

SBA

SOP 10 04 1

Processing Applications for SBIC Licenses

**U.S. Small Business
Administration
Office of Investment and Innovation**

Effective Date: 8/6/2014



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING POLICY**

SUBJECT: Processing Applications for SBIC Licenses	S.O.P.		REV
	SECTION 10	NO. 04	1

INTRODUCTION


Purpose. To provide current instructions and guidelines for the processing of Small Business Investment Company license applications.

Personnel Concerned. All personnel in Headquarters who are involved in the licensing of Small Business Investment Companies.

Cancellations. SOP 10 04.

Originator. Office of Licensing and Program Standards, Office of Investment and Innovation.

AUTHORIZED BY: Javier Saade Associate Administrator Office of Investment and Innovation		EFFECTIVE DATE: 8-6-2014
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**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

SUBJECT: PROCESSING APPLICATIONS FOR SBIC LICENSES

**S O P
SECTION NO.
10 04**

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Chapter 1. INTRODUCTION

1. Purpose of This SOP

This standard operating procedure (SOP) provides guidance to personnel in SBA's Office of Investment and Innovation (OII) engaged in the processing of SBIC license applications. The SOP identifies the relevant provisions of the Small Business Investment Act of 1958, as amended (Act) and SBA regulations, primarily 13 CFR Part 107, and explains how the licensing process is designed to address these statutory and regulatory requirements.

2. Matters Considered in the Licensing Process

- a. Section 301(c) of the Act requires SBA, in reviewing and processing a license application, to consider:
 - (1) Whether the applicant meets the minimum private capital requirements;
 - (2) Whether the applicant meets the requirement for "diversification of ownership";
 - (3) Whether the management of the applicant is qualified and has the knowledge, experience and capability necessary to comply with the Act;
 - (4) The need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;
 - (5) The general business reputation of the owners and management of the applicant; and
 - (6) The probability of successful operations of the applicant, including adequate profitability and financial soundness.
- b. 13 CFR 107.305 states that SBA will evaluate a license applicant based on the submitted application materials, any interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. This section also identifies factors that SBA will consider in the following four areas:
 - (1) Management qualifications;
 - (2) Performance of managers' prior investments;
 - (3) Applicant proposed investment strategy; and
 - (4) Applicant proposed organizational structure and fund economics.

Chapter 2. OVERVIEW OF THE LICENSING PROCESS

1. Parties Involved in the Licensing Process

The table below summarizes the parties involved in SBA's licensing process and their roles.

Office of Program Development	First point of contact for prospective applicants. Conducts optional "pre-screens" for interested managers (a pre-screen is a preliminary review to determine whether a management team's investment experience, track record, and proposed SBIC investment strategy appear to meet the goals and standards of the SBIC program). Reviews Management Assessment Questionnaires (MAQ) submitted by funds that have decided to pursue an SBIC license.
Investment Committee (Associate and Deputy Associate Administrators for Investment, Director of Program Development, Director of Licensing & Program Standards, Director of SBIC Operations, and Chief of Licensing)	Based on MAQ review and Program Development recommendation, decides whether or not to invite management team for an interview. Following interview, decides whether or not to issue a "green light" letter inviting team to submit a formal SBIC license application.
Licensing Unit (in OII's Office of Licensing and Program Standards)	Reviews SBIC license application in cooperation with Office of General Counsel and recommends approval or denial of application to the Divisional and Agency SBIC licensing committees.
Office of General Counsel	Reviews SBIC license application for legal sufficiency.
Office of the Inspector General	Coordinates criminal history checks on prospective SBIC principals and major investors.
Divisional SBIC licensing committee (Deputy Associate Administrator for Investment, Chief Administrative Officer, Director of Program Development, Director of Licensing & Program Standards, Director of SBIC Operations, and Director of SBIC Liquidation)	Meets to discuss each application and votes on whether or not to recommend an applicant for licensing to the Agency SBIC licensing committee.
Agency SBIC licensing committee (Deputy Administrator, General Counsel, Deputy General Counsel, Associate Administrator for Capital	Meets to discuss each application recommended by the Divisional committee and votes on whether or not to recommend an applicant for licensing to the Administrator.

Access, Chief Financial Officer, Associate Administrator for Investment, or as subsequently revised by a Delegation of Authority published in the Federal Register)	
SBA Administrator (or delegate)	Gives final approval for licensing as an SBIC.

2. Steps in the Licensing Process

The SBIC license application process consists of three phases: Phase I is the “management assessment” phase, which is handled by the Office of Program Development and also involves the Investment Committee. (“Subsequent fund” applications, from managers who are currently operating one or more licensed SBICs, follow a different Phase I process, described in paragraph 4 of this chapter.) During Phase II, an applicant raises capital from private investors and prepares the fund’s organizational documents and SBIC license application; no action by SBA is required during this period. Phase III is the formal licensing phase, which is handled by the Licensing Unit and also involves the Office of General Counsel (OGC), Office of the Inspector General (OIG), and the Divisional and Agency SBIC licensing committees.

3. Phase I Process for First-Time Applicants

A prospective applicant may contact the Office of Program Development for an optional “pre-screen” as described in paragraph 1 of this chapter. After the pre-screen, or as the first step if the pre-screen is omitted, the prospective applicant completes the *Management Assessment Questionnaire* (“MAQ”), which consists of SBA Form 2181, together with Exhibits A through F in SBA Form 2182. A member of the program development staff reviews these forms. The reviewer evaluates the fund’s proposed investment strategy and the background, experience and financial track record of its principals. The review includes contacting listed and unlisted references regarding the accuracy of the information provided in the MAQ and the character, reputation and capabilities of the principals. The reviewer prepares an investment memorandum that includes a recommendation to the Investment Committee as to whether the management team appears to have the minimum qualifications necessary to manage the proposed SBIC.

4. Phase I Process for “Subsequent Fund” Applicants

Management teams that are already operating one or more licensed SBICs must meet the conditions in subparagraphs a. through e. in order to submit a request for a subsequent fund. The Investment Committee, in its discretion, may waive the requirements for submission of the MAQ. This requirement would typically be waived if the currently operating SBIC has demonstrated consistently strong financial performance and regulatory compliance, and the

proposed new fund plans to operate with the same management team and investment strategy as the existing fund. In lieu of the MAQ, the prospective subsequent fund applicant will submit a proposal in memo form to the Office of SBIC Operations, to be reviewed by the analyst who is responsible for the currently operating SBIC; the same analyst will present the proposal to the Investment Committee with his/her recommendation. Conditions for submission of a subsequent fund request are as follows (see also Chapter 9, paragraph 1.d. for additional requirements to file a license application after receiving a green light letter):

- a. At least two full years of operations from date of licensing of the most recently licensed SBIC. A longer operating history may be required if the managers' investment track record prior to the licensing of the existing SBIC was not extensive or directly analogous. More flexibility with respect to the timing of a new application request may be granted if the subsequent fund is a successor fund to multiple successful SBICs with the same management team and investment strategy.
- b. At least one clean audit opinion from the SBIC's independent public accountant, covering at least one full year of operations, AND a clean audit opinion covering the most recent year of operations.
- c. No unresolved regulatory violations AND the most recent exam should have covered a period ended within 12 months of the request being filed.
- d. Existing SBIC expects to be fully invested OR to have less than 18 months remaining in its active investment period by the application filing date. "Fully invested" means the SBIC will have invested a dollar amount equal to at least 70% of the sum of private capital and assumed leverage.
- e. Permitted co-investment among the proposed and existing SBICs:
 - (1) If aggregate leverage (outstanding and committed) would be no more than \$150 million, co-investing is permitted as part of a sound business plan.
 - (2) If aggregate leverage (outstanding and committed) would exceed \$150 million and the subsequent fund is not a drop-down from the same parent as the existing SBIC(s), co-investing limited to 30% (in dollars) of the subsequent fund's investments is permitted as part of a sound business plan.
 - (3) If aggregate leverage (outstanding and committed) would exceed \$150 million and the subsequent fund is a drop-down from the same parent as the existing SBIC(s), no co-investing is permitted.

5. Investment Committee's "Green Light" Decision

If, after a review of the MAQ and the reviewer's evaluation, the Investment Committee concludes, by majority vote, that the management team may be qualified for a license, the

entire team is invited to SBA headquarters in Washington, DC for a one-hour interview (this requirement may be waived for a subsequent fund application). Following the interview, the Investment Committee votes on whether to issue an invitation to file a formal license application. If a majority of the Investment Committee is in favor, the invitation to file is issued in the form of a “green light” letter that the Licensing Unit’s program support specialist sends out by email on behalf of the Licensing Chief. For sample green light letters, see Appendix 1 (for first-time applicants) and Appendix 2 (for subsequent fund applicants). If the Investment Committee votes not to issue a green light letter, the program development analyst will notify the management team of the committee’s decision by telephone.

6. Duration of Green Light Letter (Phase II)

Both first-time applicants and subsequent fund applicants have 18 months from the date of issuance of the green light letter to file a complete license application. Many teams that receive a green light letter do not ultimately file a license application. Common reasons for not filing include inability to raise sufficient private capital, instability of the management team, or a decision to focus on investments outside the parameters of the SBIC program. Upon request by an applicant, the Investment Committee may consider an extension of the application filing deadline by up to six months. To receive an extension, an applicant must show good cause, including a high probability of raising its targeted private capital (and substantial progress to date).

