

investment adviser (each, a "non-officer director"). The grant will consist of giving each non-officer director an option to purchase 10,000 shares of the Company's common stock.

6. The Option Plan provides for an automatic, one-time option grant to each non-officer director on the date on which the issuance of options is (i) authorized by the stockholders of the Company or (ii) approved by SEC order, whichever is later. The Option Plan also provides for an automatic, one-time option grant to each person who thereafter is elected initially as a non-officer director. Any automatic, one-time grant to a non-officer director will entitle the recipient to acquire 10,000 shares of the Company's common stock at an exercise price that is not less than the fair market value of a share of the Company's common stock at the date of issuance of the option or \$15.00 per share (the Company's initial public offering price), whichever is greater. Each option vests in three annual installments, with the first installment vesting on the date of issuance of the option and the other two installments vesting on the first and second anniversaries of the date of issuance of the option. Each option expires on the earliest of (a) the tenth anniversary of its date of issuance, (b) 69 days after the optionee ceases to serve as a director of the company for any other reason other than death or permanent and total disability, (c) one year after the date on which the optionee dies or becomes permanently and totally disabled, or (d) the date on which the option is fully exercised. The Option Plan provides that all such options are non-transferable, except for disposition by will or intestacy, and are exercisable during the life of the optionee only by him or her.

7. The Company currently has six non-officer directors. Upon the SEC's issuance of an order approving the option grants, those persons will receive options covering an aggregate of 60,000 shares. The 10,000 shares covered by each grant to a non-officer director would represent 0.23%, and the 60,000 shares covered by the grants to the six current non-officer directors would represent 1.37%, of the Company's 4,377,334 shares outstanding as of June 30, 1995. As of June 30, 1995, there was an aggregate of 433,290 shares subject to then-outstanding options granted to officers of the Company under the Option Plan, and 11,570 shares available for future grants under the Option Plan (not including such 60,000 shares underlying the options proposed to be issued to the current non-officer directors). The shares subject to such

then-outstanding options represent 9.90% of the Company's common stock outstanding on June 30, 1995; if those shares are increased by the 60,000 shares underlying the options proposed to be granted to current non-officer directors, they represent 11.27% of the company's shares outstanding on that date; if those shares are increased by the shares remaining available for future grants under the Option Plan, they represent 11.53% of the Company's shares outstanding on that date. The Company has no other outstanding options, warrants or rights.

8. Non-officer directors are actively involved in managing the Company and in reviewing the operation of its portfolio companies. Non-officer directors also generally serve on at least one committee of the Company's Board. Due to their experience and expertise, the non-officer directors make material, substantive contributions in managing the business of the company and the operation of its portfolio companies.

9. The Company recruits persons to serve as non-officer directors who possess specialized knowledge and expertise in business development, small business financing techniques or the industries in which the company focuses its investments. Their experience and expertise permits the Company's non-officer directors to provide unique analysis and advice to the Company regarding prospective loans and management of portfolio companies.

10. The Company's directors establish, review and revise, when necessary, a strict set of criteria for many of the loans that are made by the Company. The Company's directors also review those proposed lending transactions that do not fit within that set of criteria. Each director is provided, well in advance of each Board meeting, a detailed underwriting or credit report regarding each lending transaction under consideration. The Company's directors analyze the reports and materials provided, discuss questions and issues with the Company's management, its responsible officer, and with each other and make and approve recommendations with respect to each such lending decision.

11. The Company also relies upon its directors to review and consider the best use of the Company's resources. The directors review and evaluate reports of outstanding commitments and funds available for future lending for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, directors of the Company review portfolio loans that are non-performing or performing

inadequately and evaluate the best course of action for the Company to take under the circumstances. On a calendar quarter basis, the directors of the Company also undertake a good faith valuation of the Company's loans in privately-held portfolio companies, which constitute substantially all of the Company's investments, as independent market valuations rarely are available.

12. For these services, the Company pays its non-officer directors (as well as its officer-directors) \$1,000 for each meeting of its Board or any committee thereof<sup>1</sup> attended.

#### Applicant's Legal Analysis

1. Section 61(a)(3)(B)(i)(II) of the Act permits a business development company to issue options to purchase its voting securities to its non-officer, non-employee directors pursuant to an executive compensation plan subject to certain conditions, which include the proposal to issue such options being authorized by the company's stockholders and approved by the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its stockholders.

2. The Company believes that its proposal to issue options to its non-officer directors satisfies all of such statutory conditions other than SEC approval (including the requirement that if the amount of voting securities that would result from the exercise of outstanding options issued to the Company's directors, officers, and employees would exceed 15% of the Company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding options at the time of issuance may not exceed 20% of the outstanding voting securities of the Company) and that granting each non-officer director an option under the Option Plan is fair and reasonable. Non-officer directors provide to the Company skills and experience necessary for management and oversight of the Company's loan portfolio and operations, and often have specific experience with commercial lending or with respect to industries in which the Company makes a significant number of loans. The Company believes that its ability to make an automatic option grant under the Option Plan to non-officer directors provides a means of retaining the services of its current non-officer directors and of attracting qualified persons to serve as non-officer

<sup>1</sup> Non-officer directors are paid \$500 for participation in any committee meeting held on the same day as a meeting of the Company's board.