



409 3rd St., SW • Washington, DC 20416 • (202) 205-6510

THE SBIC PROGRAM

Licensing Application Exhibits

Form 2183: Fund Exhibits

Name of Applicant:

Enter Applicant Name

This form should be completed only by SBIC license applicants that have previously filed a Management Assessment Questionnaire (SBA Form 2181 and 2182) with SBA, and been invited by SBA to file a license application.

The estimated burden for completing this form, including all exhibits, is 85 hours per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to the US Small Business Administration, Chief, Administrative Information Branch, Washington, DC 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. OMB Approval 3245-0062.

Please do not send forms to OMB. Refer to Instructions for information on how and where to submit the requested information.

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Notices Required by Law

The following is a brief summary of the laws applicable to this collection of information.

PAPERWORK REDUCTION ACT (44 U.S.C. Chapter 35)

Purpose for Collecting Information:

The information requested in Exhibits to the Small Business Investment Company Management Assessment Questionnaire (Exhibits A to F) and License Application (Exhibits A to J) (“Exhibits”) will be used in connection with an investigation of your experience and character. The scope of this investigation may include contact with banks, other financial institutions, individuals, business associates, law enforcement offices (including the Federal Bureau of Investigation), and any others that will assist SBA in making an adequate appraisal of your general business reputation and character. SBA may also use the information to assist in obtaining credit bureau reports, including consumer credit reports and scores on the principals of the SBIC applicant, for the purpose of determining whether to approve a principal’s participation in the SBIC program.

If information provided to SBA indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, SBA may refer it to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement or prevention of such violations.

Personal information [Privacy Act, 5 U.S.C. 552a]

Any person can request to see or get copies of any personal information that is maintained by SBA. However, requests for information about another individual may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act (5 U.S.C. 552).

Generally, you are not required to provide your social security number and the failure to provide your social security number generally may not affect any right, benefit or privilege to which you are entitled. However, the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701(c)(1)) requires a Federal agency to obtain the taxpayer identification number (TIN) from each person doing business with that agency.). Therefore, it is mandatory that you furnish your TIN to the SBA as part of your licensing application. Additionally, disclosure of your name and other personal information requested is mandatory. SBA is required under Section 301(c)(3) of the Small Business Investment Act, 15 U.S.C. 681(c)(3), to consider the general business reputation of certain key individuals in order to make a determination about whether each individual has the business experience and character necessary to participate in the SBIC program. Your social security number and other personal identifiers assist SBA in making these determinations required by law. If you do not provide this information, SBA will be unable to reach a favorable determination concerning your participation in the SBIC program.

FREEDOM OF INFORMATION ACT (5 U.S.C. 552)

This law provides, with some exceptions, that we must make records or portions of records contained in our files available to persons requesting them. This generally includes aggregate statistical information on the SBIC program and other information such as names of licensed SBICs and names of companies that have been financed by SBICs. We do not routinely make available to third parties your proprietary data or information that would cause competitive harm or would constitute a clearly unwarranted invasion of personal privacy. We note that Exemptions, 4, 6 and 8 of the Freedom of Information Act (FOIA) allow SBA to withhold financial data on individual companies.

To request information under FOIA, you must send the request to the SBA office maintaining the records requested or the Chief, FOI/PA Office, 409 3rd Street, SW, Washington, DC 20416, or by e-mail to foia@sba.gov, and identify it as a Freedom of Information Act (FOIA) request. The request must describe the specific records you want.

Declaration of Principals and Control Persons

Name of Applicant:	Enter Name of Applicant
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Instructions & Applicability

- 1) Be sure to fill-in the Name of the Applicant above.
- 2) This declaration is to be signed with the submission of an SBIC License Application (not with the submission of a Management Assessment Questionnaire).
- 3) If any new principals (as defined in the application instructions) or Control Persons (as defined in 13 CFR §107.50) are added to the firm after submitting your initial license Application, a declaration signed by the new principal or Control Person must be submitted to SBA.
- 4) If a new principal or new Control Person is to be added to the SBIC after it is licensed, a declaration signed by the new principal or Control Person must be submitted to SBA.

Declaration

1. We constitute all of the principals and Control Persons of the applicant and we certify that all information submitted in connection with SBA Forms 2181, 2182 and 2183 is true and correct to the best of the knowledge of each one of us. We also certify that we are submitting this information for the purpose of obtaining a license to operate as, or approval of a change in the ownership or management of, a Small Business Investment Company (SBIC). We agree that all statements made in connection with the SBA Forms 2181, 2182 and 2183 are considered material for the purpose of inducing the SBA to issue a license, approve the management and ownership of the applicant, and to disburse SBA funds in reliance on such statements.
2. If this Application is approved, we will operate the SBIC in full conformity with the Small Business Investment Act of 1958, as amended, and SBA regulations. We understand that if a license is granted on the basis of this Application, this Application will become an agreement with the SBA within the meaning of 13 CFR 107.507. Accordingly, nonperformance is a violation of Section 107.507.
3. We understand that knowingly making a false statement in connection with this Application is a violation of Federal law and is subject to criminal prosecution and civil penalties under 18 USC 287, 371, 1001, 1006 and 1014, including fines of up to \$1 million and up to 30 years imprisonment; 15 USC 645 and 687(f); civil penalties under 31 USC 3729; government-wide disbarment or suspension; and denial, suspension, or revocation of a small business investment company license.
4. We have not used and will not use, directly or indirectly, any funds advanced by any SBIC or any New Markets Venture Capital (NMVC) company to any small business concern, or any funds available as a result of funds advanced by an SBIC or NMVC company to a small business concern, to purchase any securities of the SBIC or to repay any obligation incurred in connection with the purchase of any securities of the SBIC.

Name of Applicant	
By (entity authorized to sign on behalf of Applicant, e.g., general partner)	
By (signature of person authorized to sign)	
Title	Date

INDIVIDUAL EXECUTION BY EACH PRINCIPAL AND EACH CONTROL PERSON

Signature		
Printed Name		
Title	Date	Click here to enter a date.
Signature		
Printed Name		
Title	Date	Click here to enter a date.
Signature		
Printed Name		
Title	Date	Click here to enter a date.
Signature		
Printed Name		
Title	Date	Click here to enter a date.

Exhibit K. Capital Certificate

Name of Applicant:	Enter Applicant Name
Date of this Certificate:	Click here to enter a date.
Applicant's Leverageable Capital ¹ :	\$\$
Applicant's Regulatory Capital ² :	\$\$
Applicant's Regulatory Capital Adjusted to Determine Management Fees ³ :	\$\$
Applicant's Regulatory Capital Adjusted to Determine Overline Limit ⁴ :	\$\$

General Instructions

- a. As used in the Capital Certificate, "*Applicant*" means the applicant for a license as an SBIC or an existing SBIC licensee, as applicable.
- b. For limited partnerships, the Capital Certificate must be signed by the general partner. If the general partner is an entity general partner, a manager or managing member of the general partner must sign the Capital Certificate. If the general partner is itself a limited partnership, then the Capital Certificate must be signed by its general partner or the manager or managing member of that general partner.
- c. For limited liability companies, the Capital Certificate must be signed by an authorized managing member, manager or officer.
- d. For corporations, the Capital Certificate must be signed by the authorized senior executive officer, the Chairman, President, CEO, CFO, COO, Vice President, or Treasurer.
- e. Applicants that are "*drop-down funds*", i.e., funded by one or more parent venture funds, should refer to the Addendum A for further instructions on completing this Capital Certificate.
- f. Do not let any table break across a page unless its length exceeds a page in length.
- g. Prior to submission, enter the name of the applicant and select the date of submission using the space provided in the header of this page.

¹ 13 CFR 107.50 contains the definition of "Leverageable Capital"

² 13 CFR 107.50 contains the definition of "Regulatory Capital"

³ SBIC Tech Notes 7 (December 2000) and 7A (December 2003) provide for management fees during an SBIC's initial investment period based on Regulatory Capital that is "unreduced" by certain permitted distributions. Refer to the applicable Tech Note for details.

