



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

June 15, 2005

TO: All SBICs with Participating Securities Commitments Expiring in FY 05

SUBJECT: Policy Regarding Waiver of 13 CFR §107.1230(d)(4)

In a letter dated March 9, 2004, SBA notified all SBICs that SBA could not make any assurances that SBICs would be able to obtain commitments for participating securities leverage after FY 2004. In an attempt to minimize the adverse implications resulting from that development, SBA indicated that it would consider requests by certain SBICs during the May 2004 commitment period to cancel and then re-issue their existing participating securities leverage commitments. Due to the high demand for participating securities leverage commitments during FY 04, a number of cancellation and re-issuance requests were not approved.

In order to draw leverage under an SBA commitment, SBICs must comply with the requirements of 13 CFR §107.1230, including the requirement that the proceeds be needed to fund one or more particular small businesses or to provide liquidity for the SBIC's operations. SBA recognizes the limited period of time until the end of this fiscal year and the needs of those SBICs with commitments expiring on September 30, 2005 whose cancellation and re-issuance requests were not approved. Therefore, SBA will consider waiving 13 CFR 107.1230(d)(4) for these SBICs in order to allow these SBICs to draw leverage for liquidity purposes beyond the near term and to make follow-on financings when the anticipated closing dates of such financings are not known. No further waivers will be considered.

However, in order to ensure that the SBA upholds its fiduciary responsibility to minimize losses on this program, SBA will only consider waiver requests if the SBIC satisfies all of the following requirements:

- 1) The SBIC must have a participating securities leverage commitment expiring on September 30, 2005 and must satisfy all of the requirements of 13 CFR 107.1230, other than subsection (d)(4).
- 2) The SBIC must have applied for a cancellation and subsequent re-issue of its participating securities leverage commitment in the May 2004 commitment period and been denied only because of the funding issue.
- 3) The SBIC must not have any serious unremedied regulatory violation (including a capital impairment in excess of its maximum permissible capital impairment) as of August 25, 2005, and through the date it draws any funds under this waiver request. It is the SBIC's responsibility to notify SBA immediately of any changes in its financial condition, including, without limitation, changes in its portfolio companies, between the date it submits its waiver request and the date it draws any funds under this waiver request.
- 4) The SBIC must submit the June 30 quarterly Form 468 on time (no later than August 1, 2005).

- 5) The SBIC may not apply for a waiver for an amount that exceeds the lesser of its remaining commitment or the amount of reissue it requested in the May 2004 commitment period.
- 6) The SBIC must submit the waiver request no later than August 1, 2005 and it must be accompanied by adequate justification for the use of all funds that the SBIC intends to draw under the waiver, including the following:
 - a. Updated business plan with detailed timeline and budget showing projected uses of remaining funds available to the SBIC (including Private Capital). This should describe the portfolio companies that are projected to receive follow-on financing, certification that no new investments will be made by the SBIC with the funds requested and a description of how management fees and SBIC expenses will be paid and minimized to lower the total request under the waiver and ensure most of the capital goes to small businesses. The plan should also clearly demonstrate how the SBIC will maintain its financial health and not exceed its maximum allowable capital impairment percentage.
 - b. Alternate business plan indicating likely scenario should the SBA not approve the waiver, including (if any) impacts to the value of the portfolio and the SBIC's ability to repay the SBA its leverage.
 - c. Valuation reports updated as of June 30, 2005 addressing all portfolio companies.
 - d. Independent valuations by a mutually satisfactory valuation firm on all portfolio companies that are forecast in the business plan to receive \$500,000 or more in follow-on funding from the SBIC.

The SBIC will be notified by August 31, 2005 of SBA's action on the waiver request and the draw amount, if any, approved. The SBIC must submit the formal draw request no later than September 6, 2005. The SBIC must draw all approved funds no later than September 30, 2005. (Note: This means the SBIC must notify J.P. Morgan Chase no later than September 29, 2005.)

Please notify your analyst as soon as possible if you intend to submit a waiver request.
If you have any questions with regard to these procedures, please refer them to your analyst.

Respectfully,

Jaime Guzmán-Fournier
Associate Administrator for Investment