

Subpart C—Qualifying for an SBIC License

ORGANIZING AN SBIC

§ 107.100 Organizing a Section 301(c) Licensee.

Section 301(c) Licensee means a company licensed under section 301(c) of the Act. It may be organized as a for-profit corporation or as a limited partnership created in accordance with the special rules of § 107.160.

§ 107.115 1940 Act and 1980 Act Companies.

A 1940 Act or 1980 Act Company is eligible to apply for an SBIC license, and an existing Licensee is eligible to apply for SBA's approval to convert to a 1940 Act or 1980 Act Company. In either case, the 1940 Act or 1980 Act Company may elect to be taxed as a regulated investment company under section 851 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 851). However, a Licensee making such election may make Distributions only as permitted under the applicable sections of this part (see the definition of Retained Earnings Available for Distribution, § 107.585, and §§ 107.1540 through 107.1580).

§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

With SBA's prior written approval, a Section 301(d) Licensee may operate as the subsidiary of one or more Licensees (participant Licensees), subject to the following:

(a) Each participant Licensee must own at least 20 percent of the voting securities of the Section 301(d) Licensee.

(b) A participant Licensee must treat its entire capital contribution to the subsidiary as a reduction of its Leverageable Capital. The participant Licensee's remaining Leverageable Capital must be sufficient to support its outstanding Leverage.

(c) A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

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§ 107.130 Requirement for qualified management.

When applying for a license, you must show, to the satisfaction of SBA, that your current or proposed management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, these regulations and your business plan. You must designate at least one individual as the official responsible for contact with SBA.

§ 107.140 SBA approval of initial Management Expenses.

If you plan to obtain Leverage, you must have your Management Expenses approved by SBA at the time of licensing. (See § 107.520 for the definition of Management Expenses.)

§ 107.150 Management-ownership diversity requirement.

(a) *Diversity requirement.* You must satisfy the requirements in paragraphs (b), (c) and (d) of this section:

(1) In order to obtain an SBIC license (unless you do not plan to obtain Leverage),

(2) If at the time you were licensed you did not plan to obtain Leverage, but you now wish to be eligible for Leverage, or

(3) If SBA so requires as a condition of approval of your transfer of Control under § 107.440.

(b) *Percentage ownership requirement.*

(1) Except as provided in paragraph (b)(2) of this section, no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a traditional investment company, as determined by SBA, may own and control more than 70 percent of your Regulatory Capital and your Leverageable Capital. For purposes of this section, a traditional investment company must be a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. In determining