⁴ 13 CFR 107.740 contains the methodology for making this calculation

Instructions during the License Application Process

You must submit a signed Capital Certificate with your license application showing that the minimum Regulatory Capital requirement has been met. Before the application is presented to the Agency licensing committee, you must submit an updated Capital Certificate that meets the minimum Leverageable Capital requirements and shows that you have sufficient Regulatory Capital to carry out your business plan.

Instructions after the Applicant has been Licensed

A current signed Capital Certificate must be on file with SBA at the time you apply for an SBA Leverage commitment and at the time that you apply to draw down Leverage.

Representations and Warranties

AS A MATERIAL INDUCEMENT FOR THE U.S. SMALL BUSINESS ADMINISTRATION (“SBA”) TO ISSUE THE APPLICANT A LICENSE AS A SMALL BUSINESS INVESTMENT COMPANY AND/OR TO PROVIDE SBA FINANCIAL ASSISTANCE, THE APPLICANT HEREBY REPRESENTS AND WARRANTS TO AND COVENANTS AND AGREES WITH SBA AS FOLLOWS:

1. **Investors**⁵. The attached Tables 1A, 1B, 1C and 1D state:
 - a. the name and address of each investor of Applicant (including the Applicant’s general partner(s) for limited partnerships, but excluding the SBA, its agents, trustees or representatives);
 - b. the amount of each investor’s total capital commitment to Applicant (“*Capital Commitment*”);
 - c. the amount of each investor’s Capital Commitment which has been paid to Applicant in cash⁶ (“*Paid-In Capital*”) on or before the date hereof; and
 - d. the unpaid balance of each investor’s Capital Commitment (“*Unfunded Commitment*”).
2. **Institutional Investor Status.** Tables 1A, 1B, 1C and 1D further specify:
 - a. whether each investor is an Entity Institutional Investor, an Individual Institutional Investor or an Other Investor⁷;
 - b. for each investor designated as an Entity or Individual Institutional Investor, the subsection of the definition of Institutional Investor in 13 CFR §107.50 under which such investor qualifies as an Institutional Investor; and
 - c. for each investor designated as an Entity Institutional Investor, the type of entity.
3. **Representations and Warranties of Institutional Investors.** Each investor listed as an Institutional Investor whose unfunded commitment is included in Regulatory Capital has represented and warranted to, and agreed with, the Applicant that, with respect to such investor:
 - a. it meets the criteria for qualifying as an Institutional Investor under that subsection of the definition of Institutional Investor (see 13 CFR §107.50) designated in Tables 1A, 1B and 1D; See *Addendum A for information on the use of dual commitments.*
 - b. if such investor has a net worth of less than \$10 million, (i) its Unfunded Commitment does not exceed ten percent (10%) of its net worth or (ii) if its Unfunded Commitment exceeds 10%, SBA has approved an unconditional, irrevocable letter of credit for the term of the commitment to be issued by a state or national bank in favor of Applicant, in an amount not less than such

⁵ Refer to *Addendum A* for information and instructions on the use of dual commitments.

⁶ Non-cash contributions will not be accepted without the prior written approval of the SBA.

⁷ 13 CFR §107.50 contains a definition of “Institutional Investor”.

- investor's Unfunded Commitment, a signed copy of which letter of credit has been supplied to SBA, and the required information concerning such letter of credit is listed in Table 3;⁸
- c. until all of its Capital Commitment has been paid, such investor will notify Applicant promptly of any change that causes the information in Tables 1A through 1I or in this Section 3 concerning such investor to be incorrect;
 - d. its Capital Commitment constitutes Private Capital (as defined in 13 CFR §107.230), and except as specified in Table 1H, no part of such Capital Commitment constitutes Qualified Nonprivate Funds (as defined in 13 CFR §107.230(d)); and
 - e. if the investor is an individual, such investor is a permanent resident of the United States or has, in writing, irrevocably appointed the person or entity specified on Table 2 as such investor's agent for service of process, or
 - f. if the investor is an entity, such investor is qualified to do business and maintains a place of business in one or more states of the United States, the District of Columbia or U.S. possessions or has in writing, irrevocably appointed the person or entity specified on Table 2 as such investor's agent for service of process.
4. **Individual Institutional Investors.** For each investor listed in Table 1B or 1D as an Institutional Investor pursuant to subsection 2(i)(A) of the definition of Institutional Investor, SBA has approved an unconditional irrevocable letter of credit to be issued by a state or national bank in favor of Applicant, in an amount not less than such investor's Unfunded Commitment, a signed copy of which letter of credit has been delivered to SBA and the required information concerning such letter of credit listed on Table 3).
5. **Diversity Investors.** Each investor whose name is followed by "Y" in the column headed "*Diversity Investor*" in Tables 1A, 1B, 1C and 1D qualifies as a diversity investor for purposes of the Management and Ownership Diversity requirement (13 CFR §107.150(b))⁹. Table 1F lists the amount and percentage of Applicant's Regulatory Capital and Leverageable Capital, respectively, that consists of the capital committed and/or contributed by such diversity investors.
6. **Qualified Non-private Funds.** Table 1H shows Applicant's "*Qualified Non-private Funds*" (as defined in 13 CFR §107.230(d)) and the ratio of such Qualified Non-private Funds to Applicant's Regulatory Capital.

⁸ For individuals, "net worth" does not include the value of any equity in his/her most valuable residence. For entities described in subsection 1(v) or 1(vi) of the definition of Institutional Investor in 13 CFR §107.50, "net worth" means net assets available for benefits. If an investor with a net worth of more than \$10 million makes a significant investment in the Applicant, SBA may require additional financial information concerning such investor in order to include such investor's unfunded commitment as part of the Applicant's Regulatory Capital.

⁹ If you are unsure or otherwise do not wish to certify that an investor is a "diversity investor", place an "N/A" in the column headed "*Diversity Investor*". See 13 CFR §107.150(b).

7. **Associate Investors.** Table 1I shows all of Applicant’s investors that are *Associates* of Applicant (as defined in 13 CFR §107.50), and Table 1J shows persons who are investors and who may be affiliates of one another.
8. **Guarantees.** For each investor listed in Table 1A or Table 1B as an Institutional Investor through the approved use of a guarantee agreement, SBA has approved the guarantee agreement (a signed copy must be submitted to SBA if the amount of the Unfunded Commitment is to be included as part of Regulatory Capital). Note that guarantees are only permitted in certain specifically defined situations. *See Addendum A for information on the use of guarantee agreements.*
9. **Investor’s Payment Covenant.** Each investor must pay its Unfunded Commitment to Applicant at the times and in the amounts specified in documents approved by SBA (“Investor’s Payment Covenant”), subject only to those conditions permitting a withdrawal: (i) if Applicant is a limited partnership, in Applicant’s Partnership Agreement (including, if applicable any SBA Annex), (ii) if Applicant is a corporation, in its articles of incorporation, or (iii) if Applicant is a limited liability company, in its operating agreement, provided each such document has been approved by SBA (“Organizational Document”). Each investor has represented to Applicant that such Investor’s Payment Covenant has been duly authorized and is the legal, valid and binding obligation of such investor (except as enforcement may be limited by bankruptcy, insolvency, reorganization or moratorium laws or other laws affecting the rights of creditors generally).
10. **Changes in Investor’s Payment Covenant.** Without the prior written approval of SBA, Applicant shall not release, amend, extend, compromise, cancel, forgive or otherwise waive any Investor’s Payment Covenant or Applicant’s right to receive payment when due of any investor’s Unfunded Commitment, other than as provided in Applicant’s Organizational Documents.
11. **Pre-Licensing Investments.** Applicant has made “approved pre-licensing investments” in the Portfolio Concerns on the dates and in the amounts (stated at their cost) set forth in Table 5. As used in Table 5, the column headed “Additional Obligation” means Applicant’s unfunded binding commitment to provide additional financing to the Portfolio Concern, which amount was included in the approval received from SBA, but does not qualify as Leverageable Capital and which amount should be listed in Table 5. *(After Applicant receives its license, Table 5 does not need to be completed for subsequent Capital Certificates.)*
12. **Changes in Regulatory Capital.** Applicant certifies that Table 1G reflects all changes in its Regulatory Capital since the date on which Applicant filed with SBA its application for an SBIC license.
13. **Management Fees.** Applicant certifies that Table 1L indicates the date, if any, it began drawing a management fee based upon an assumed use of Leverage greater than Combined Capital for purposes of establishing the five year period that management fees may be computed based on assumed Leverage (If the management fee is not computed on the basis of assumed Leverage use, insert N/A in Table 1L.) (See SBIC Tech Note No. 7A, revised April 2008.)