7. Licensing (Phase III)

- a. The formal license application consists of the same SBA Form 2181 and Exhibits A through F of SBA Form 2182 that constitute the MAQ (updated by the applicant as needed), together with Exhibits G through J in SBA Form 2182 and all the exhibits in SBA Form 2183. At the time of filing, an applicant must have capital contributions and/or firm commitments from qualified “Institutional Investors” (see Chapter 4 of this SOP) for sufficient private capital to carry out its business plan (this amount will typically be greater than the \$5 million minimum private capital required by the Act). If the applicant intends to seek SBA leverage, the committed private capital must also satisfy the “management-ownership diversity” requirements (see Chapter 3 of this SOP). The applicant must also pay a nonrefundable licensing fee, submitted with the application.
- b. A Licensing Unit analyst and an attorney from OGC review the entire application concurrently. Any questions, concerns or requested changes to the application are presented to the applicant in one or more comment letters. The licensing analyst also conducts due diligence on each principal through various means, including reference checks and electronic record searches, while OIG facilitates criminal history checks of each principal by the FBI.
- c. The licensing analyst prepares a “licensing action” which updates and expands upon the

Office of Program Development's MAQ analysis or the subsequent fund presentation prepared by the Office of SBIC Operations. The licensing action summarizes the terms of the application, giving background on the principals and their respective experience and track records, identifies the capital raised, summarizes the due diligence undertaken by the licensing analyst, and presents the Licensing Unit's recommendation for or against licensing the applicant. The licensing action is distributed to the members of the Divisional SBIC licensing committee, after which the committee meets to discuss and vote on the applicant. The licensing analyst attends the meeting to present key points regarding the applicant and answer any questions. If a majority of the Divisional committee votes in favor of licensing, the applicant is then considered by the Agency SBIC licensing committee, following the same procedures. If a majority of the Agency committee votes in favor, the applicant is sent to the Administrator for final approval.

Chapter 3. ORGANIZING AN SBIC

1. “Stand-alone” vs. “Drop-down” SBICs

SBA policy allows an SBIC to be a stand-alone investment company, i.e., one that is directly owned by the investors who are funding it, or to be owned by one or more non-SBIC investment companies which in turn are owned by the investors who are the ultimate source of private capital. One SBIC cannot be owned by another. An SBIC that is funded by one or more “parent” investment companies is commonly referred to as a “drop-down” SBIC. The drop-down structure gives private investors additional flexibility (for example, the parent fund may invest in companies that are not eligible under the SBIC program regulations), but also makes many aspects of the SBIC’s organizational structure more complex and more difficult to evaluate. Applicants proposing to use a drop-down structure must provide a valid reason for the existence of a separate parent fund; SBA may decline to license a drop-down applicant where the parent fund has no significant resources or activities apart from those of its proposed SBIC subsidiary. Special issues involving drop-down SBICs will be discussed throughout the remainder of this SOP.

2. Definition and Organization of a “Section 301(c) Licensee”

- a. 13 CFR 107.100 introduces the defined term “Section 301(c) Licensee”, which means a company licensed under section 301(c) of the Act. An SBIC licensed under section 301(c) must be a for-profit entity. All current applicants can only apply for licensing under section 301(c). In the past, certain “specialized” SBICs investing only in disadvantaged businesses were licensed under section 301(d) of the Act; however, that section was repealed in 1996 and no new licenses are being issued under that section. Some specialized SBICs remain in existence and they are referred to in part 107 as “Section 301(d) Licensees”.
- b. An SBIC may be organized as a corporation, a limited partnership, or a limited liability company (LLC). Corporations and limited partnerships may be organized under the laws of any State. A limited liability company must be organized under Delaware law. As a practical matter, the vast majority of SBIC applicants are organized as limited partnerships, with a few organized as LLCs. Part 107 does not list the LLC structure as a permitted form of organization; however, it is allowed because the Act permits it.

3. SBICs Subject to Regulation by the SEC

- a. 13 CFR 107.115 allows an applicant to be a “1940 Act Company” or a “1980 Act Company”. These definitions refer, respectively, to companies registered under the Investment Company Act of 1940 and the Small Business Investment Incentive Act of 1980. Both types of companies are regulated by the Securities and Exchange Commission (SEC).

- b. The 1940 Act regulates “investment companies”, defined as companies that issue securities and engage primarily in investing in securities of other companies. Examples of regulated investment companies include mutual funds and closed-end funds. Even though SBICs issue securities (usually in the form of limited partnership interests) and are primarily engaged in the business of investing in securities, most are exempt from the requirement to register under the 1940 Act because they do not make public offerings of their securities and have fewer than 100 investors. SBICs with 100 or more investors are also exempt if all their investors are “Qualified Purchasers” as defined in the 1940 Act; these funds are often referred to as “QP” funds.
- c. The 1980 Act created a type of investment company known as a “business development company” or “BDC” to encourage investment in “eligible portfolio companies”. Eligible portfolio companies are generally private or thinly traded public US companies. BDCs operate as public, closed-end investment companies with shares that trade on a stock exchange or NASDAQ. They are regulated under the 1940 Act, but with some provisions different than those applicable to other investment companies. Unlike most investment companies which receive capital commitments from private investors and call the capital over time, a BDC receives investors’ capital contributions up front through a public stock offering (although additional capital can also be raised through subsequent offerings). Although an SBIC itself can be a BDC, the more typical structure is for the SBIC to be formed as a subsidiary of a BDC.

4. Special rules for Limited Partnership SBICs

An SBIC organized as a limited partnership is subject to the requirements of 13 CFR 107.160. This section also includes the regulatory requirements applicable to the general partner of a limited partnership SBIC (as well as any general partner of the SBIC’s general partner). In addition, SBA has created two model limited partnership agreements, one for SBICs using standard debenture leverage and one for Early Stage SBICs. Both agreements include required provisions (presented in bold) that SBICs must include in their organizational documents without modification or additions.

5. Management-Ownership Diversity

An SBIC that intends to seek leverage must meet the “management-ownership diversity” requirements of 13 CFR 107.150. These requirements were adopted to provide for a degree of independence between the management and ownership of an SBIC. Prior to the adoption of these rules, SBA had observed abuses in SBICs wholly owned and operated by a single individual or group of individuals. The abuses, which included conflict of interest transactions, misapplication of funds, and other types of self-dealing activities, had resulted in financial losses to SBA. In general, “management-ownership diversity” requires:

- a. Limitation on maximum ownership percentage: No single investor or group of affiliated

investors can own or control, directly or indirectly, more than 70 percent of an SBIC's Regulatory or Leverageable Capital. This limit addresses SBA's concern that at some point the influence of a super-majority investor, even a passive limited partner, becomes so great that it effectively becomes the power to control the managers of the SBICs, and the management team can no longer be said to have the ability to act independently.

- b. Exception for "traditional investment companies": An exception to the 70 percent limit may be made in SBA's discretion for a "traditional investment company" – 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. This exception was designed to accommodate the drop-down SBIC structure, where a parent fund often is the sole limited partner of the SBIC. Meaningful management-ownership diversity can be considered to exist in this structure if the managers (who usually manage both the parent fund and the SBIC) are accountable to a group of unrelated investors at the parent level and if the parent benefits from the use of a subsidiary SBIC only if the SBIC makes profitable investments.
- c. Non-affiliation requirement: At least 30 percent of the Regulatory Capital and Leverageable Capital of the SBIC must be owned by investors who are unaffiliated with management, as detailed in 13 CFR 107.150(c). The general rule is that there must be at least 3 diversity investors, unaffiliated with each other, each of whom has made a "significant" investment in both dollar and percentage terms as determined by SBA. An exception allows certain types of "acceptable" Entity Institutional Investors to qualify as an SBIC's sole diversity investor. Such entities generally are subject to government oversight or regulation (e.g., banks, insurance companies, pension funds) or have sufficient size and public oversight to justify treating them the same as regulated companies (e.g., companies listed on the New York Stock Exchange).
 - (1) What factors may indicate affiliation among diversity investors? Affiliation, as defined in 13 CFR 121.103, exists between two parties when one party controls or has the power to control another, or a third party controls or has the power to control both. It is the power to control rather than the exercise of control that creates affiliation. Affiliation may arise based on such factors as actual or potential ownership of the equity in a concern, common management, or "identity of interests" (among family members, for example). When reviewing an applicant's diversity investors for possible affiliations, look at the relationships disclosed in Tables 1I, 1J and 1K of the capital certificate; also look for individuals with the same last name, entities with the same address, etc.
 - (2) What is a "significant" investment? SBA evaluates significance on a case-by-case basis, depending on the size of the SBIC and the number of diversity investors. The investment of each diversity investor should be compared to the amounts invested by other diversity investors for this purpose. An investment that is either less than \$250,000 or less than 1 percent of Regulatory Capital should not be considered

significant under any circumstances.

- d. “Look-through” for traditional investment companies: As discussed previously, a drop-down SBIC typically has as its only limited partner a parent fund that is managed by the same individuals who manage the SBIC, and therefore cannot show direct ownership of 30 percent of its capital by investors unrelated to management. Under 13 CFR 107.150(c)(2), SBA may, in its discretion, consider the non-affiliation requirement to be satisfied if at least 30 percent of the SBIC’s Regulatory and Leverageable Capital is indirectly owned, through a traditional investment company (i.e., the parent fund), by investors unaffiliated with management. This “look-through” provision is available only to a traditional investment company that owns more than 70 percent of an SBIC.

6. Opinions of Counsel

All SBIC applicants are required to provide SBA with certain opinions of counsel, which are included with the license application as Exhibit P of SBA Form 2183.

- a. If an opinion is reliant on one or more certifications made by the applicant or its managers, SBA must be provided with a copy of the certification(s).
- b. During the license application process, OGC reviews required opinions of counsel in draft form. The opinions must be approved by OGC in final form before an application is presented to the Agency licensing committee. SBA must receive an executed copy of any such opinion, identical to the approved draft, before the application is sent to the Administrator for final approval.
- c. Opinions must be rendered by “independent” legal counsel for the applicant. A law firm is not considered independent if any of its employees are involved in the management of the applicant. If the firm (or any of its affiliates) has a limited partnership interest or other ownership interest in the applicant, it will generally not be considered independent; however, SBA may make an exception for a *de minimis* investment.
- d. “Formation” opinions: All applicants must submit an opinion of independent counsel, addressed to SBA, stating the following:
 - (1) The applicant has complied with all applicable local, state, and federal laws in the formation and organization of the applicant.
 - (2) 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.
 - (3) The applicant is authorized and entitled to conduct said franchise powers in full in each jurisdiction to be named in its license as part, or all, of its operating territory, or

area, immediately upon the issuance of a license. This means that the applicant, once licensed, will be legally able to operate in any location where it conducts business, even if the applicant is organized under the laws of a different state.

- e. **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.
- f. **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.

