

By executing this document, both parties certify that the concern is a Disadvantaged Business.

(d) A certification by the concern you are financing of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

§ 107.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 107.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the applicant to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses and projections as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the business and the amount of the proposed Financing.

(b) *Updated financial information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern; and

(iii) Verify the use of Financing proceeds.

(2) The information submitted to you must be certified by the president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the business involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see § 107.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by SBA's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 107.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or SBA's examiners access to its books and records for such purpose.

REPORTING REQUIREMENTS FOR
LICENSEES

§ 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).

(a) *Annual filing of Form 468.* For each fiscal year, you must submit to SBA financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraph (e) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* The annual Form 468 must be audited by an independent public accountant acceptable to SBA.

(2) *Insurance requirement for public accountant.* Unless SBA approves otherwise, your independent public accountant must carry at least \$1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least \$1,000,000.

(b) *Interim filings of Form 468.* When requested by SBA, you must file interim reports on Form 468. SBA may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. If you have an outstanding Leverage commitment from SBA, see the filing requirements in § 107.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

§ 107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).

For each Financing of a Small Business (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

§ 107.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

§ 107.660 Other items required to be filed by Licensee with SBA.

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give SBA a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give SBA a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by

you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

(2) SBA may require you to submit copies of the pleadings and other documents SBA may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise SBA of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, or general partner of the Licensee, or any other person who was required by SBA to complete a personal history statement in connection with your license, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts which pertain to the incident.

(e) *Other reports.* You must file any other reports that SBA may require by written directive.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5866, Feb. 5, 1998]

§ 107.670 Application for exemption from civil penalty for late filing of reports.

(a) If it is impracticable to submit any required report within the time allowed, you may apply for an extension. The request for an extension must:

(1) Be filed before the reporting deadline;

(2) Certify to an extraordinary occurrence, not within your control, that makes timely filing of the report impracticable; and

(3) Be accompanied by written evidence of such occurrence, where appropriate.

(b) Upon receipt of your request, SBA may exempt you from the civil penalty provision of section 315(a) of the Act, in such manner and under such conditions as SBA determines.