14. **Changes in Capital Certificate.** Applicant shall notify SBA promptly if Applicant learns that any information contained in this Certificate (including the Tables attached to this Certificate) is incorrect or incomplete or if any investor fails to pay, when due, any required payment of such investor’s Unfunded Commitment or if any investor notifies Applicant that it will not pay its Unfunded Commitment or otherwise desires to withdraw from Applicant. Applicant shall also notify SBA promptly if any letter of credit or guarantee agreement provided by an investor to Applicant expires, ceases to be in full force and effect, or is modified, renewed or replaced; and if such letter of credit is renewed or replaced, Applicant shall give SBA a copy of such renewal or replacement letter of credit.

15. **Criminal Prosecution.** Applicant acknowledges that any intentionally false statement or willful misrepresentation contained in this certificate is a violation of Federal law and is subject to criminal prosecution under 18 USC §§287, 371, 1001, 1006, and 1014; 15 USC §645; civil penalties under 31 USC §3729; government-wide debarment or suspension; and denial, suspension, or revocation of a Small Business Investment Company license.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Capital Certificate as of the date set forth above.

Name of Applicant:

By (*Typed Name*):

Title¹⁰:

Signature:

Date

[Click here to enter a date.](#)

¹⁰ Indicate the position of the signatory (e.g. specific officer or manager title), the entity for which the signatory is signing and its relationship to the Applicant.

Capital Certificate Tables

Table 1A – Entity Institutional Investors ¹¹			“X” if this is a Drop-Down Fund →		
Name & Address ¹²	Type of Entity & Qualifying Subsection	Paid-In Capital	Unfunded Commitment	Capital Commitment	Diversity Investor (Y / N)
Totals					

Table 1B – Individual Institutional Investors			“X” if this is a Drop-Down Fund →		
Name & Address ¹³	Qualifying Subsection	Paid-In Capital	Unfunded Commitment	Capital Commitment	Diversity Investor (Y / N)
<i>Totals</i>					

¹¹ Trusts and IRAs are entities, not individuals, and trusts must be tax-exempt to qualify under subsection 1(vii). Any investor seeking to qualify as an Institutional Investor under subsection 1(xi) must obtain SBA’s prior approval.
¹² Entity investors must list their business addresses. P.O. boxes are not acceptable addresses.
¹³ Individual investors must list their primary residence. P.O. boxes are not acceptable addresses.

Table 1C – Other Investors ¹⁴			“X” if this is a Drop-Down Fund →			
Name & Address ¹⁵	Type (e.g., individual, LLC)	Paid-In Capital	Unfunded Commitment	Capital Commitment	Diversity Investor (Y/N)	Enter “X” if Parent Fund
<i>Totals</i>						

Table 1D – Dual Commitments ¹⁶		“X” if this is a Drop-Down Fund →			
Name & Address	Type of Entity for Primary Investor & Type of Entity and Qualifying Subsection for Backup Investor	Paid-In Capital	Unfunded Commitment	Capital Commitment	Diversity Investor (Y / N)
Primary Investor #1 – list in brackets			[\$ in brackets]	[\$ in brackets]	
Back-up Investor(s)					
Primary Investor #2 – list in brackets			[\$ in brackets]	[\$ in brackets]	
Back-up Investor(s)					
Primary Investor #2 – list in brackets			[\$ in brackets]	[\$ in brackets]	
Back-up Investor(s)					

¹⁴ Any Investor that does not meet the criteria for an Institutional Investor (see 13 CFR §107.50) is considered an Other Investor for purposes of this Capital Certificate.

¹⁵ Individuals must list their primary residence and entity investors must list their business address. P.O. boxes are not acceptable addresses.

¹⁶ An investor that plans on utilizing a dual commitment must refer to *Addendum A* for information and instructions on the use of dual commitments.

Table 1D – Dual Commitments ¹⁶		“X” if this is a Drop-Down Fund →			
Name & Address	Type of Entity for Primary Investor & Type of Entity and Qualifying Subsection for Backup Investor	Paid-In Capital	Unfunded Commitment	Capital Commitment	Diversity Investor (Y / N)
TOTALS [Add only amounts that are <u>not</u> in brackets]					

Table 1E –Investor Commitments to Parent Fund (for Drop-Down SBICs only)			
Names of Investors	Paid-In to Parent	Unfunded Commitment to Parent	Total Commitment
Entity Institutional Investors (From Table 1A)			
Individual Institutional Investors (from Table 1B)			
Dual Commitments (primary investors from Table 1D)			
Other Investors (from Table 1C)			
<i>Investor Totals</i>			

Table 1F – Investor Diversity Summary			
Type of Capital ¹⁷	Total Amount	Diversity Amount	Diversity %
Regulatory Capital			
Leverageable Capital			

¹⁷ The Management Ownership Diversity requirement applies to both Regulatory Capital and Leverageable Capital.

Table 1G – Changes in Regulatory Capital						
Date	Beginning Regulatory Capital	Amount of Increase	Decrease Pursuant to 13 CFR §107.585	Decrease Pursuant to 13 CFR §107.1570(b)	Other Decreases ¹⁸	Ending Regulatory Capital

Table 1H – Qualified Non-private Funds			
Name of Investor <i>(from Table 1A, 1B or 1C)</i>	Capital Commitment	Qualified Non-private Funds Whose Source is Federal Funds	Qualified Non-private Funds Whose Source is State or Local Gov't. Funds
<i>Totals</i>			
Non-Federal Qualified Non-private Funds ÷ Regulatory Capital			%

Table 1I – Associates of Applicant		
Name of Investor	Describe Relationship to Applicant	Applicable Subsection of Definition of Associate

Table 1J – Investor Affiliates

¹⁸ Any decreases in Regulatory Capital require SBA approval.

Name of Investor#1	Name of Investor #2	Describe Relationship Between Investors

USE OF TABLE 1K

(a) Identify each entity and individual who, directly or indirectly, (1) owns 10% or more of the equity interests of the Applicant, (2) is the beneficial owner of 10% or more of the equity interests of the Applicant, or (3) controls 10% or more of the equity interests of the Applicant, hereinafter referred to as a “10% Investors”.

(b) For purposes of identifying a 10% Investor, the equity interests of all affiliates must be aggregated

(c) For any 10% Investor that is an entity, identify all of the owners of that 10% Investor except that all individual owners of less than 10% can be aggregated and identified as shown in the example below. Continue identifying all of the owners of any entity owner until individual owners have been identified. (Note that you multiply the percentage in the current column by the percentage in the preceding column to determine if the result is 10% or more.)

(d) See the example below and delete the example, whether or not the table is utilized.

Table 1K – 10% Investors		
Level 1 – SBIC 10% Investors	Level 2 – Owners of SBIC 10% Investors	Level 3 – Indirect Equity Holder - % of Level 2 / % of SBIC
Bermuda Triangle Holdings 40%	High & Wide Investments 50%	Fred Jones 50%
		Steve Brown 50%
	John Smith 30%	
	Remainder = 20%, 10 Individuals each with less than 5%	
William Davis Trust, Robert Johnson, Trustee 15%	William Davis II, beneficiary 100%	
Remainder = 45%, 10 individuals and 5 entities, each with 8% or less.		

