

SBIC TechNote 9: Guidance for Obtaining a Regulatory Exemption for “Overline” Investments

A. Introduction

The Small Business Investment Act of 1958, as amended, (“Investment Act”) sets aggregate limitations on the amount of financial assistance that a Small Business Investment Company (“SBIC” or “you”) is allowed to provide to a Small Business and its Affiliates as a way of managing program risk. This maximum investment amount is referred to as the “overline” limit. The relevant regulations are set forth in 13 C.F.R. Parts 107 and 121. Section [107.740](#) implements the statutory requirement by limiting the maximum amount SBICs can invest in a Small Business and its Affiliates and §121.103 describes how SBA determines Affiliation.

This TechNote supersedes the original TechNote 9 published in April 2002 and reflects the statutory and [regulatory changes promulgated in 2009](#) that generally increased the overline limit from 20% to 30% of adjusted Regulatory Capital for most SBICs. SBICs that want to make Financings and/or Commitments that exceed this overline limit must now obtain a prior written regulatory exemption from the Small Business Administration (“SBA”) under §107.1920. Given the significant statutory and regulatory changes made to the overline limit in 2009, SBA expects that you should be able to plan your initial and follow-on investments within this increased limit. SBA does not anticipate granting exemptions for overline investments except in very rare cases.

B. References and Definitions

[Section 306\(a\) of the Investment Act](#) sets aggregate limitations on the amount of financial assistance you may provide to a Small Business and its Affiliates.

The following SBIC regulations address overline investments:

- 1) [§107.740](#) Portfolio diversification (“overline” limitation). This section specifically establishes the aggregate amount of Financing or Commitment that a Licensee may provide to a Small Business and its Affiliates.
- 2) [§107.1920](#) Licensee's application for exemption from a regulation in this part 107
- 3) [§107.880\(c\)](#) Assets acquired in liquidation of Portfolio securities
- 4) [§121.103](#) Determination of Affiliation
- 5) [§107.50](#) Definitions of [Commitment](#), [Financing or Financed](#), and [Regulatory Capital](#)

C. Description of Procedures

The requirements for obtaining a prior written regulatory exemption are set forth in §107.1920 of the SBIC regulations. You must demonstrate to SBA’s satisfaction that the exemption would not be contrary to the purposes of the Investment Act, that the proposed action is fair and equitable, and that the exemption is reasonably calculated to advance the best interests of the SBIC program. The exemption must be approved in advance by the Associate Administrator for the Office of Investment and Innovation.

When requesting a regulatory exemption under §107.1920 for an overline investment you must provide the following written information to SBA:

1. **Written request:** Provide a detailed explanation of the need for the overline investment, including a description of the Small Business' requirements for the funds, use of proceeds, how the Financing will benefit the Small Business and increase the likelihood of repayment to the SBIC. In addition, please discuss the effect on the SBIC and the Small Business if the SBIC does not participate in the Financing. The request must adequately address the requirements listed in [§107.1920](#) as well as the information required by Items 2 through 8 listed below.
2. **SBIC financial statements:** An interim Form 468 not more than 30 days old from the date the overline request is submitted to SBA.
3. **Schedule of all overline investments:** Submit a schedule of all Loans and Investments that are in an overline status. The schedule should include the names of the Small Businesses and Affiliates, the current outstanding balance of the investments, the amounts and dates of planned subsequent Financings and a brief update on the financial and operating status of the Small Businesses and Affiliates.
4. **Affiliation with the Small Business:** Submit a description of any direct or indirect Affiliation between each Small Business and its Affiliates (as defined in [§121.103](#)).
5. **Financial Statements and operating performance of the Small Business and its Affiliates:** Submit financial statements for the previous two fiscal years and interim financial statements not more than 60 days old along with a brief update on the operating performance of the Small Business and its Affiliates.
6. **Description of the proposed investment:** Provide a summary of key terms of the proposed overline Financing and a complete description of all investments made by the SBIC in the Small Business and its Affiliates.
7. **Other participants in the Financing:** Submit a pre- and post-Financing capitalization table and waterfall analysis including debt and equity capital, and identify who is participating in the overline Financing.
8. **Anticipated exit:** Describe the anticipated exit from this investment (or the source of the reduction of the overline investment) including the approximate timing of the exit, identification of the parties (or types of parties) involved in the expected exit, and the amounts and timing of subsequent financing expected. Provide a waterfall analysis for both debt and equity investments.

In reviewing the request for an overline exemption SBA will assess the following factors:

- a. Your explanation for the need for the overline investment.
- b. Whether the proposed overline financing is consistent with the Licensee's investment strategy.
- c. The SBIC's financial condition including liquidity and asset concentration.
- d. The SBIC's investment stage (is the SBIC still making new investments or is it only making follow on investments).
- e. The status of the SBIC's current portfolio including the financial condition of the Small Businesses, diversification of the portfolio overall and the number of potential new and follow-on investments.
- f. The amount and the funding of return of capital distributions (were they funded by proceeds from one large winner or several successful investments).
- g. The number of overline investments previously approved for the SBIC's portfolio.
- h. Such other factors that SBA may deem relevant to your request.

SBA expects to provide a final response on a request for an overline exemption within 30 days from the date the request is received provided that you have submitted all of the required documentation, as listed above, with the request and all such documentation is complete. SBA reserves the right to ask for additional information in order to assess your request.

If you have any questions, please contact your Financial Analyst or Area Chief.