7. Acceptable Names for an SBIC

- a. Under 13 CFR 107.502, an SBIC may not represent or imply that SBA, the U.S. government, or any Federal agency has approved the SBIC’s securities as an investment or approved any obligations the SBIC has incurred. To avoid any confusion of SBICs with government agencies or with regulated banking institutions, a license applicant is not permitted to use the terms "United States," "National," "Federal," "Reserve," "Bank," or "Government," in its name.
- b. An SBIC’s name must be sufficiently distinct, in SBA’s discretion, from that of other, unaffiliated SBICs (both current and former licensees) so as not to imply a relationship and to avoid confusion. If an applicant is a subsidiary of another company it may contain elements in common with the parent's name but must be clearly distinguishable from the parent entity. The use of the abbreviation "SBIC" in the name is encouraged.

8. SBIC’s Investment Adviser/Manager

- a. An SBIC is not required to have a separate management company, but is permitted to do so by 13 CFR 107.510. Specifically, the regulation allows a licensee to employ an “Investment Adviser/Manager” subject to SBA’s approval of the management contract. The creation of a separate company to manage an investment fund’s administrative and financing activities is a standard practice in the private equity industry and most SBIC program applicants employ this structure.

- b. An SBIC typically pays its management company a fee which must be no greater than an SBA-approved formula (see SBIC Technote 7A, updated April 2008). The management company is then responsible for paying all of the SBIC's "Management Expenses" as defined in 13 CFR 107.520. Costs that are excluded from the Management Expense definition, such as the cost of services provided by outside lawyers and accountants, can be paid directly by the SBIC. These costs, which are usually referred to as "partnership" or "fund" expenses, must be clearly defined in the SBIC's partnership or operating agreement and must not include costs that are properly includible in Management Expenses.
- c. An applicant's management company will usually have the same or similar ownership as its general partner (or equivalent entity); the applicant must explain the reasons for any major differences. If the management company is 100 percent owned by a single individual, SBA will ask for detailed information regarding any special powers held by that individual, such as the ability to remove other managers unilaterally. In general, SBA will look for meaningful checks and balances to ensure that the applicant is not under the control of only one person.

Chapter 4. CAPITALIZING AN SBIC

1. Private Capital, Regulatory Capital and Leverageable Capital

Private Capital, Regulatory Capital and Leverageable Capital are defined terms in 13 CFR Part 107 that describe the capital that an SBIC raises from its private investors. Private Capital is the most inclusive term and Leverageable Capital is the most restrictive.

2. Private Capital

- a. “Private Capital” is defined in 13 CFR 107.230. It includes the following key elements:
 - (1) The “contributed capital” of an SBIC. Contributed capital means amounts paid to an SBIC by its general and limited partners (in the case of a limited partnership), members (in the case of an LLC), or shareholders (in the case of a corporation), to acquire an ownership interest in the SBIC. It excludes funds that are loaned to the SBIC.
 - (2) Unfunded binding commitments by Institutional Investors to contribute capital to an SBIC. An SBIC that is a corporation will not have unfunded commitments because investors will pay for their shares up front. In contrast, SBICs that are limited partnerships or LLCs typically have each investor sign a subscription agreement in which the investor commits a certain amount of capital to the funds and agrees to fund the commitment over time as the general partner or manager makes “capital calls”. See paragraph 5 of this chapter for a discussion of the “Institutional Investor” definition.
- b. Unfunded commitments from all investors (whether they are Institutional Investors or “Other”) are enforceable even in the event of liquidation of the SBIC.
- c. As a general rule, Private Capital does not include non-cash assets (or a commitment to contribute a non-cash asset) unless the non-cash asset is one of the types listed in 13 CFR 107.240(a) through (d), all of which are extremely rare, or is specifically approved by SBA under 13 CFR 107.240(e). The only type of non-cash asset that SBA typically approves is a “pre-licensing investment” as discussed in paragraph 3 of this chapter.
- d. Private Capital may include capital contributed or committed by a public pension fund. Other capital contributions or commitments by government agencies or instrumentalities may be included in Private Capital only if they are “Qualified Non-private Funds” as defined in 13 CFR 107.230(d). See subparagraph f. for further details.
- e. An SBIC may not accept a capital contribution from any investor seeking to own an equity interest of at least 10 percent of Private Capital, if the investor is using borrowed

funds to make the capital contribution. Exceptions to this rule are allowed by 13 CFR 107.230(e) in two cases: (1) if the investor's net worth is at least twice the amount borrowed; or (2) if SBA gives its prior written approval for the capital contribution. An investor who claims to qualify for exception (1) based on net worth must support this claim by providing SBA with recent financial statements (no more than 3 months old). SBA has approved capital contributions under exception (2) only in unusual circumstances. An exception will not be approved if the borrowing arrangement includes events of default and remedies for the lender that, in SBA's determination, have the potential to transfer control of the SBIC or otherwise disrupt its operations. In considering a request for an exception, SBA will also evaluate the collectability of the commitment, which may be addressed by placing the borrowed funds in an escrow account until called by the SBIC.

- f. Qualified Non-private Funds include capital from certain government entities that are fairly common sources of funding for SBICs and others that are extremely rare. Key characteristics of Qualified Non-private Funds include the following:
- (1) Common sources of Qualified Non-private Funds are State or local government entities. These include State or local governments, which may be described in various ways, e.g. State of _____; Commonwealth of _____; _____ State Treasurer or Treasury Department; County of _____, etc. Any agency or instrumentality of a State or local government is also considered a government "entity" for purposes of 13 CFR 107.230(d)(3). SBA will review an entity's charter and/or authorizing legislation, taking into account how it was established and how it is financed and governed, to determine whether its capital constitutes Qualified Non-private Funds. Aggregate capital commitments from State or local government entities cannot exceed 33 percent of an SBIC's Regulatory Capital. The SBIC cannot accept any amount that would exceed 33 percent of its Regulatory Capital, even if it proposes to exclude such amount from Regulatory Capital.
 - (2) In extremely rare circumstances, Federal agencies may be sources of Qualified Non-private Funds. One such provision, 13 CFR 107.230(d)(1), relates to Federal funds invested on or before August 16, 1982 and is therefore not relevant to the licensing of a new SBIC. Under a second provision, 13 CFR 107.230(d)(2), Qualified Non-private Funds include "funds directly or indirectly invested in any Licensee by any Federal agency under a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in "Private Capital". It is not sufficient for a statute to contain language stating that funds are not considered "Federal assistance" or similar general language. If a statute does not contain explicit language that meets SBA's regulatory standard, any Federal funds made available under that statute are not Qualified Non-private Funds and cannot be invested in an SBIC.
 - (3) Investors of Qualified Non-private Funds must not control, directly or indirectly, an SBIC's management, or its board of directors or general partner. Among other

things, State or local government employees may not manage an SBIC. The presence of any State or local government employee as a member of an SBIC's general partner, board of directors, or investment committee will be evaluated case by case.

3. Regulatory Capital

- a. "Regulatory Capital" is a subset of Private Capital. It is defined in 13 CFR 107.50 as "Private Capital, excluding non-cash assets contributed to a Licensee or a license applicant, and non-cash assets purchased by a license applicant, unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital." SBA policy also excludes the value of contributed services from Regulatory Capital. The only type of non-cash asset that SBA routinely approves for inclusion in Regulatory Capital is a "pre-licensing investment" made by an applicant while its SBIC license application is in process. Pre-licensing investments can only be made after the application has been filed and has been accepted by SBA for processing. The investment must be made in an eligible small business and must be structured in compliance with all applicable regulations.
- b. The second paragraph of the Regulatory Capital definition excludes an investor's unfunded commitment if SBA determines that the licensee's ability to collect on the commitment is questionable. Examples of questionable collectability include the following:
 - (1) An investor who meets the applicable net worth requirement to be an Institutional Investor, but whose net worth is largely tied up in illiquid assets, or whose commitment is contingent upon certain conditions being met in the future. SBA may require additional financial information for any investor in order to determine whether such investor's unfunded commitment can be included in Regulatory Capital.
 - (2) An applicant's partnership or operating agreement has provisions that would release investors from their unfunded capital commitments. For example, commitments not drawn by a certain date might expire, or a "key person" provision might allow investors to cease funding their commitments if a certain manager leaves the fund. SBA does not allow unfunded commitments to count as Regulatory Capital if they are subject to this type of risk.
 - (3) An applicant's partnership or operating agreement has provisions that give an investor the right to withdraw, beyond the standard withdrawal provisions applicable to various types of regulated entities (e.g., ERISA regulated pension plans) that SBA has included in its model limited partnership agreements for SBICs.
- c. When reviewing a license application, SBA will include in Regulatory Capital a commitment that is conditioned upon issuance of an SBIC license to the applicant and/or approval of the applicant's organizational documents. SBA will not include in

Regulatory Capital a commitment that is subject to other conditions that may or may not be met, e.g., the applicant reaching a certain level of private capital, the investor representing no more than a certain percentage of the fund, or the applicant meeting requirements to invest particular amounts in certain geographic areas.

4. Leverageable Capital

“Leverageable Capital” is a subset of Regulatory Capital. It is defined in 13 CFR 107.50 as “Regulatory Capital, excluding unfunded commitments.” In other words, it is the capital actually paid in to an SBIC by its investors. Applicants must meet a minimum Leverageable Capital requirement (\$2.5 million) to be licensed; post-licensing, the level of Leverageable Capital determines the maximum amount of SBA leverage that a licensee is eligible to draw.

5. Institutional Investors

- a. As discussed in paragraph 2 of this chapter, only capital commitments made by Institutional Investors can count as part of a licensee’s Private and Regulatory Capital. The definition found in 13 CFR 107.50 is not limited strictly to traditional institutions, such as banks or pension funds; a variety of entities can qualify as well as individuals. The intent is to define categories of investors with sufficient financial means to indicate a high probability that they will be able to fully fund their commitments to the licensee.
- b. The definition establishes minimum “net worth” criteria for various categories of entities and individuals. For most entities, net worth should be interpreted as total assets minus total liabilities, as presented on a balance sheet prepared in accordance with generally accepted accounting principles applicable to the entity. In the case of an entity that has unfunded capital commitments from its owners or investors, these commitments must be excluded from the net worth calculation. For entities described in subsection 1(v) or 1(vi) of the definition (public or private employee benefit or pension plans), net worth means net assets available for benefits. For individuals, net worth does not include the value of any equity in his/her most valuable residence. SBA, in its discretion, may accept financial statements prepared in accordance with applicable non-U.S. GAAP if the investor can satisfactorily explain how its financial statements equate to statements prepared under U.S. accounting principles.
- c. For any investor whose net worth is less than \$10 million, the definition must be applied in concert with 13 CFR 107.230(b)(4), which effectively limits the amount of the investor’s commitment that can be counted as Regulatory Capital to 10 percent of the investor’s net worth. However, an Institutional Investor in this category is permitted to make an additional commitment in excess of 10 percent of net worth, provided the excess amount is shown in the Capital Certificate as a commitment by an “Other Investor” (i.e., a non-Institutional Investor). For example, if Jane Smith has a net worth of \$3,000,000 and makes a \$350,000 commitment to an SBIC, she will be listed in the Capital Certificate both as an Individual Institutional Investor with a \$300,000 commitment (10

percent of her net worth) and as an Other Investor with a \$50,000 commitment.