Table 1L –Management Fees	
Date on which Applicant began drawing Management Fee based upon assumed use of Leverage (if not applicable, insert N/A)	

Table 2 – Investors Who Are Not Permanent Residents of the United States ¹⁹	
Name & Address of Non-Resident Investor	Name & Address of U.S. Agent for Service of Process

Table 3 – Approved Letters of Credit				
Name of Investor	Unfunded Commitment	Amount of Letter of Credit	Issuing Institution	Expiration Date
<i>Totals</i>				

Table 4 – Conditions to Exercise of Right to Receive Unfunded Commitments
[if no conditions, insert “None”]

Table 5 – Approved Pre-Licensing Investments				
Name of Portfolio Concern	Date(s) of Investment(s)	Cash Invested	Additional Obligations	Cash Investment + Additional Obligations
Totals				

¹⁹ For individuals, permanent residents of the United States means a lawful permanent resident of the United States under the immigration laws. For entities, permanent resident of the United States means an entity qualified to do business and maintaining a place of business in one or more states of the United States, the District of Columbia or U.S. Territories.

Addendum A: Guarantees and Dual Commitments

NOTES ON THE USE OF GUARANTEES AND DUAL COMMITMENTS

In certain limited situations, SBA will allow an Applicant to use a guarantee and/or a dual commitment arrangement so the Applicant can include in its Regulatory Capital the Commitments of non-Institutional Investors. The circumstances under which SBA will permit the use of a guarantee and the requirements for using a guarantee are described in Section I below. The circumstances under which SBA will permit the use of the dual commitment arrangement and the requirements for a dual commitment are described in Section II below.

1. Guarantees for IRAs, Keoghs, Family Trusts and Family Investment Partnerships

An IRA, Keogh, family trust or family investment partnership that does not qualify as an Entity Institutional Investor may use a guarantee to have its Commitment included as part of Regulatory Capital. Adverse tax consequences may result for the IRA or Keogh, however, so SBICs and investors are cautioned to consult with legal counsel before using a guarantee in this situation.

How Does it Work. The IRA, Keogh, family trust or family investment partnership obtains a guarantee from an Institutional Investor for the full amount of its Unfunded Commitment. For example, for IRAs and Keoghs, if the individual who created the retirement account qualifies as an Institutional Investor, that individual can guarantee the full amount of the Unfunded Commitment of the IRA or Keogh to the Applicant. If the amount of the Unfunded Commitment is to be included in Regulatory Capital, the guarantee must be in the form approved by SBA (request a copy by sending an email to sbic@sba.gov) and the guarantee must be executed and a copy submitted to SBA before the licensing approval process can be finalized. SBA regulations limit the size of an unfunded commitment that can be guaranteed by an Institutional Investor with net worth of less than \$10 million (see 13 CFR §107.230(b)(4) and paragraph (2)(i)(B) of the Institutional Investor definition).

How is this Reflected on the Capital Certificate. The IRA, Keogh, family trust or family investment partnership is listed on the Capital Certificate as an Entity Institutional Investor under subsection 1(xi), followed by a footnote describing the guarantee arrangement and the name of the guarantor and the clause of the *Institutional Investor* definition of 13 CFR §107.50 under which the guarantor qualifies as an Institutional Investor.

2. Dual Commitments

How Does it Work. The “dual commitment” arrangement works by having one or more Institutional Investors (“back-up investor”) make a Capital Commitment to the Applicant identical to that made by the non-Institutional Investor (“primary investor”). When a capital call is made, the back-up investor is excused from funding its Unfunded Commitment to the extent the primary investor funds its own Unfunded Commitment on a timely basis. *Both the primary investor and the back-up investor are limited partners or members, as applicable, and must sign the Applicant’s limited partnership agreement or operating agreement as limited partners or members, as applicable.* In addition, both the primary investor and the back-up investor must be listed as investors in Table 1D of the Capital Certificate and in

the schedule of partners attached to the limited partnership agreement. The same limitations applicable to guarantees by Institutional Investors with net worth of less than \$10 million also apply to dual commitments.

When more than one Institutional Investor is serving as a back-up investor, each such Institutional Investor may make a Capital Commitment that is equal to only a proportionate amount of the primary investor's Capital Commitment, so long as the total of all Capital Commitments of such Institutional Investors equals 100% of the primary investor's Capital Commitment. Each Institutional Investor serving as a back-up investor must be listed on the Capital Certificate and the schedule of partners/members attached to the limited partnership agreement or member agreement in the case of limited liability companies with a designation as to the proportionate share for which each such Institutional Investor is obligated.

The suggested footnote language below can be used on the signature pages and the schedule of partners/members to clarify the dual commitment arrangement.

If [Primary Investor] makes a cash Capital Contribution to the Partnership, then simultaneously with such cash Capital Contribution, the Capital Commitment of [Back-up Investor] shall be reduced in an amount equal to that cash Capital Contribution and the Capital Contribution required to be made by [Back-up Investor] at the time shall be reduced by the same amount.

How is this Reflected on the Capital Certificate. The primary investor and each back-up investor are listed on the Capital Certificate on Table 1D. Each back-up investor must indicate the amount of the primary investor's Capital Commitment for which it is obligated and the appropriate subsection of the definition of Institutional Investor under which it is qualified.

Applicants and their counsel should note that neither the guarantee nor the dual commitment approach automatically qualifies Unfunded Commitments from investors that do not qualify as Institutional Investors as part of Regulatory Capital, and in every instance, a guarantee and/or dual commitment arrangement is subject to SBA's approval.

CAPITAL CERTIFICATE PRESENTATION FOR DROP-DOWN FUNDS

Applicants that are "drop-down funds" (i.e., funded by one or more parent investment funds) should use the standard Capital Certificate, following these presentation guidelines:

1. SBA requires each parent fund to be a primary investor in the Applicant ("Class A investor") and each parent fund's investors to become stand-by investors ("Class B investors") in the Applicant, except as noted below in item 3.
2. The names and addresses of all the Applicant's Class B investors, along with their respective capital commitments, paid-in capital and unfunded commitments (all three amounts at the *Applicant* level, not at the parent level), must be listed in Table 1A, 1B, 1C, 1D, as appropriate. The amount in the "Paid-in Capital" column will increase as either the Class A investor contributes capital to the

Applicant or the Class B investor contributes capital directly to the Applicant, thereby reducing the amount in the “Unfunded Commitment” column.

3. A Class A investor is typically not considered an Institutional Investor and should be listed as an “Other Investor” in Table 1C. The amounts in the “Capital Commitment”, “Paid-in Capital”, and “Unfunded Commitment” columns should all be shown in brackets and should not be included in the totals for Table 1C. In rare cases, SBA has determined that Class B commitments are not required if a parent fund qualifies as an Institutional Investor in its own right and has ample liquid assets available to fund its commitment to the Applicant, so that there is no doubt regarding the collectability of the commitment. In this case, the parent fund should be listed as an Entity Institutional Investor in Table 1A, its commitment should not be bracketed, and no Class B investors will be listed on the Capital Certificate. The same presentation applies if the parent fund is a publicly traded Business Development Company; for a BDC, see also the guidance on capitalization in SBIC Tech Note #13, particularly the criteria that SBA will apply in determining the extent to which a parent BDC’s Unfunded Commitment to the Applicant can be included in Regulatory Capital).
4. The capital commitments made by the Applicant’s Class B investors at the parent fund level should be shown on the Capital Certificate in Table 1E.

Addendum B: Definitions for Reference Only

Please note that this addendum is for convenience only. It does not constitute a part of the capital certificate contract. In the event that there are discrepancies between definitions of terms in the capital certificate and this page, the definitions within the capital certificate prevail.

APPLICANT means the applicant for a license as an SBIC or an existing SBIC licensee, as applicable.

CAPITAL COMMITMENT is the amount of each investor's total capital commitment to Applicant.

COMBINED CAPITAL means the sum of Regulatory Capital and outstanding Leverage.

DIVERSITY INVESTOR is a person or entity who meets the requirements of Management and Ownership Diversity as found in 13 CFR §107.150(b).

INSTITUTIONAL INVESTOR means the definition as found in 13 CFR §107.50.

INVESTOR'S PAYMENT COVENANT means the obligation of each investor to pay its Unfunded Commitment to Applicant at the times and in the amounts specified in Applicant's Organizational Documents.

LEVERAGEABLE CAPITAL means the definition as found in 13 CFR §107.50.

