading.

9. In 1995, the Government granted IDBI the authority to raise equity capital by issuing shares to investors, provided that the Government's share of IDBI's issued equity capital would not fall below 51%. As of December 31, 1997, the Government owned approximately 72% of IDBI's equity capital.

10. IDBI proposes to offer and sell equity and debt securities in the United States. It will not offer or sell any such securities unless (a) they are registered under the Securities Act of 1933 ("Securities Act"), (b) in the opinion of special United States counsel for IDBI, there is an exemption from registration under the Securities Act available with respect to such offer and sale, or (c) the SEC staff states that it would not recommend that the SEC take any action under the Securities Act if such securities are not registered. IDBI intends to use the proceeds from any sales of its securities in the United States as an additional source of funding for industrial development and general corporate purposes.

11. Although IDBI does not expect that the Government will guarantee payments on the debt securities that IDBI proposes to sell in the United States, IDBI states that investors would have the protection afforded by Indian regulation of IDBI's operations, the requirements of the Securities Act, and the antifraud provisions of the Securities Exchange Act of 1934.

#### **Applicant's Legal Analysis**

1. Section 3(a)(1)(C) of the Act defines an investment company to include any issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40%

of the issuer's total assets. Section 3(a)(2) of the Act defines the term "investment securities" to include all securities except: (A) government securities; (B) securities issued by employees' securities companies; and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).

2. As of December 31, 1997, more than 76% of IDBI's assets consisted of obligations of borrowers to repay loans. These obligations could be deemed to be "investment securities" within the meaning of section 3(a)(2) of the Act. As a result, IDBI may be deemed to be an "investment company" under section 3(a)(1)(C) of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with both the protection of investors and the purposes fairly intended by the policy and provisions of the Act. IDBI requests an order under Section 6(c) exempting it from all provisions of the Act.

4. IDBI states that rule 3a-6 under the Act excludes foreign banks from the definition of investment company under the Act. A "foreign bank" is defined in the rule to include a banking institution "engaged substantially in commercial banking activity" which, in turn, is defined to include "extending commercial and other types of credit, and accepting demand and other types of deposits." IDBI believes that it is functionally equivalent to a foreign bank because it offers financial services and issues financial products similar to those offered and issued by traditional foreign banks, and it is subject to RBI oversight, supervision, and regulation. IDBI states, however, that because it is not considered a commercial bank under Indian law and, consequently, is prohibited from accepting demand deposits, it might not be eligible to rely on rule 3a-6.

5. IDBI represents that RBI regulations governing its activities are similar to those governing commercial banks. The principal differences between RBI's regulation of non-bank financial institutions (such as IDBI) and banks are that non-bank financial institutions are exempt from RBI regulations relating to minimum cash reserve ratios and statutory liquidity ratios and from the

RBI's authority over the appointment of bank directors.

6. IDBI asserts that, as a development financial institution designed to promote and provide a source of finance for industry in India, it is not within the intent of the Act and its characteristics differ from the types of entities at which the Act was generally directed. Applicant thus states that it satisfies the standards for relief under section 6(c) of the Act.

#### **Applicant's Conditions**

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. In connection with any offering by IDBI of its securities in the United States, IDBI will appoint an agent to accept service of process in any suit, action, or proceeding brought on the securities and instituted in any state or federal court in the City or State of New York by the holder of any such securities. IDBI expressly will submit to the jurisdiction of the New York state and United States federal courts sitting in the City of New York with respect to any such suit, action, or proceeding. IDBI also will waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of debt securities have been paid and until any equity securities offered in the United States are no longer outstanding. No such submission to jurisdiction or appointment of agent for service of process will affect the right of a holder of any such security to bring suit in any court that shall have jurisdiction over IDBI by virtue of the offer and sale of such securities or otherwise.

2. IDBI will rely on this order only so long as (a) its activities conform in all material respects to the activities described in the application; and (b) IDBI continues to be regulated by the RBI, SEBI, or other applicable Indian regulatory authority as a financial institution, as described in the application.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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