- d. Paragraph (1)(xi) of the definition includes among the list of qualified entity Institutional Investors, “Any other entity that SBA determines to be an Institutional Investor.” In practice, SBA uses this provision only to approve entities that do not meet the criteria for any other category based on their own net worth, but whose commitments are backed by an Institutional Investor via a dual commitment or guarantee (see paragraph 9 of this chapter for a discussion of dual commitments and guarantees).
- e. Paragraphs (2)(B) and (2)(C) of the definition, which were intended to describe two distinct categories of individual Institutional Investors, are in fact not mutually exclusive; some individuals qualify under both (2)(B) and (2)(C). Where paragraph (2)(B) refers to an “individual whose net worth is at least \$2 million”, it should be understood as referring to an individual whose net worth is at least \$2 million and less than \$10 million so as to avoid overlap with paragraph (2)(C). With this interpretation, any individual whose net worth is \$10 million or more should be treated as qualifying under paragraph (2)(C).
- f. A license applicant must certify, for every Institutional Investor listed on its Capital Certificate, the paragraph of the Institutional Investor definition under which the entity or individual qualifies (see paragraph 8 of this chapter for more information on the Capital Certificate).

6. Adequate Capital

- a. Section 302(a)(3)(A) of the Act and 13 CFR 107.200 require a license applicant to have adequate capital. The regulation states that the applicant must have enough Regulatory Capital to provide reasonable assurance that it “will operate soundly and profitably over the long term” and “will be able to operate actively in accordance with [its] Articles and within the context of [its] business plan, as approved by SBA.”
- b. The requirement for adequate capital means that it is not necessarily sufficient for an applicant to meet the minimum capital requirements discussed in paragraph 7 of this chapter. SBA must determine that the applicant has enough capital to make an appropriate number of investments in the targeted size range; to hire adequate staff with the skills and experience needed to source, structure, monitor, and exit those investments; and to provide the staff with the resources needed to perform these functions. Many applicants develop an initial business plan based on a particular fund-raising goal; if actual fund-raising is significantly less than the targeted level, then adequacy of the capital with respect to the business plan must be re-evaluated.

7. Minimum Capital Requirements

- a. Before accepting a license application for processing, SBA requires the applicant have initial paid-in and/or committed private capital equal to the greater of: (1) statutory minimum of \$5 million, or (2) any minimum amount stipulated in the applicant's own SBIC license application for an initial closing of the fund. In addition, SBA may decline to accept an application if it determines that the applicant's initial capitalization is not reasonably sufficient to carry out its stated business plan effectively.
- b. Irrespective of the amount of Regulatory Capital, an applicant must have a minimum of \$2.5 million of Leverageable Capital before it is presented to the Agency SBIC licensing committee. As a practical matter, SBA must receive documentation showing that the \$2.5 million requirement has been satisfied at least one week before the committee is scheduled to meet, to allow time for the distribution of materials to the committee members. Leverageable Capital may consist of cash capital contributions on deposit in the applicant's bank account, in combination with any of the following to the extent they were funded by investor capital contributions: (1) pre-licensing investments, (2) organizational expenses, and (3) management fees, in each case approved by SBA. See paragraph 11 of this chapter for additional information.

8. Capital Certificate

- a. The Capital Certificate, Exhibit M of SBA Form 2183, is the document on which all applicants and licensees must report and certify their Regulatory and Leverageable Capital to SBA. An applicant must submit a signed Capital Certificate with the license application, showing that the minimum requirements for Regulatory Capital and management-ownership diversity (see chapter 3, paragraph 5) have been met. An applicant is not required to have Leverageable Capital at the date of application. The signed Capital Certificate must include any conditions contained in a commitment letter or subsequent agreement except for approval of the applicant's organizational documents and/or receipt by the applicant of an SBIC license.
- b. Many applicants continue to raise funds during the licensing process and should update their Capital Certificates as needed to reflect the additional capital commitments obtained. All applicants must submit a signed Capital Certificate that meets the minimum requirements for both Regulatory and Leverageable Capital at least one week before the application is presented to the Agency SBIC licensing committee.
- c. Instructions for the preparation of the Capital Certificate are included with Exhibit K of SBA Form 2183.

9. Dual Commitments and Guarantees

- a. Dual commitments and guarantees are relevant to entities or individuals who wish to invest in an applicant and do not meet the criteria for any Institutional Investor category, but who have an Institutional Investor willing to back their commitment. Common

examples include:

- (1) A family trust that does not have the \$10 million of net worth needed for it to qualify as an entity Institutional Investor, but that is controlled by an individual Institutional Investor.
 - (2) A special-purpose investment vehicle with little or no funded net worth, created by a group of individuals who are all Institutional Investors in their own right.
 - (3) An investment fund that has large unfunded commitments from a number of Institutional Investors, but currently has no funded net worth of its own.
- b. SBA accommodates applicants in these and similar circumstances by allowing a commitment from a non-Institutional Investor to be backed up by a “dual commitment” from one or more Institutional Investors (see subparagraph d. below).
- c. 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.
- (1) 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. The guarantee must be in the form approved by SBA (see Appendix 3) and the guarantee must be executed and a copy submitted to SBA before the amount of the unfunded commitment may be included in Regulatory Capital.
 - (2) 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 under which the guarantor qualifies as an Institutional Investor.
- d. Dual Commitments: 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(s) are excused from funding their unfunded commitments to the extent the primary investor funds its own unfunded commitment on a timely basis. Both the primary investor and the back-up investor(s) are limited partners

or members, as applicable, and must sign the applicant's limited partnership agreement or operating agreement, as applicable. In addition, both the primary investor and the back-up investor(s) must be listed as investors in Table 1D of the Capital Certificate and in the schedule of partners/members attached to the limited partnership agreement/operating agreement. In 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.

- e. To be included in Regulatory Capital, a non-Institutional Investor's commitment must be backed up in full by one or more Institutional Investors; SBA will not accept dual commitments or guarantees that cover only part of a non-Institutional Investor's commitment.
- f. In addition to these specific restrictions, SBA reserves the right in its sole discretion to review and approve all proposed guarantee and/or dual commitment arrangements. Neither the guarantee nor the dual commitment approach automatically qualifies unfunded commitments from investors that do not qualify as Institutional Investors for inclusion in Regulatory Capital.

10. Special Considerations for Drop-down SBICs

Applicants that are drop-down funds should use the standard Capital Certificate with these changes/additions:

- a. Unless SBA otherwise approves, SBA requires each parent fund of an applicant to be a primary investor ("Class A investor") in the applicant and all of the investors in each parent fund to become stand-by investors ("Class B investors") in the applicant. ALL of the investors in a parent fund must agree to become Class B investors in the applicant, regardless of whether or not they are Institutional Investors. Each Class B investor must sign the applicant's partnership/membership agreement. SBA may determine that Class B commitments are not necessary if (i) the parent fund is an Institutional Investor in its own right, based on its funded net worth; (ii) the parent's funded net worth is a substantial multiple of its commitment to the applicant; and (iii) the parent's assets are sufficiently liquid to provide a high level of assurance that the parent will be able to fund its commitment to the applicant without difficulty. "Funded net worth" in this subparagraph a. excludes the portion of the parent's net worth that is attributable to its investment in any other SBIC(s).
- b. Each Class B investor must commit a specific dollar amount to the applicant and is responsible for this amount regardless of how much he or she has paid in to the parent fund. This form of commitment protects SBA in the event that a parent fund calls all of its investors' capital, but diverts the funds for purposes other than honoring its capital commitment to the applicant. The applicant's limited partnership agreement must

provide that Class B commitments are reduced only as capital contributions are paid in to the SBIC, by either the Class A or Class B investor.

- c. The names and address of all of the applicant's Class B investors, along with their respective capital commitments, paid-in capital and unfunded commitments, must be listed in Tables 1A through 1D, as appropriate. The total of these commitments must equal the parent fund's Class A commitment to the applicant.
- d. Unless SBA otherwise approves, a parent fund of the applicant is not considered an Institutional Investor and should be listed as an "Other Investor" in Table 1C, with its commitment to the applicant shown in brackets to avoid double-counting. In evaluating whether a parent fund can be presented as an Institutional Investor, SBA will consider the same factors involved in determining whether Class B commitments are required.
- e. Investors' paid-in and unfunded capital commitments to the parent fund must be shown in Table 1E.

11. Bank Letter and Reconciliation of Leverageable Capital

An applicant's Leverageable Capital may include cash, pre-licensing investments, and approved expenditures for organizational expenses and management fees.

- a. To the extent that an applicant's Leverageable Capital consists of cash on deposit, it must be evidenced by a "bank letter". This letter must be provided to SBA at least one week before it presents the applicant to the Agency SBIC licensing committee.
- b. The applicant's depository bank must represent to SBA in writing that the funds in the applicant's account are not subject to any restrictions on their use by the bank or, to the bank's knowledge, any other party, including any off-setting arrangements such as compensating balances, pledge of CDs, etc.
- c. The bank letter must be signed by a senior officer of the bank, preferably a Senior Vice President or above. It must be addressed to SBA and 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 _____ the sum of _____. This bank 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."
- d. For a number of different reasons, some investors either cannot or prefer not to contribute capital until an applicant is actually licensed. For example, certain employee benefit or pension plans subject to the provisions of the Employee Retirement Income Security Act (ERISA) can only invest in a qualified "venture capital operating company" and some

applicants will only qualify after they begin operations post-licensing. Other investors simply may wish to make their commitments conditional upon the issuance of a license. SBA, in its discretion, can allow such investors to place their initial capital contributions in an escrow account, with the escrowed funds to be released to the SBIC following approval by the Agency SBIC licensing committee but before final approval by the Administrator. In such cases the bank letter will refer to the escrow arrangement, and will be accompanied by a copy of the escrow agreement.