ORGANIZATIONAL DOCUMENT means: (i) if Applicant is a limited partnership, its Partnership Agreement (including, if applicable any SBA Annex), (ii) if Applicant is a corporation, its articles of incorporation, or (iii) if Applicant is a limited liability company, its operating agreement, as approved by SBA.

OVERLINE LIMIT is a calculation derived according to the methodology found in 13 CFR §107.740.

PAID IN CAPITAL means the amount of each investor's Capital Commitment which has been paid to Applicant in cash on or before the date hereof including the Unfunded Commitment. (Non cash contributions will not be accepted without the prior written approval of the SBA.)

QUALIFIED NON-PRIVATE FUNDS has the meaning as defined in 13 CFR §107.230(d).

REGULATORY CAPITAL means the definition as found in 13 CFR §107.50.

UNFUNDED COMMITMENT means the unpaid balance of each investor's Capital Commitment.

Addendum C: Sample Acceptable Commitment Letters

Instructions

It is not necessary to use the forms in this Addendum 3. They have been acceptable to the SBA and are presented for your convenience.

ENTITY (including trusts) form of commitment letter

[Name and Address of Fund]

[Date]

Dear Mr. _____:

This confirms the intention of _____ (“Investor”) to invest \$_____ as a limited partner in _____ (the “Partnership”) subject to *[insert one or more of the following as appropriate]*:

- a. Investor’s review of the limited partnership agreement;
- b. receipt of similar commitments which, together with Investor’s investment will total at least \$_____ [*; and*]

[Note: Include the following provision only under special circumstances:

- c. *receipt of evidence that the Partnership’s application for licensing as a Small Business Investment Company (“SBIC”) has been approved by the divisional Licensing Committee of the U.S. Small Business Administration (“SBA”) and it is reasonable to anticipate that the Partnership will promptly be licensed as an SBIC.]*

The Investor represents that it is an “Accredited Investor” as defined in Regulation D under the Securities Act of 1933; and

The Investor has a net worth (exclusive of any unfunded commitments from investors) in excess of *[check the appropriate box]*:

- over \$10 million
- over \$2 million and at least ten times the amount of this commitment
- less than \$2 million

We understand that you may submit a copy of this letter to SBA in connection with the application of the Partnership for licensing as an SBIC.

Very truly yours,

High net worth individuals form of commitment letter

[Name and Address of Fund]

[Date]

Dear Mr. _____:

This confirms [my][our] intention of investing \$_____ as a limited partner in _____ (the "Partnership") subject to [insert one or more of the following as appropriate]:

- a. [my][our] review of the limited partnership agreement;
- b. receipt of similar commitments which, together with [my][our] investment will total at least \$_____ [; and]

[Note: Include the following provision only under special circumstances:

c. receipt of evidence that the Partnership's application for licensing as a Small Business Investment Company ("SBIC") has been approved by the divisional Licensing Committee of the U.S. Small Business Administration ("SBA") and it is reasonable to anticipate that the Partnership will promptly be licensed as an SBIC.]

[We][I] represent that [we are][I am an] "Accredited Investor[s]" as defined in Regulation D under the Securities Act of 1933; and

[We][I] represented that [we][I] have a net worth (exclusive of the value of [my][our] most valuable residence in excess of [check the appropriate box]:

- over \$10 million
- over \$2 million and at least ten times the amount of this commitment
- less than \$2 million

[We][I] understand that you may submit a copy of this letter to SBA in connection with the application of the Partnership for licensing as an SBIC.

Very truly yours,

Exhibit L. Transferor's Liability Contract

Instructions

This Transferor's Liability Contract is to be executed by (i) each principal of the SBIC, in his/her individual capacity, (ii) each person, in his/her individual capacity, who will own or control, directly or indirectly, 50% or more of the *Private Capital* of the SBIC (as defined in 13 CFR §107.230), (iii) each entity that will own or control, directly or indirectly, 50% or more of the *Private Capital* of the SBIC, (iv) each person, in his/her individual capacity, who will own or control, directly or indirectly, 10% or more of the *Private Capital* of the SBIC and will participate in investment decisions of the SBIC (e.g., participation on the SBIC's Investment Committee), and (v) each entity that will own or control, directly or indirectly, 10% or more of the *Private Capital* of the SBIC and will have a nominee who participates in investment decisions of the SBIC.

If you have not already done so, enter the name of the applicant and select the date of submission using the space provided in the header of this page.

Definitions

As used in this Contract, the terms listed below have the following meanings:

"Act" means the Small Business Investment Act of 1958, as amended.

"Contract" means this Transferor's Liability Contract.

"Guarantor" means the individual or entity signing this Contract and identified above.

"Impermissible Change of Control" means (i) the assignment, pledge, grant or other transfer of any portion or all of any of the Guarantor's right, title or interest in SBIC, including, without limitation, rights to receive assets, income, distributions or other amounts from SBIC and rights to vote, consent or otherwise participate in decisions concerning SBIC, (ii) the assignment, pledge, grant or other transfer of any portion or all of any of the Guarantor's ability to control SBIC, including, without limitation, rights to vote, consent or otherwise participate in decisions concerning SBIC or (iii) the admission or substitution of a new principal in SBIC or new investor in SBIC's general partner or managing member, in each case, without the prior written consent of SBA when such consent is required by SBA.

"Leverage" means financial assistance provided to SBIC as defined in 13 CFR §107.50.

"Obligations" means all amounts which are or may become due and payable from SBIC in connection with any and all Leverage, and all expenses, including, without limitation, court costs and reasonable attorney's fees, incurred by SBA in enforcing its rights under this Contract.

"Participates In" means any action that permits, approves, facilitates or otherwise brings about an Impermissible Change of Control, including, without limitation, any vote, at a meeting or by proxy, or written consent in favor of an Impermissible Change of Control, unless the effectiveness of the participation is conditioned on the written consent of SBA.

“Permitted Transfer” means, with respect to any limited partner who is not a principal, a transfer to (i) a spouse, child, grandchild or heir of Guarantor, (ii) a trust for the benefit of one or more family members of Guarantor, (iii) an entity, all of whose owners or beneficiaries are family members of Guarantor, (iv) an IRA, Keogh account, trust or profit sharing plan of or for the benefit of Guarantor, (v) a wholly-owned subsidiary of Guarantor, or (vi) any transfer of all or a portion of the economic interest (the right to receive allocations and distributions) of Guarantor provided that Guarantor retains all capital contribution obligations and voting rights with respect to the transferred economic interest.

“Private Capital” means *Private Capital* as defined in 13 CFR §107.230

“SBA” means the U.S. Small Business Administration.

“SBIC” means the small business investment company (or applicant for a Small Business Investment Company license) named above.

Contract

In order to induce the SBA to provide Leverage under Section 303 of the Act, Guarantor hereby irrevocably and unconditionally guarantees the immediate payment of all Obligations, if the Guarantor Participates In an Impermissible Change of Control; it being understood that SBA is not required to pursue or exhaust any other remedies before proceeding under this Contract. Guarantor waives any right to require SBA to proceed against SBIC or any of its assets, or to proceed against or exhaust any collateral security that may have been given to SBA in connection with SBIC’s obligations to SBA or to pursue any other remedy in SBA’s power whatsoever. Guarantor also waives any and all presentments, demands, protests or notices otherwise required to be given to Guarantor.

If Guarantor Participates In an Impermissible Change of Control, SBA may, at its option and without notice to Guarantor, proceed directly against Guarantor to collect and recover the full amount of the Obligations; however, if SBA provides Leverage to SBIC after full written disclosure by SBIC or Guarantor of the Change of Control to an official of SBA with authority to approve additional Leverage, then Guarantor shall not have any liability for the future Obligations associated with such Leverage. The commission of a Permitted Transfer without SBA’s consent will not subject the Guarantor to liability under this Contract.

Furthermore, if SBA provides Leverage to the SBIC after written notification to an authorized SBA official that the Guarantor no longer meets any of the criteria in (i) through (v) above of the Instructions to this Contract, Guarantor shall have no liability with respect to such subsequent Leverage.

