

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>Civil No. 14-1637</b>
	:	
<b>v.</b>	:	
	:	
<b>NORTH AMERICA INVESTMENT CORPORATION</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

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**COMPLAINT FOR RECEIVERSHIP AND INJUNCTION**

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the Small Business Administration, and for its cause of action states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is a civil action brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, “SBA,” “Agency” or “Plaintiff”), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the “Act”), Sections 308(d), 311, and 316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, North America Investment Corporation (hereinafter “NAIC” or “Licensee”), is a corporation that maintains its principal place of business in San Juan, Puerto Rico. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

**Statutory and Regulatory Framework**

4. NAIC was licensed by SBA as a Small Business Investment Company (“SBIC”) pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on or about November 7, 1974, SBA License No. 02/02-5308, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. NAIC’s Application for Leverage contains an acknowledgement and certification that NAIC would be operated in accordance with the Regulations and the Act.

6. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the “Regulations”).

7. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide leverage to licensed SBICs.

8. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided Leverage to NAIC through the purchase of Preferred Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$1,250,000, which amount plus accrued dividends are still outstanding.

9. The Preferred Securities referenced in paragraph 8, above, are subject to and incorporated by reference in the Regulations, including but not limited to the provision of 13 C.F.R. §§107.1820-1850 and 13 C.F.R. §203 (1974)(1979)(1981).

10. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the

Regulations, all of the rights, privileges and franchises of a Licensee such as NAIC be forfeited and the company may be declared dissolved.

11. Section 311 of the Act, 15 U.S.C. §687c, provides that if a determination by SBA that a Licensee such as NAIC, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

### **COUNT ONE**

#### **CAPITAL IMPAIRMENT AND DEFAULT**

12. Paragraphs 1 through 11 are incorporated herein by reference.

13. Section §107.1830(c) of the Regulations requires that NAIC not have a condition of Capital Impairment of greater than 75% (seventy five percent) as defined under the Regulations.

14. Based on the SBA Form 468 submitted by NAIC for the period ending September 30, 2013, SBA determined that NAIC had a condition of Capital Impairment percentage, as NAIC's capital impairment percentage was 99.3%, greater than the 75% allowed under the Regulations.

15. By letter dated October 29, 2013, SBA notified NAIC that SBA would proceed with its legal remedies, pursuant to 13 C.F.R. § 107.203 (1974)(1979)(1981)

unless the condition of capital impairment was cured within fifteen (15) days of the date of the letter.

17. NAIC failed to cure its condition of capital impairment. Consequently, by letter dated January 30, 2014, NAIC was notified that it had been placed into liquidation status by SBA. SBA also demanded, in accordance with Paragraph 2 of the Leverage Application, Certification and Agreement, the principal amount of Leverage plus earned dividends,

18. To date, NAIC has failed to cure its condition of Capital Impairment, has committed various other regulatory violations, including activities not contemplated by the Act, and the entire \$1,250,00 in Preferred Securities Leverage purchased by SBA remains outstanding.

19. NAIC's failure to cure its condition of Capital Impairment is a violation of §107.1830(b) of the Regulations and a violation of 13 C.F.R. §107.203 (1974)(1979) and (1981).

20. NAIC's Application for Leverage provides that SBA may make demand for all indebtedness due SBA in the event of a violation of 13 C.F.R. §107.203.

21. In its January 30, 2014 letter to NAIC, SBA demanded repayment of the Leverage issued NAIC. To date, the amount has not been repaid.

22. As a consequence of NAIC's violation of 13 C.F.R. §§107.1830(b) and 13 C.F.R. §203 (1974)(1979) and (1981), of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of NAIC.

23. As a consequence of NAIC's violation of 13 C.F.R. §§107.1830(b) and 13 C.F.R. §203 (1974)(1979) and (1981), of the Regulations, SBA is entitled to the judgment against NAIC in the amount of Leverage outstanding or \$,1,250,000.

**COUNT TWO**

**FAILURE TO HONOR A WRITTEN AGREEMENT WITH SBA**

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. Section 107.507 (a) of the Regulations provides that that failure to comply with the terms of written agreement with SBA is a violation of the Regulations and an event of default.

26. The Leverage Application executed by NAIC contains a certification and agreement by NAIC that SBA could demand repayment in full of all Preferred Securities purchased by SBA In the event of a violation of 13 C.F.R. §203 (1981).

27. The terms under which the Preferred Securities were purchased by SBA incorporate, by reference, provisions of SBA's Regulations (13 C.F.R.) ("the Regulations") as if fully set forth therein. Section 107.1820, which was codified in 1996, provides that preferred securities issued before April 25, 1994, continue to be governed by the remedies in effect at the time of their issuance (i.e., the regulations which were in effect from 1974 to 1981, when SBA purchased Licensee's preferred stock). The terms under which the Preferred Securities were purchased by SBA include the Certification and Agreement set forth in SBA Form 1022A, "Application for Funds Pursuant to Section 303(c) of the Act" submitted by NAIC to induce SBA to approve the purchase. Thus 13 C.F.R. §107.203 is the governing regulation.

28. NAIC has failed to honor the terms of the Leverage Application, a written agreement with SBA, by failing to pay SBA in full in accordance with the Leverage Application and as a consequence of the capital impairment violation.

29. As a consequence of NAIC's violation of 13 C.F.R. §§107.507 (a), 107.1830(b) and 13 C.F.R. §203 (1974)(1979) and (1981), of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of NAIC.

**COUNT THREE**

**FAILURE TO FILE ANNUAL AND QUARTERLY FINANCIAL STATEMENTS**

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. Section 107.630 of the Regulations provides that an SBIC must submit an annual audited financial statement within ninety (90) days of the end of its fiscal year. NAIC's fiscal year end is March 31.

32. Section 107.630 of the Regulations also provides that an SBIC must submit quarterly unaudited financial statements at the end of each quarter that is not the fiscal year end quarter within thirty (30) days of the end of that quarter. For NAIC, those quarters would be June 30, September 30 and December 31.

33. Since at least 2012, NAIC has failed to file any quarterly or annual financial statements in a timely manner. Although the 2012 and 2013 statements were ultimately filed, the 2014 audited financial statement for the year ending March 31, 2014 was due by June 30, 2014. It has yet to be received.

34. As a consequence of NAIC's repeated failure to comply with 13 C.F.R. §630 of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of NAIC.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining NAIC, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of any NAIC assets of the Fund; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any NAIC or assets of the Fund, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate NAIC's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. §687c enter the proposed Consent Order, (2) appoint SBA as receiver of NAIC for the purpose of marshaling and liquidating the assets of NAIC, satisfying the claims of creditors as determined by the Court and authorize SBA as Receiver to sell or transfer the interest of SBA and/or other limited partners in NAIC provided the express written consent of the affected parties whose interest is to be sold or transferred is obtained; and (3) grant such other relief as contained in the Consent Order filed simultaneously herewith.

D. That this Court enter judgment in the amount of \$1,250,000 plus earned dividends in favor of SBA and against NAIC.

E. That this Court grant such other relief it deems just and proper.

Respectfully Submitted in San Juan, Puerto Rico, this 21st day of August, 2014.

ROSA EMILIA RODRÍGUEZ-VÉLEZ  
United States Attorney

s/ *Agnes I. Cordero* .

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