- e. **Pre-licensing Investments:** After its license application has been filed and accepted by SBA, an applicant can begin to make pre-licensing investments using its private capital. SBA must review and approve a pre-licensing investment in order for it to be counted as part of Regulatory and Leverageable Capital. In addition, the applicant must provide a copy of the note, stock certificate, or other security in the name of the prospective SBIC that evidences the loan or investment made. If the applicant makes a pre-licensing investment with borrowed funds, such as a bank line of credit, the investment cannot be counted as Regulatory and Leverageable Capital until after the applicant completes a capital call to repay the borrowing (see Chapter 7, paragraph 7 for a discussion of the requirements for third-party borrowing by an applicant).
- f. **Organizational Expenses:** Organizational expenses incurred in applying for a license and forming the SBIC and its entity general partner (but not its parent fund or any other affiliate) can be counted as part of Leverageable Capital provided they are reasonable and are documented and disclosed to SBA and to current and/or prospective equity owners. The disclosure must include sufficient information to enable SBA to evaluate the reasonableness and appropriateness of the expenses. With respect to the aggregate organizational expenses incurred by a stand-alone SBIC applicant, SBA will generally consider the lesser of \$500,000 or 2 percent of Regulatory Capital to be a reasonable amount. However, SBA will evaluate each applicant individually, taking into account such factors as the fund size, existing SBICs under the same management, whether costs can be shared by other affiliated entities, any legal or structural issues that presented an unusual degree of complexity, etc. For drop-down SBIC applicants, SBA will also consider the allocation of costs between the applicant and its parent, and whether a given expenditure directly benefits the applicant.
 - (1) Organizational expenses typically include items such as the licensing fee, cost of legal and other professional and consulting services, travel and other fundraising expenses, costs of preparing, printing and distributing the private placement memorandum or other offering materials, and other related expenses such as telephone and supply costs. SBA will also include reasonable fees paid to a placement agent and other costs of raising capital in this category. If SBA determines that unreasonable or excessive expenses were incurred, the fund organizers must pay the disallowed amounts out of their own pocket or through an entity other than the SBIC (however, an existing SBIC is not permitted to bear the organizational costs of a new SBIC). The disallowed amount cannot be included in the SBIC's Regulatory

- Capital. Management Expenses (as defined in 13 CFR 107.520) cannot be used to pay the disallowed amounts. However, SBA may permit the SBIC to pay the disallowed expenses, provided its Regulatory and Leverageable Capital are reduced accordingly. This option is only feasible if the remaining Regulatory and Leverageable Capital meet the minimum capital and capital adequacy requirements.
- (2) Organizational expenses for applications that are not approved are the sole responsibility of the organizing group. The licensing fee paid to SBA when the application is filed is nonrefundable regardless of whether the application is denied, voluntarily withdrawn, or otherwise dismissed.
- g. Management Fees: Management fees that an applicant pays to its investment adviser/manager prior to licensing can be counted as part of Leverageable Capital with SBA's approval. SBIC Technote 7A provides a management fee formula to compute the maximum fee amount that SBA will approve for leveraged SBICs (including, by implication, applicants that intend to seek leverage). The maximum allowable fee calculation is based on not only on an SBIC's Regulatory Capital, but also on its "Assumed SBA Leverage", which is the amount of leverage that the fund expects to apply for based on its business plan.
- (1) Applicants seeking SBA approval to include management fees in their Leverageable Capital must provide SBA with a calculation reflecting the period for which the fees were paid, the fee percentage, and the capital base on which the fees were calculated. Applicants planning to seek SBA leverage must show that the fees paid did not exceed the maximum amount allowed by Technote 7A. All applicants must show that the fees paid did not exceed the amounts permitted by their governing documents.
 - (2) Technote 7A is silent on whether a fund can begin paying a management fee before it submits its SBIC license application. SBA's practice is not to allow management fees incurred prior to the application date to count as part of Leverageable Capital. Exceptions can be made if the applicant can demonstrate that the pre-application expenditures provided a meaningful benefit to the fund's future operation as an SBIC and if both the Chief of Licensing and the Director of Licensing and Program Standards concur.
- h. Reconciliation of Leverageable Capital: The executed Capital Certificate that an applicant provides prior to licensing must be accompanied by a reconciliation showing the various components of Leverageable Capital. Each component must have acceptable supporting documentation (bank letter for cash on deposit, schedule of organizational expenses, etc.).

Chapter 5. MANAGEMENT QUALIFICATIONS

1. Statutory and Regulatory Requirements

- a. Section 301(c)(3) of the Act requires SBA to consider, in reviewing and processing any license application, “whether the management of the applicant is qualified and has the knowledge, experience and capability necessary to comply with this Act” and to consider “the general business reputation of the owners and management of the applicant” and “the probability of successful operations of the applicant, including adequate profitability and financial soundness.”
- b. Qualified management is also required under 13 CFR 107.130: “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.”
- c. In addition, an applicant must meet the “economic viability” requirement of 13 CFR 107.200(b): “In SBA’s sole discretion, you must be economically viable, taking into consideration actual and anticipated income and losses on your Loans and Investments, and the experience and qualifications of your owners and managers.”

2. General Management Qualification Standards

- a. SBA looks for the following characteristics in evaluating the qualifications of proposed management teams:
 - (1) Private equity investing experience and strong “deal flow” of the same type that the proposed fund would perform. In evaluating the relevance of prior investment experience to the type of investing proposed for the SBIC, SBA considers such factors as the size, stage and structure of deals planned by the fund, as well as the targeted industries, geographic areas, and company characteristics.
 - (2) At least two fund managers (general partners or equivalent) with meaningful time commitments to the applicant and substantial investing experience similar to what is proposed for the SBIC. A “meaningful” time commitment does not have to be full time, but will be evaluated by SBA in the context of the team as a whole and the applicant’s business plan. It is strongly preferred that at least two individuals have experience as a principal in a fund environment. The managers of a prospective SBIC should be able to demonstrate that they have experience relevant to successfully managing a fund. Operations, commercial banking, investment banking and merger

and acquisition experience may have some relevance, but are not a sufficient replacement for experience in direct private investing.

- (3) A track record that contains a meaningful number of full, positive realizations that have been achieved within the past ten years, and overall performance that is strong on an absolute and relative basis across multiple investment cycles. SBA will consider such factors as performance compared to standard industry benchmarks for similar types of funds to determine whether or not a fund has performed above the median net IRR for its vintage year; return multiples; and ratio of distributions to paid in capital. SBA will also consider the age of the track record and such “quality” factors as the number of deals, the manager’s involvement in deals from start to finish, and whether the overall returns are largely dependent on a single deal.
 - (4) Cohesive management team, with complementary skills and history of working together. The management team preferably will be a group that has previously worked together as an investment team, or will have at least some members who have worked together. SBA will also give some weight to a history of co-investing or other successful working relationships. SBA will evaluate the balance in the skills, experience and influence among each team member.
 - (5) Managerial, operational or technical experience that can add value at the portfolio company level. In assessing management teams, SBA focuses on teams with a history of building companies and adding value above and beyond merely providing capital.
 - (6) A track record that demonstrates management’s ability to generate sufficient liquidity to service SBA-guaranteed debt. This is particularly important for Standard Debenture and Impact SBIC applicants whose track records should contain a sufficient number of successful, income-generating investments. SBA expects funds using debenture leverage to generate current income sufficient to service the debt, without reliance on capital gains or frequent capital calls on the fund’s investors (SBA leverage may not be drawn for the purpose of servicing debt). The track records of Early Stage applicants must have a sufficient number of full, positive exits within 4-6 years of the investment date.
- b. A prospective SBIC manager may include a deal in his/her track record only if he or she (i) served on the Investment/Credit Committee that approved the transaction, OR (ii) led the due diligence, structuring, Investment Committee presentation AND the post-close monitoring of the investment for a meaningful period of time.
 - c. In addition to possessing professional experience, team characteristics, and an investment track record that are acceptable to SBA, prospective SBIC fund managers must be individuals who have demonstrated good character and adherence to legal and ethical

standards in their professional and personal lives. The SBA will assess the individual characteristics of every team to determine whether the team merits approval for a license.

- d. Non-leveraged applicants: Prospective managers of a non-leveraged fund (i.e., a fund that does not intend ever to seek SBA leverage) must meet the same standards for character and integrity as any other applicant. They also must show that they have experience in finding, making and monitoring investments, and that their experience is applicable or transferable to a type of investing that is suitable for the SBIC program. However, because a non-leveraged fund presents no credit risk to SBA, managers are not required to demonstrate the same level of realized investment performance, as described in subparagraph a. above, that would be required to obtain leverage. SBA will generally view private investors' willingness to capitalize the fund as a significant (although not determinative) indicator of management's investment capabilities. SBA will also be more flexible with respect to managers' time commitments, although there must be staffing sufficient to carry out the business plan and operate the fund in accordance with applicable regulatory requirements.