This Contract shall terminate upon the earlier to occur of (i) repayment in full of all Leverage drawn by SBIC and all expenses incurred by SBA in enforcing its rights under this Contract or (ii) the written consent of SBA by an authorized official.

Guarantor acknowledges and agrees that, without notice and without affecting the liability of Guarantor hereunder, from time to time, whether before or after an Impermissible Change of Control has occurred, SBA may renew, extend, grant indulgences or otherwise change the time for payment or

performance or otherwise change any other term or condition of SBIC’s obligations to SBA or otherwise deal with SBIC as SBA may elect, all without in any way diminishing, releasing or discharging the liability of Guarantor hereunder. Upon payment of its liability under this Contract, Guarantor shall be subrogated to the rights of SBA to receive payments and distributions of assets from SBIC in connection with any and all Leverage provided by SBA to SBIC.

If any term or provision of this Contract is illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not in any way affect or impair the remaining terms and provisions of this Contract.

This Transferor’s Liability Contract is binding upon Guarantor, its successors and assigns/heirs, executors, administrators and personal representatives, and may not be waived, amended, modified or, except upon repayment in full of all Leverage as provided above, terminated or discharged except in a writing signed by Guarantor and an authorized official of SBA; provided, that, Guarantor agrees and consents to any assignment of this Contract by SBA, in which event it shall inure to the benefit of any such assignee with the same force and effect as though said assignee was specifically named herein, and Guarantor hereby waives any notice of any such assignment. This Contract shall be governed by and construed in accordance with applicable Federal laws and the laws of the State of organization of SBIC.

PRIOR TO SIGNING THIS CONTRACT, BE CERTAIN THAT YOU FULLY UNDERSTAND THE LIABILITY THAT YOU ARE ASSUMING IN THE EVENT THAT YOU PARTICIPATE IN AN “IMPERMISSIBLE” TRANSFER OF OWNERSHIP.

IN WITNESS WHEREOF the undersigned party (or parties) has (have) affixed his/her (their) signature(s) hereto.

Guarantor		Percentage of Private Capital	
Printed Name		Title	
Signature		Date	

Guarantor		Percentage of Private Capital	
Printed Name		Title	
Signature		Date	

Guarantor		Percentage of Private Capital	
Printed Name		Title	
Signature		Date	

Guarantor		Percentage of Private Capital	
Printed Name		Title	
Signature		Date	

Guarantor		Percentage of Private Capital	
Printed Name		Title	
Signature		Date	

Exhibit M. Declaration of Significant Investors

Instructions

This declaration must be signed by each investor of 50% or more of the ownership interests of the applicant if that investor is **not required** to sign the *Declaration* found on page 6 of Form 2183.

Declaration

1. The undersigned certifies that all information submitted by it or on its behalf in connection with SBA Forms 2181, 2182 and 2183, is true and correct to the best of its knowledge. The undersigned also certifies that it is submitting this information for the purpose of obtaining an ownership interest in, or a license to operate as, a Small Business Investment Company. The undersigned understands that all statements made by it or on its behalf in connection with SBA Forms 2181, 2182 and 2183 are considered material by SBA in evaluating the Applicant’s application for a license to operate as a Small Business Investment Company.

2. The undersigned understands that knowingly making a false statement in connection with this application is a violation of Federal law and is subject to criminal prosecution under 18 USC §§ 287, 371, 1001, 1006, and 1014, including fines up to \$1 million and up to 30 years imprisonment, 15 USC §§ 645 and 687(f), civil penalties under 31 USC § 3729; government-wide debarment or suspension; and denial, suspension, or revocation of a Small Business Investment Company license.

3. The undersigned has not obtained, directly or indirectly, any of the funds it is investing in the SBIC from any SBIC or any business financed by an SBIC, and will not use any proceeds of a financing by any SBIC to repay any obligation that it has incurred, directly or indirectly, in connection with the purchase of its ownership in the SBIC.

4. The undersigned will not participate in or consent to any action by the SBIC that to the best of its knowledge and belief constitutes a violation of the Small Business Investment Act of 1958, as amended, or that constitutes a violation of SBA regulations.

Printed Name of Investor

Title

Signature

Date

[Click here to enter a date.](#)

Exhibit N. Offering Memoranda & Other Documents

Instructions

Attach your offering memoranda and other documents, as appropriate. (See 13 CFR 107.660(a) and (b)).

Exhibit O. Organizational Documents of Applicant

Instructions

For the Applicant and its general partner, if applicable, please provide the following:

1. **Organizational Documents:**

- a. For limited partnerships, include the certificate of limited partnership and a copy of the limited partnership agreement.
- b. For limited liability companies, include the certificate of formation and a copy of the operating agreement.
- c. For corporations, include a copy of the articles of incorporation and by-laws.

Please note that if a general partner of a limited partnership SBIC is an entity (i.e., corporation, LLC, or partnership), in accordance with 13 CFR §107.160(b), the organizational documents for the general partner must include language which states that the entity is organized under state law solely for the purpose of serving as the general partner of one or more SBICs.

2. **Minutes, resolutions and/or written consents.** Include certified copies of minutes, resolutions or written consents at which current directors, managers, officers were elected or appointed, as applicable.
3. **Model Partnership Agreement.** SBA encourages the use of SBA's Model Partnership Agreement and reminds the Applicant that all of the provisions of SBA's Model Partnership Agreement shown in bold face type must be included in the Applicant's Limited Partnership Agreement. A black line must be submitted showing the changes made to the SBIC model partnership agreement.

SBA's Model Partnership Agreement is available for download at www.sba.gov/inv.

4. **Execution.** The organizational documents submitted with the application may be unexecuted. SBA may require changes in your organizational documents during the licensing process. However, all organizational documents must be executed prior to SBA's approval of the Applicant's license application.
5. **Side Letters.** SBA discourages the use of side letters. If the Applicant intends to utilize side letters its limited partnership agreement and, preferably, its PPM should include provisions indicating the intent to utilize side letters. Provide a copy of all side letters between the Applicant and any of its investors, affiliates, associates, advisors or other third parties (executed or contemplated). These agreements require the prior approval of SBA.

Exhibit P. Opinions of Counsel

Instructions

1. **Opinions.** All applicants must submit an opinion of independent counsel for the applicant, addressed to the SBA, stating the following:
 - a. The applicant has been duly organized and is validly existing in good standing under the laws of the State of [state of organization].
 - b. The applicant is chartered or registered by the appropriate authorities to conduct, in its proposed operating territory or area, only the activities described under Title III of the Small Business Investment Act of 1958, as amended.
 - c. The applicant is duly qualified to do business in each jurisdiction contemplated under its business plan which requires such qualification, except to the extent that the failure to so qualify would not have a material adverse effect on the applicant. (Note: SBA considers the lack of authority to file suit in any jurisdiction to be a material adverse effect.)
2. **Securities Opinions.** All applicants must also submit evidence issued by the Securities and Exchange Commission (“SEC”) that the securities of the applicant sold or proposed to be sold, as set forth in the license application, are not required to be registered under the Securities Act of 1933 and that the applicant is not required to register as an investment company under the Investment Company Act of 1940, or, if registration is required in either case, evidence satisfactory to SBA that the applicant has complied with such requirements. If counsel for an applicant believes that the applicant is not subject to the registration provisions of the Securities Act of 1933 or the Investment Company Act of 1940, SEC clearance is not required, and in such event, the applicant must provide an opinion to the effect that it is not so subject to such registration provisions.
3. **Tax Opinions.** If the applicant is a partnership, an opinion must be provided that the partnership will be classified as a partnership for federal income tax purposes, stating that the partnership is not a publicly-traded partnership, as defined in Section 7704 of the Internal Revenue Code.
4. **Form of opinion.**
 - a. The opinions required must be rendered by independent legal counsel for the applicant and may be rendered in one or more separate legal opinions. (Note: An applicant must notify its licensing analyst in the event that the legal firm rendering such opinions and/or any member of such legal firm has invested or intends to invest in the applicant.)
 - b. Opinions with respect to state law must be rendered by counsel licensed to practice law in such state, unless the SBA specifically approves otherwise.