3. Evaluation of Management Qualifications

- a. All prospective SBIC fund managers must complete a set of "personal history" forms that accompany their fund's license application. The forms, which are part of SBA Form 2182, "Exhibits to Small Business Investment Company License Application", ask for personal identifying information; professional and educational background; references in the categories of supervisors or partners, peers, portfolio company executives, portfolio company co-investors, fund investors, and general character references; criminal history; involvement in civil legal proceedings and/or professional disciplinary proceedings; investment experience and track record; relevant business, community and personal affiliations; and an authorization for SBA to obtain a personal credit report.
- b. Exhibits that must be submitted by each principal with the MAQ filing:
 - (1) Exhibit A – Experience
 - (2) Exhibit B – Legal Questionnaire
 - (3) Exhibit C – Other SBIC Activities and Relationships
 - (4) Exhibit D – References
 - (5) Exhibit E – Track Record
 - (6) Exhibit F – Portfolio Detail
- c. Exhibits that must be submitted by each principal with the license application filing include:

- (1) Two copies of their fingerprints on Fingerprint Cards furnished by SBA (Form FD-258)
 - (2) Exhibit H – Statement of Personal History (Individuals)
 - (3) Exhibit J – Authorization to Release Information
- d. The Office of Program Development will be responsible for the initial review and analysis of Exhibits A through F submitted with a MAQ filing. The Licensing Unit will be responsible for review and analysis of any updated exhibits submitted with the license application, exhibits for new principals added after the issuance of a green light letter, and exhibits for principals of subsequent fund applicants who were not required to submit a MAQ. In all cases, the analyst must substantiate and evaluate the information provided in these exhibits through due diligence. Throughout the entire process, the analyst must be particularly alert for any failures on the part of prospective managers to disclose required information. An individual who submits an exhibit that either makes a false statement or fails to disclose required information may not serve as a principal of an SBIC.
- e. The major elements of the due diligence process are as follows:
- (1) Contacting listed references and developing and contacting unlisted references to verify information provided by the prospective managers regarding their background, experience, authority level and involvement in particular deals, and to evaluate their character, business reputations and ability to operate a successful fund. This process begins with verification of factual information, but must also include an assessment of such qualitative factors as the team members' individual strengths and weaknesses, complementary skills, ability to work together and stay together as a team, and ability to function in a regulated environment.
 - (2) Performing electronic records searches to identify any issues that may reflect on an individual's fitness to serve as an SBIC fund manager, such as indications of criminal activity, breach of fiduciary duty, or financial irresponsibility in either a personal or business context. The analyst must perform a general background review of each prospective manager using an Internet search engine and must review the available public records; these searches should be performed during Phase I, and should then be updated during Phase III. Searches should cover not only the individual managers, but also any entities in which the manager has past or present involvement as an equity owner, board member, or member of senior management; such entities may be identified in the personal history exhibits or may come to light during the search process.

- (3) Reviewing the investment track record claimed by each prospective manager, including evaluation of the validity of financial returns claimed on key deals (those that drive the overall rate of return) and the fund as a whole; the role claimed by the individual with respect to particular investments; and whether the track record presents the appropriate set of deals.
 - (4) Evaluating the significance of legal proceedings disclosed by prospective fund managers in Exhibit D or discovered through due diligence. The licensing analyst should request guidance from the OGC attorney assigned to the application concerning the type of documentation that should be obtained from the applicant. Both the licensing analyst and the OGC attorney should then review the submitted material and any other relevant information obtained through the due diligence process. In the case of unresolved litigation, investigations, disciplinary proceedings or other issues, SBA must consider a “worst-case” outcome in evaluating how the matter affects an individual’s fitness to manage an SBIC, but should also assess how likely that outcome appears to be.
 - (5) Completion of FBI criminal history checks based on submitted Fingerprint Cards and Exhibit H. The licensing unit delivers the Fingerprint Card and Exhibit H to the Office of Inspector General, which in turn transmits them to the FBI. OIG serves as SBA’s liaison with FBI throughout the process. The FBI conducts two separate checks: the fingerprint check will indicate whether the subject has any type of criminal record, while the “name check” will indicate whether the subject is or has been under investigation, even if no charges have been filed. Charges that have been expunged are not removed from FBI records and the license application instructs applicants to disclose them.
 - (6) Obtaining and reviewing a personal credit report on each prospective fund manager. The licensing unit has an account with a credit reporting bureau for this purpose. SBA must obtain a signed authorization (SBA Form 2182, Exhibit J) from the subject before running any credit report. If an individual’s credit report contains unfavorable information, SBA will contact that individual (and no other individuals involved with the application) to provide him or her with an opportunity to explain or rectify the problem.
 - (7) Determining whether prospective fund managers hold any positions or have any other affiliations that suggest the possibility of State or local government control of the applicant, which is prohibited by the Act and 13 CFR 107.230(d).
- f. For prospective fund managers who have previously worked with an SBIC, due diligence also includes evaluating the financial and regulatory performance of their prior fund(s) and their general working relationship with SBA.

- (1) For the most part, the financial performance of an SBIC should be evaluated in the same way as the performance of any other fund. Two additional elements, however, are (1) whether the SBIC has fully repaid its SBA leverage or appears likely to do so, and (2) if the SBIC has outstanding leverage, whether it has a condition of Capital Impairment (a regulatory violation per 13 CFR 107.1830). Both of these issues should be evaluated in cooperation with the Operations analyst assigned to the licensee, particularly where repayment depends on the ultimate success of an SBIC's unrealized portfolio.
- (2) In most cases, the Licensing Unit should not recommend an applicant for licensing if a predecessor fund has a condition of capital impairment, has substantially wound up its operations and has not repaid its SBA leverage in full, or is still operating but appears unlikely to repay its SBA leverage in full. There is one possible exception that may arise in the case of an SBIC that issued SBA leverage in the form of "participating securities", an equity-type instrument that was available from 1994-2008. This instrument had a flawed design, particularly with respect to the statutory provisions governing the allocation of distributions to SBA and to licensees' private investors. As a result, some funds that achieved good or excellent financial returns were not able to pay back all of their leverage, although SBA's total cash-on-cash returns may still have been positive or break-even. The licensing analyst should take the participating securities program's structural flaws into account in evaluating such funds.
- (3) The Investment Division maintains an examinations database as part of the ID information system to which all licensing analysts have access. This database provides the dates on which SBICs have been examined and summarizes the findings noted in each report. For more detail, the actual examination reports can be found in the individual SBIC's operations file, which also includes all correspondence related to the resolution of findings.
- (4) The Licensing Unit should not recommend an applicant for licensing if members of its management team operate an existing SBIC that has an unresolved regulatory violation. If members of an applicant's management team operate or have operated an SBIC with an overall record of poor compliance, that is also a sufficient reason to recommend against licensing the applicant, even if the violations were corrected. However, in formulating its recommendation, the Licensing Unit may consider such factors as whether the compliance record improved over time, the nature of the violations, the promptness with which violations were corrected, and whether or not there were repeat violations. A licensing analyst who encounters a problematic compliance record should obtain input from the Operations analyst who is most familiar with the SBIC in question and should also consult with the Chief of Licensing and the Director of Licensing and Program Standards.

- (5) The licensing analyst should consult with Operations analysts, examiners and any other SBA staff who have had experience working with an applicant's management team.

4. Foreign Principals

A foreign principal (i.e., a non-resident alien) may be part of an SBIC's management team, subject to the following conditions:

- a. The foreign principal must meet all of the same requirements that US citizens or permanent residents must meet: (1) Be qualified from the standpoint of experience, and (2) be a person of high quality character as demonstrated by background investigations performed through the Office of Inspector General and by due diligence performed by Investment Division staff.
- b. The applicant must have at least two other fund managers who have venture/private equity investing experience that would fully qualify the fund to be an SBIC even if the fund lacked the foreign principal. The foreign principal cannot hold, directly or indirectly, more than 49 percent of the ownership interests of the general partner or other managing entity of the applicant. The US citizens or resident alien principals must hold at least 51 percent of the ownership interests of the general partner or other managing entity of the applicant.
- c. SBA must confirm that the foreign principal has an appropriate work visa permitting him or her to be in the US at all times if the applicant's business plan contemplates that he or she will enter the US to participate in the SBIC's domestic operations. SBA should also ask foreign principals for a written representation concerning how much time they intend to spend in the US during each year of the SBIC's active investment period. Formal written notice must be given to the principal indicating that SBA approval as a principal does not constitute authority to enter the United States.
- d. Due diligence on the foreign principal must be performed by an expert private security firm, acceptable to SBA, with experience doing background checks in the principal's native country. The cost of the private due diligence must be borne by the principal, the applicant's management company, or its general partner or equivalent managing entity, not by SBA or the SBIC (unless reflected as a reduction of the SBIC's Regulatory Capital). The private security firm must be engaged by a third party, typically the applicant's law firm (which can bill the cost of the investigation back to the individual principal, management company, or GP), so as to avoid potential conflicts of interest that could arise if the private security firm were hired to investigate its own client.
- e. SBA must be satisfied that the ownership and profit interests of the US principals of the SBIC are sufficient to ensure that the SBIC would be managed safely and soundly in the event the foreign principal were no longer involved in the management of the SBIC.

5. Evaluation of Owners Not Involved in Management and Other Non-Principals

As stated at the beginning of this chapter, the Act requires SBA to consider the “general business reputation” not only of an applicant’s management team, but also of its owners. Even for owners who are in a passive role, typically as limited partners of an LP or non-managing members of an LLC, SBA has a statutory responsibility to know the parties with whom it is involved and to obtain background information on owners who are presumed to exert some influence in the operations of the SBIC based on the size of their investments. As a matter of practice, SBA also obtains information on any other non-principal who is deemed to be highly influential.

- a. Requirements for Criminal History Checks: Exhibit G of SBA Form 2182, “Parties Required to Submit Information”, states that the following individuals and entities must submit either Exhibit H – Statement of Personal History (Individuals) or Exhibit I – Statement of Personal History (Entities), as appropriate:
 - (1) All officers and directors of a corporate SBIC, general partners of a limited partnership SBIC, or managers of an LLC SBIC. (Note that if the general partner, in the case of a limited partnership SBIC, or the manager in the case of an LLC SBIC is an entity, then all of the individual managers or members of the entity must be listed.)
 - (2) All individuals or entities that exercise "Control" or who are “Control Persons” (both as defined in 13 CFR 107.50).
 - (3) All individuals or entities who own or control, directly or indirectly, securities of the SBIC equivalent to thirty-three percent (33%) or more of the outstanding securities of the SBIC.
 - (4) All investment committee members and any individual whose role is highly influential (SBA liaison, compliance officer, officers and employees of the applicant’s investment advisor/manager with day-to-day management responsibility and/or signing authority for the applicant).
 - (5) The three ranking managers or officers of any entity described in (2) or (3) above.
- b. SBA submits the personal history statements completed by these individuals and entities to the FBI, which conducts a name check to determine whether the subject is or has been under investigation. In addition to the personal history statement, an individual in any of the above categories must also submit fingerprint cards (Form FD-258), unless he or she is one of the three ranking managers of an entity that qualifies for one of the following exemptions listed in Exhibit G:

- c. EXEMPTIONS: The entities listed below are exempt from the requirement that their three ranking managers submit fingerprint cards. However, if one of the three ranking managers has an arrest record, that individual must submit fingerprint cards regardless of these exemptions. Furthermore, the three ranking managers must submit Exhibit H even if they are not required to submit fingerprint cards.
- (1) Companies registered under the Investment Company Act of 1940.
 - (2) Advisors registered under the Investment Advisors Act of 1940.
 - (3) Broker-Dealers registered under the Securities and Exchange Act of 1934.
 - (4) Federal Home Loan Banks.
 - (5) National banks regulated by the Office of the Comptroller of the Currency, FDIC members, or federal savings associations regulated by the Office of Thrift Supervision.
 - (6) Any company subject to regulation under the Bank Holding Company Act or regulated as a Financial Holding Company under the Gramm-Leach-Bliley Act.
 - (7) U.S. subsidiaries of foreign banks that take deposits in the US, provided the subsidiary has a net worth of at least \$10 million.
 - (8) Foreign banks that do NOT accept deposits in the U.S. and which have a net worth of \$50 million or greater, and have publicly available audited financial statements.
 - (9) Domestic insurance companies with a minimum of \$10 million of surplus.
 - (10) Any corporation (domestic or foreign) whose stock (or ADRs) trades on the New York Stock Exchange.
 - (11) Any company required to file periodic reports with the Securities and Exchange Commission under Section 15(d) or 12(g) of the Securities and Exchange Act of 1934 *and* whose net worth is \$20 million or greater, *and* whose stock trades on the American Stock Exchange or the NASDAQ National Market.
 - (12) State and local government agencies.
 - (13) State and local government retirement plans.
 - (14) Employee benefit plans covered by ERISA with assets of at least \$50 million.
 - (15) Entities tax-exempt under §501(c)(3) of the Internal Revenue Code with assets of \$10 million or greater, net of liabilities.

- (16) Foreign entities substantially equivalent to those exempted above, as determined by the SBA.
- d. When a subsidiary of an exempt entity invests in an SBIC, the subsidiary cannot rely on the fingerprint exemption unless it is subject to the same requirements as its parent company with respect to the approval of top managers and general regulatory oversight.
- e. In determining whether a foreign entity is substantially equivalent to an exempt domestic entity, the analyst should consider how the foreign entity is regulated; whether the ranking managers were required to undergo background checks or other approval procedures; and whether any independent outside agency (e.g., the International Monetary Fund) has evaluated the adequacy of the regulatory oversight environment in which the foreign entity operates.
- f. Disclosure Requirements: Exhibit K of SBA Form 2183, “Capital Certificate”, contains additional requirements for disclosure concerning 10 percent or greater investors in an applicant.
 - (1) Table 1K of the Capital Certificate must identify each “10% Investor”, defined as any *entity* or *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.
 - (2) For purposes of identifying a 10% Investor, the equity interests of all affiliates must be aggregated.
 - (3) For any 10% Investor that is an entity, table 1K must 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, as shown in the following table:

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
ABC Company 40%	High and Wide Investments 50%	Fred Jones 50%
		Steve Brown 50%
	John Smith 30%	
	Remainder = 20%, 10 individuals each with less than 5%	
John Doe Trust, Jane Doe, Trustee, 15%	John Doe, Beneficiary 100%	

Remainder = 45%, 10 individuals and 5 entities, each with 8% or less		
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- (4) An applicant that is a subsidiary of a publicly-traded parent company may not be able to satisfy fully the Level 3 disclosure requirements in Table 1K. The parent company, as the 100% owner of the proposed SBIC, will be listed under Level 1. If the parent company has any 10% or greater investors, these investors must be listed under Level 2. However, if any of these Level 2 investors is an entity, such entity would have no obligation (as a shareholder of a public company) to disclose its owners to the applicant. If this information is available to the applicant through public records or other sources, it should be filled in on Table 1K; if it is not available, SBA in its discretion may accept as adequate disclosure the SEC forms that must be filed by a 5% or greater shareholder of a public company (SEC Form 13d or 13g). The applicant should be informed that SBA reserves the right to revisit its disclosure requirements if the public parent becomes closely held or is taken private at any time in the future.

Chapter 6. NEED FOR LICENSE

1. Statutory Requirements

Section 102 of the Small Business Investment Act of 1958, as amended, reflects the conclusion of Congress that small businesses in general do not have an adequate supply of long-term debt and equity capital. This section states in part that it is “the policy of the Congress and the purpose of this Act to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply . . .” Section 301(c) of the Act also requires SBA, in reviewing and processing a license application, to consider “the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business.” Therefore, the analyst must review the license application (SBA Form 2181), particularly sections 1.1, 1.4, 1.7, and Appendix 2, to evaluate the need for an SBIC in the applicant's proposed area of operation.

2. Factors Considered

The analyst should consider factors such as:

- a. Other SBICs serving the area, and how their investment activity (industries and stage of companies targeted, types and amounts of financing provided) compares to the applicant's plan of operations.
- b. Overall access to venture capital/private equity investment funds in the applicant's proposed area of operations. Various organizations make relevant survey data available on their websites. Applicants often can provide additional data that is available by subscription.
- c. How the proportion of total venture capital/private equity funds invested in the applicant's proposed area of operations compares with the proportion of the total population and/or total US businesses located in the area.
- d. The extent to which there are non-SBIC funds operating in the area on the same scale and with the same focus as the applicant.
- e. Whether the applicant will focus on special competitive opportunity gaps, or underserved markets or geographies.

Chapter 7. REVIEW OF BUSINESS PLAN

1. Information Submitted by Applicant

A license applicant describes its business plan by answering the questions on SBA Form 2181. The licensing analyst must review the plan to assess not only whether it appears to be financially viable, but also whether it complies with SBIC program regulations and appears consistent with program objectives. In addition to Form 2181, applicants must submit any offering or private placement memoranda or other sales material they have prepared for distribution to potential private investors. This chapter highlights SBA policies relative to certain sections and topics typically covered in these documents that have not already been addressed in Chapters 3 through 6.

2. Determining Who is a Principal

- a. A “principal” of an applicant for an SBIC license refers to any individual who engages or proposes to engage in the management of the applicant, and always includes officers and directors of a corporation, general partners of a partnership, and managers of a limited liability company. However, it may also include other individuals. Title is not determinative, and in its sole discretion, SBA may determine that other individuals are principals (see next paragraph).
- b. The analyst must consider the role played by any individual identified in the license application as having a direct or indirect relationship to the applicant. Such parties may include outside advisors or consultants, major investors, family members, business associates, and anyone who receives either carried interest or a portion of the management fee. The analyst must inform the Chief of Licensing if there is any indication that an individual (1) will participate in investment-related decisions, including any right to veto decisions, (2) will participate in fund governance, (3) appears likely to play a major role in one or more of the applicant’s business activities, such as deal sourcing, (4) has the right to attend investment committee meetings, or (5) may exercise significant influence over one or more principals. The Licensing Unit and OGC will jointly evaluate the individual’s role and determine whether he/she is a principal.

3. Allocation of Carried Interest

The analyst must evaluate the applicant’s proposed allocation of the general partner/manager’s carried interest in accordance with the following guidelines:

- a. The allocation must reasonably reflect with each principal’s value to the fund, which typically reflects the principal’s professional qualifications and experience, professional network, and role in fundraising.

- b. The fund managers in general, and particularly any individual principal whose qualifications SBA considers to be essential to the success of the fund, must have adequate economic incentive to remain with the fund and to maximize its performance. Although a principal may direct a portion of his/her carried interest to a family trust or similar entity, SBA will normally require a significant portion to be received directly by the principal.
- c. SBA policy does not allow any one individual to receive more than 50 percent of the carried interest.
- d. SBA policy allows no more than 25 percent of the carried interest to be allocated (in the aggregate) to parties other than principals and employees.

4. Targeted Geographic Area

Does the business plan require the fund to invest exclusively within a specific geographic area? If so, is the area likely to produce a sufficient number of desirable investment opportunities? For a leveraged SBIC, SBA generally will not approve a plan that restricts investments to a single State or other limited geographic area; such restrictions increase risk because managers may not have sufficient flexibility to achieve satisfactory fund performance. A single State strategy may be acceptable if it encompasses not only businesses domiciled in the State but also those that have operations or employees in the State. In such cases, the SBIC must provide evidence of ample, high-quality deal flow consistent with its strategy.

5. Management Fee/Management Expenses

How will the management fee be calculated, and what expenses will be covered by the management fee vs. paid separately by the SBIC?

- a. An SBIC may not pay a management fee that exceeds the amount calculated in accordance with the formula in SBIC Technote 7A. The Technote 7A formula calculates a maximum allowable management fee. SBA generally looks favorably on lower management fees, but may decline to approve an alternative fee structure that is excessively complex or lacking in transparency. An applicant may elect to have a lower fee structure prior to being licensed, even if it intends to use the standard formula as a licensee. For example, an applicant might pay a fee based only on Regulatory Capital until it is licensed, then incorporate Assumed SBA Leverage in its fee structure post-licensing. The limited partnership agreement must set forth the method of calculating an SBIC's management fee over its entire life (from inception to licensing if applicable, and during and after the active investment period).
- b. Provisions in the limited partnership agreement that provide for certain expenses to be paid by the fund (over and above the management fee) must be reviewed to make sure

that these items are not included in “management expenses” as defined in 13 CFR 107.520.

6. Reinvestment of Proceeds

There is no regulatory prohibition against the reinvestment of proceeds (i.e., funds received by and SBIC from a portfolio company; these funds may represent a return of capital, interest payment, profit distribution, etc.). Many applicants intend to reinvest funds, usually for a stated period of time (such as the period during which the fund is making new investments). However, SBA does not permit indefinite reinvestment for a limited life entity, such as a limited partnership. The general rule is that reinvestment is permitted during an SBIC’s active investment period, which usually lasts five years.

7. Third Party Debt

Does the applicant have or intend to have any third party borrowing arrangements in place prior to being licensed?