- c. Each opinion must be specifically addressed to the SBA and may also be addressed to other parties.
- d. The opinion or opinions may be provided to the SBA for approval in final draft form in advance of the receipt of a license by the SBA; *provided* that counsel undertakes to deliver an executed copy of any such opinion in the same form as the draft submitted effective upon the formation or license of the applicant.

5. Assumptions, Exceptions and Qualifications.

- a. Any assumptions on which an opinion is based must be specifically identified.
- b. Any exceptions and/or qualifications taken with respect to an opinion must be specifically enumerated, and where an exception relates to specific provisions of an agreement counsel should identify the provisions of the agreement to which the exception relates.
- c. Counsel must identify in which states they are members of the bar and the states to which their opinion relates, if different.

Exhibit Q. Management Services & Other Agreements

Instructions

If the SBIC plans to employ an investment advisor/manager as permitted by 13 CFR 107.510, please attach a copy of the management services agreement. Also, attach any side letters or other special agreements that the SBIC has negotiated with its general partner, investment advisor/manager, limited partners, or any other entities or individuals.

If the SBIC will not employ a separate investment advisor/manager, please provide a statement to that effect on this page.

Exhibit R. Bank Letter & Third Party Debt

Instructions

1. This information does not need to be submitted at the time of filing your application. However, it must be submitted before the application is presented to the Agency SBIC licensing committee. Your analyst will advise you when the bank letter is required.
2. Attach a letter or letters addressed to SBA from the institutions(s) or custodian(s) as evidence that unencumbered cash or permitted investments of idle funds as defined in 13 CFR §107.530(b) are on deposit in the account(s) of the Applicant. The funds evidenced by these letters should match the amounts in Table 1. The letters must be signed by a senior officer of the institution, and must be addressed to SBA and *must contain the following language* evidencing the deposit of funds to the Applicant's account:

This certifies that there is on deposit in the name of [Applicant] the sum of _____. This institution has no right, written or otherwise, to restrict the use of or the withdrawal of funds from this account, or to apply the funds in this account against any indebtedness owed to it; and it has no knowledge of any agreements with other parties restricting the right of withdrawal from, or concerning the use of, the funds in this account.

Table 1		
Description (cash on deposit, U.S. Treasury bill, etc.)	Amount	Custodian or Where Located
Total		

Description	Amount
Cash and cash equivalents (per bank letter(s))	
Pre-Licensing Investments Made (per Exhibit K, Table 5)	
Cash Paid for Organizational and Management Expenses Approved by SBA	
Other reconciling items (identify and explain)	
Total Paid-In Capital (per Exhibit M)	

Table 2 –Third Party Debt
If the applicant has third party debt, provide the name, address, phone number and email address of the contact person at the entity that has provided the loan, and attach a copy of the loan agreement.

Exhibit S. Legal Documentation Certification

Instructions

The following certification concerning the Applicant’s legal documents must be completed and signed by either a principal of the Applicant or Applicant’s legal counsel and submitted with the Applicant’s final, fully-executed legal documents prior to SBA’s approval of the Applicant’s license application.

Representation

I hereby represent and warrant to the United States Small Business Administration (“SBA”) that the following documents listed below, all of which have been fully-executed by all parties to such documents and attached to this letter, are unchanged from the versions of such documents approved by the SBA in processing [Name of SBIC Applicant]'s application for a Small Business Investment Company license.

List of Documents (modify the following list as needed)
Limited Partnership Agreement of Applicant
Executed Signature Pages of Limited Partners to Limited Partnership Agreement or Subscription Agreement (if signing through power of attorney contained therein)
Limited Liability Company Operating Agreement of General Partner
Capital Certificate
Bank Letter
Formation Opinion
Tax Opinion
Securities Opinion
Management Agreement
Exhibit R (Certification of Third Party Debt)
Side Letters
Escrow Agreement

Printed Name

Title

Signature

Date

[Click here to enter a date.](#)

Pre-Licensing Investment Worksheet

Instructions

This appendix is not submitted with the application. Once you have received a letter from SBA stating that your application has been accepted for processing, you may make eligible investments. You are limited to one pre-licensing investment until at least one principal has attended the SBIC regulations training class. Pre-licensing investments must be submitted for approval to the SBA on the *Pre-Licensing Investment Worksheet* which begins on the next page, with a certification that to the best of its knowledge and belief, the subject investment is an eligible investment, meeting the criteria set forth in 13 CFR Parts 107 and 121. **The investment must be approved by SBA before it is closed.** (The submission should be made at least **10 business days** prior to the proposed closing.)

Please note that the principals of an SBIC have sole responsibility for its investment decisions. SBA's pre-licensing investment review focuses only on regulatory compliance, and is part of an educational process that helps you become familiar with SBIC Program regulations. In particular, SBA's review may help you avoid the disruption of having to divest yourself of an ineligible investment (e.g. an investment in a company that does not qualify as a small business).

As part of this submission, you must also submit SBA Forms 1031, 480, and 652. For this purpose, you will submit a pro forma Form 1031 in hard copy, rather than electronically. After you are licensed, you must then submit a final Form 1031 using SBA's electronic reporting software.

Pre-Licensing Investment Worksheet

Name of Applicant:	Enter Applicant Name
Date:	Click here to enter a date.
Small Business Name:	Small Business Name
Date Financing is Expected to Close:	Click here to enter a date.

Additional Instructions

Copy this page and the balance of the Appendix into a new file. Please complete all questions. For any item for which you feel there might be multiple interpretations or where you feel that your interpretation might conflict with SBA's interpretation, please elaborate and/or call your analyst for guidance.

Overline Limits

1. State the Applicant's most likely Regulatory Capital.	\$
2. State the amount of Regulatory Capital raised to-date.	\$
3. What is the total dollar investment the Applicant is proposing to invest in the Small Business? Include Commitments as defined in 13 CFR 107.50	\$
4. Has or will the Applicant guarantee the obligations of the Small Business, or made any other commitments? If yes, explain fully below. (Include a description of the Applicant's relationship with the creditor, the amount of the guarantee and the cost of the guarantee). (13 CFR 107.740, 107.820)	YES <input type="checkbox"/> NO <input type="checkbox"/>
Provide an explanation, if required.	
5. What percentage of <i>most likely Regulatory Capital</i> is the sum of the proposed financing, including financing Commitments and guarantees? (13 CFR 107.740)	%
6. What percentage of <i>Regulatory Capital raised to-date</i> is the sum of the proposed financing, including financing commitments and guarantees. (13 CFR 107.740)	%

Size Standards

7. Is the Small Business affiliated with any other concerns, as defined in 13 CFR 121.103? If yes, list the names of the affiliated concerns, and include information for these affiliates when answering questions the remaining questions in the “Size Standards” section. YES NO

Provide an explanation, if required.

8. What is the average net income of the Small Business, including its affiliates, over its past two fiscal years? (Net income measured after Federal income tax, but excluding carryover losses. Note that if the company is an S Corp. or LLC, income tax expense can be attributed to the business when answering this question.)²⁰ Show calculation below. [13 CFR 121.301(c)(1), 121.201] \$

Provide an explanation, if required.

9. What is the tangible net worth (total assets minus goodwill, minus total liabilities) of the Small Business, including its affiliates, as of the date of this worksheet? Show calculation below. [13 CFR 121.301(c)(1), 121.201] \$

Provide an explanation, if required.

10. If the answer to A8 is \$6.5 million or less AND the answer to A9 is \$19 million or less, check the box “N/A.” Otherwise, if the business does not meet the size tests in A8 and A9, is the business qualified under the appropriate industry size standard found in 13 CFR 121.201 N/A YES NO

²⁰ ²⁰ Small Business Investment Act, Section 103(5)(B) “in determining whether a business concern satisfies net income standards established pursuant to section (3)(a)(2) of the Small Business Act, if the business concern is not required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined in an amount equal to the sum of –

(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation: and

(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation.

Eligibility for Finance

11. What is the NAICS (North American Industry Classification System) code for the Small Business? [13 CFR 121.201] NAICS Code

12. Does the primary activity of the Small Business consist of relending or reinvesting? If yes, please explain below. [13 CFR 107.720(a), 107.720(a)(2)] YES NO

Provide an explanation, if required.

13. Is the Small Business passive, as defined in 13 CFR 107.720(b)(1)? If yes, explain how the business qualifies for financing? YES NO

Provide an explanation, if required.

14. How will the Small Business use the new funds? Show percentages per use. [13 CFR 107.720(c)(2), 107.720(d)-(i)]

Provide an explanation, if required.

15. Will any of the funds be used to finance a foreign operation? If yes, please provide details. [13 CFR 107.720(g)] YES NO

Provide an explanation, if required.

16. Does the Small Business have more than 49% of its employees or tangible assets located outside the United States? If yes, provide details explaining how the SBIC's funds will be used for a specific domestic purpose. [13 CFR 107.720(g)] YES NO

Provide an explanation, if required.

Terms of Financing

17. Please check the box if this is solely an equity financing with no term. Equity

If this financing has a term, please indicate the term. If less than one year, Term (yrs.)
explain. [13 CFR 107.830, 107.835, 107.840]

Provide an explanation, if required.

18. Will any interim financing be provided to the Small Business by the Applicant? If YES NO
yes, explain. [13 CFR 107.835]

Provide an explanation, if required.

19. If present in the proposed terms, what are the amortization provisions?

Provide an explanation, if required.

20. Are there any restrictions or costs associated with prepayment by the Small YES NO
Business? If yes, explain the restrictions and related costs. [13 CFR
107.830(d)(2), 107.830(d)(3)]

Provide an explanation, if required.

Cost of Money

21. If a Loan or Debt Security is utilized in the financing, what is the nominal cost of N/A
money for the Small Business [13 CFR 107.855] %

Financing Fees

22. Will the Small Business be charged an application fee and/or closing fees? If yes, YES NO
quantify each charge as a percentage of the total financing and explain below.
[13 CFR 107.860]

Provide an explanation, if required.

Control

23. How many shareholders does the Small Business have? [13 CFR 107.865]	Number
24. What percentage of outstanding voting securities will be owned or controlled by the Applicant and Associates of the Applicant upon closing of [a] all firm commitments, and [b] all conditional commitments. (<i>Do not present on a fully-diluted basis.</i>) [13 CFR 107.865]	A: % B: %
25. What percentage ownership is held by other SBICs and/or other SBIC Applicants?	%
26. After the financing is closed (including [a] all firm commitments, and [b] all conditional commitments), what percentage of Directors, General Partners, or Managers of the Small Business may be elected by management of the Small Business?	A: % B: %
27. After the financing is closed (including [a] all firm commitments, and [b] all conditional commitments), what percentage of Directors, General Partners, or Managers of the Small Business may be elected by the Applicant (together with Associates)? [13 CFR 107.865]	A: % B: %
28. Would the Applicant (together with its Associates) be able to exercise control, directly or indirectly, through management agreement, voting trust, majority representation on board of directors, or in any other way? If yes, explain fully. [13 CFR 107.865]	YES <input type="checkbox"/> NO <input type="checkbox"/>

Provide an explanation, if required.

Securities

29. Will you purchase securities directly from the Small Business? If no, explain. [13 CFR 107.825]	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Provide an explanation, if required.

30. If an Equity financing is being done, are there debt-type acceleration provisions? If yes, explain. [13 CFR 107.800(b)]	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Provide an explanation, if required.

-
31. Will options be obtained by employees, officers, directors, or general partners of the Small Business Investment Company or its management company? If yes, explain. [13 CFR 107.815(b)] YES NO
-

Provide an explanation, if required.

-
32. If present in the proposed terms, what is the least amount of time allowed for making a redemption? [13 CFR 107.850(a)] Time Period
-

33. If present in the proposed terms, what are the terms of the redemption provisions? [13 CFR 107.850]
-

Provide an explanation, if required.

-
34. If the Applicant has a preference in liquidation, what is the preference amount and under what conditions is it payable? Indicate specifically the circumstances that constitute an event of liquidation.
-

Provide an explanation, if required.

-
35. If this is a proposed equity financing, could the financing result in the Applicant becoming a general partner in the Small Business or otherwise becoming jointly or severally liable for the general obligations of the Small Business? If yes, explain how. [13 CFR 107.800(a), 107.800(b)] YES NO
-

Provide an explanation, if required.

Conflicts of Interest

-
36. Is the Small Business an Associate of the Applicant? If yes, explain fully. [13 CFR 107.730(a)(1)] YES NO
-

Provide an explanation, if required.

37. Could any aspect of the transaction be construed as self-dealing? If yes, explain fully. [13 CFR 107.730(a), 107.50] YES NO

Provide an explanation, if required.

38. Is the Small Business an Associate of any other Applicant, SBIC, or New Markets Venture Capital company? Has or will such other Applicant or SBIC provide financing to the Applicant. If yes, explain fully. [13 CFR 107.730(a)(2)] YES NO

Provide an explanation, if required.

39. Is the Applicant or any Associate borrowing from the Small Business, its officers, directors or owners, or their relatives? If yes, explain fully. [13 CFR 107.730(a)(3), 107.730(b)(1)] YES NO

Provide an explanation, if required.

40. Will Funds be used, directly or indirectly, to repay an obligation to an Associate of the Applicant; or to purchase property from an Associate of the Applicant? If yes, explain fully. [13 CFR 107.730(a)(4), 107.730(a)(5)] YES NO

Provide an explanation, if required.

41. Is the Small Business compensating an Associate of the Applicant, directly or indirectly, in connection with the financing? If yes, explain fully. [13 CFR 107.730(b)(2)] YES NO

Provide an explanation, if required.

42. Does an Associate of the Applicant have any voting equity interest in the Small Business of at least 5 percent? If yes, explain fully. [13 CFR 107.730(d)(1), 107.730(d)(3)] YES NO

Provide an explanation, if required.

43. Does an Associate of the Applicant participate in the management of the Small Business. If yes, explain. [13 CFR 107.730(e)] YES NO

Provide an explanation, if required.

44. If the Small Business is being, or has been, financed by any Associate, are the terms of such financing the same? If "no", give details of the terms of the financing by the Associate, and explain fully the justification for different terms, and why the Applicant is not being disadvantaged vis-à-vis its Associate. [13 CFR 107.730(d)(2), 107.730(d)(3)] YES NO

Provide an explanation, if required.

General

45. Identify the principals of the Applicant that have attended the SBIC Regulations Class, if any, and the dates on which he/she/they attended.

Provide an explanation, if required.

46. Briefly state how the investment is consistent with the Applicant's business plan.

Provide an explanation, if required.

47. Very briefly state how the investment is consistent with the experience of the management team of the Applicant.

Provide an explanation, if required.

48. Briefly explain how the type of security used in the investment is consistent with the Applicant's intended leverage type, if any. Check if not seeking leverage

Provide an explanation, if required.

Representation

Applicant is contemplating an investment in the above-named Small Business and requests approval of such investment in order that that it may be included within Regulatory Capital as defined by the SBA. Applicant understands that the SBA is relying upon Applicant's representations, and that an examination by the SBA may find that the investment is ineligible and may be subject to divestiture or other regulatory action.

To the best of my knowledge and belief, I represent that the foregoing is true, and I acknowledge that these representations will be relied upon by the SBA.

Applicant

Printed Name

Signature

Date

[Click here to enter a date.](#)

Checklist for Pre-License Investment Submission

Before Financing is Closed

- Pre-Licensing Investment Worksheet
- Term Sheet
- Executive Summary of Business Plan
- Draft Form 1031 Portfolio Financing Report
- Pro-forma Form 480 Size Status Declaration
- Pro-forma Form 652 Assurance of Compliance for Non-Discrimination

After Financing is Closed

- Final Form 1031 Portfolio Financing Report (After licensing, submit this form electronically.)
- Signed Form 480 Size Status Declaration (Retain in your files.)
- Signed Form 652 Assurance of Compliance for Non-Discrimination (Retain in your files.)