- a. A leveraged SBIC is subject to 13 CFR 107.550, which requires SBA’s prior approval for any secured third-party debt. SBA applies the same standard to license applicants that intend to seek leverage. The licensing analyst should obtain a copy of the proposed borrowing agreement and review it in cooperation with OGC. SBA will generally allow an applicant to obtain a line of credit prior to licensing, to be used for pre-licensing investments, provided the line will be paid down and closed after the fund is licensed and is able to draw leverage. The stated maturity date must be one year or less. The line may be secured by the specific assets acquired with the borrowing proceeds and/or by the applicant’s unfunded commitments from investors, but not by a blanket lien on all assets.
- b. Although the regulations do not require SBICs to obtain SBA approval for unsecured third-party debt, these borrowing arrangements may still present a credit concern. This is because SBA leverage is generally subordinate to third-party debt of an SBIC (see 13 CFR 107.560). Therefore, the Licensing Unit’s comment letter should ask whether an applicant has or plans to use any unsecured non-SBA debt, and should instruct the applicant to submit any existing or proposed third-party debt agreement for review by the Licensing Unit and OGC.

8. Private Placement Memorandum (PPM)

Most applicants prepare a PPM (or similar offering document) to present to potential investors. The PPM typically describes the fund’s investment strategy and provides information concerning the experience and performance record of the management team. The PPM also explains the terms that the fund is offering to investors, including such items as the minimum investment amount required, the expected duration of the fund, how distributions will be allocated, and the compensation to be paid to the fund managers.

Another key element of the PPM is a description of the risks associated with the investment. The licensing analyst, in cooperation with OGC, must review the PPM to make sure that it is consistent with the information provided in the license application and that the applicant has clearly informed its potential private investors (1) that the fund intends to operate as an SBIC (or to form and operate a drop-down SBIC subsidiary, as the case may be), and (2) that any investment in the fund is subject to a number of risks specific to the SBIC program, especially concerning the use of leverage, payment of unfunded commitments, the possible impact on the fund of regulatory non-compliance, and the remedies available to SBA if the fund is in regulatory non-compliance, defaults on its leverage or develops a condition of capital impairment.

Chapter 8. OTHER ASPECTS OF APPLICATION REVIEW

1. Regulatory Review of Limited Partnership Agreement or LLC Operating Agreement

- a. SBA provides model limited partnership agreements for (1) standard SBIC debenture applicants, and (2) Early Stage SBIC applicants. Applicants must use the appropriate model agreement as a starting point, and follow the instructions that accompany the model, especially the instructions concerning those provisions in the model in bold-face type. Applicants are required to submit a copy of their limited partnership agreement marked to show any changes from SBA's model.
- b. It is the responsibility of OGC and the licensing analyst to review the applicant's limited partnership agreement, LLC operating agreement, or similar organizational document. OGC's review focuses primarily on legal sufficiency, while the licensing analyst's review focuses primarily on business and program issues. Examples of business and program issues include:
 - (1) Conformity of management compensation provisions to SBA policy.
 - (2) Conditions under which the applicant either can or must co-invest with affiliated funds.
 - (3) Whether distribution provisions governing reinvestment, distribution of proceeds, and allocation of preferred returns to certain investors are consistent with program regulations and Investment Division policies.
 - (4) Whether the designation of expenses as Management Expenses or fund expenses is consistent with 13 CFR 107.520.
 - (5) Whether the maximum amount of organizational expenses allowed by the agreement is reasonable (see Chapter 4, paragraph 11 of this SOP).
 - (6) Acceptability of any limitations on the fund's ability to call private capital, such as a limit on the percentage of capital that can be called within any one year (must be reasonable), expiration of uncalled commitments as of a certain date (not permitted by SBA), or limitations on the purposes for which capital can be called after the termination of a defined investment period (must allow capital to be called for the purpose of paying any amounts due to SBA).
 - (7) Acceptability of "key person" provisions that take effect if one or more principals depart (unacceptable to release any investors from their unfunded commitments or provide any right of withdrawal; generally acceptable to allow suspension of new investments until an acceptable replacement manager is found).

- (8) Conditions under which new investors can be admitted to a fund after its initial closing, including provisions for payment of interest and catch-up capital contributions to the fund.
- (9) Right of the principals to engage in activities other than management of the funds, including the right to establish additional funds.

2. Side Letters

- a. SBA generally discourages the use of side letters, especially when a majority of investors each have a separate side letter. Side letters can be expected to slow down the licensing process for the applicant. Nevertheless, an applicant or its general partner may enter into a side letter with one or more of its investors. The side letter is a contractual agreement between the investor and the applicant that supplements the applicant's limited partnership agreement, and may provide the investor with special rights that are not otherwise available under the limited partnership agreement. For example, the side letter may grant the investor co-investment rights or a reduced carried interest or management fee on its investment. All side letters are subject to SBA's prior written approval.
- b. An applicant's use of side letters must be consistent with the following guidelines:
 - (1) The applicant's limited partnership agreement must specifically authorize the fund to enter into side letters, or specifically authorize the general partner to enter into side letters on behalf of the fund.
 - (2) Provisions affecting all of an applicant's investors or the operation of the fund must be incorporated into the limited partnership agreement.
 - (3) The side letter may not contain language stating that in the event of any conflict between the side letter and the limited partnership agreement, the side letter will control. SBA in its discretion may permit the side letter to control with respect to specific provisions that do not affect SBA's interests.
 - (4) The side letter may not attach conditions to or in any way attempt to release a limited partner's obligation to pay its capital commitment.
 - (5) The side letter may not contain a "Most Favored Nation" clause which automatically extends to the investor any more favorable rights and benefits established by another investor's side letter or similar agreement. However, the side letter may require disclosure of other side letters, and give the LP the right to either (1) veto the extension of more favorable rights and benefits to other investors, or (2) obtain those rights for itself subject to SBA approval.

3. Pre-Licensing Investments

- a. After its license application has been filed and accepted by SBA, an applicant can begin to make pre-licensing investments using its private capital. However, an applicant is limited to making only one pre-licensing investment until at least one member of its management team has attended the SBIC regulations training class offered by SBA (see item 5 of this chapter). SBA must review and approve a pre-licensing investment in order for it to be counted as part of Regulatory and Leverageable Capital.
- b. SBA Form 2183 contains the Pre-Licensing Investment Worksheet, a questionnaire designed to elicit information from a license applicant about possible compliance issues that a proposed pre-licensing investment might present. At least 30 days before the planned closing date of the investment, an applicant must submit the following information to SBA:
 - (1) Pre-Licensing Investment Worksheet
 - (2) Term Sheet
 - (3) Executive Summary of Business Plan
 - (4) Draft Form 1031 Portfolio Financing Report
 - (5) Pro-forma Form 480 Size Status Declaration
 - (6) Pro-forma Form 652 Assurance of Compliance for Non-Discrimination
- c. The licensing analyst verifies that all required information has been submitted and provides copies of the package to the Director of Licensing and Program Standards and the Director of the Office of SBIC Operations (or their designees) for review and approval. The licensing analyst will serve as liaison between the directors and the applicant if any questions arise during the review process. When both directors have approved a pre-licensing investment, the licensing analyst will prepare an approval letter for the Licensing chief's signature. The letter will inform the applicant that the investment is approved for inclusion in Regulatory and Leverage Capital. In addition, it will advise the applicant of the following additional documentation requirements:
 - (1) A copy of the note, stock certificate, or other security in the name of the prospective SBIC that evidences the loan or investment made (to be submitted to the licensing analyst as soon as possible after closing)
 - (2) Final Form 1031 Portfolio Financing Report (to be submitted to SBA electronically after licensing).

- (3) Signed Form 480 Size Status Declaration (to be retained in the SBIC's files).
- (4) Signed Form 652 Assurance of Compliance for Non-Discrimination (to be retained in the SBIC's files).

4. Valuation Policy

SBICs are required under 13 CFR 107.503 to have a written valuation policy approved by SBA for use in determining the value of their loans and investments. An SBIC applicant's proposed valuation policy must be included with the license application; it is typically provided as an exhibit to the limited partnership agreement. An applicant has the option of adopting verbatim SBA's model valuation policy or obtaining SBA's prior written approval of an alternative valuation policy. The licensing analyst must review the applicant's submitted policy to determine whether it differs from the model in any respect. If so, the policy must be reviewed and approved by the OII's credit committee, made up of the Director of the Office of SBIC Operations (OSO) and the OSO Area Chiefs.

5. SBIC Regulations Training Class

- a. As a part of the licensing process, all prospective SBIC fund managers are required to attend a one-day class on the SBIC program regulations. Non-principals who will have significant regulatory compliance or reporting responsibilities, such as a fund's CFO or non-principal compliance officer, should also attend. The classes are held at least three times a year, usually in downtown Washington, DC.
- b. The licensing analyst should advise managers of an applicant to complete the class before the fund is considered by the Divisional and Agency licensing committees. If more than one principal, or one key principal, has not attended the class by that time, the committees still have discretion to approve the fund for licensing, but may require that no leverage be approved until all principals have attended.
- c. Prior to licensing, an applicant is permitted to make only one pre-licensing investment until at least one of its managers has attended the class.

Chapter 9. APPLICATION PROCESSING STEPS

1. Intake on a New License Application

- a. **Pre-Acceptance Review and Data Entry:** When an application is received, the Licensing Chief, or a designee (generally the Licensing Unit's program support specialist), will make a preliminary review of the material submitted by the applicant to ascertain its completeness, including minimum Regulatory Capital, management-ownership diversity, and all required signatures (see SBA Form 2181, "Declaration of Principals and Control Persons", and SBA Form 2183, Exhibit M, "Declaration of Significant Investors"). If the application is incomplete, the applicant will be notified by email and requested to submit the missing materials. If the application appears to be complete, the program support specialist will assign an application number and create a record for the applicant in the Office of Investment Information System licensing database, which will be used to track each subsequent step of the licensing process as it occurs. The program support specialist will send a letter via email, notifying the applicant of the acceptance of the application, the application number, the name of the assigned licensing analyst (designated by the Licensing Chief), and applicant's eligibility to begin making pre-licensing investments.
- b. **License Application Fee:** Except for Early Stage SBIC applicants, the license application fee is \$10,000 for a corporation and \$15,000 for a limited partnership or limited liability company. For Early Stage SBIC applicants, the license application fee is \$25,000 (see 13 CFR 107.300). The fee must be paid by check and submitted together with the license application. The Licensing Unit's program support specialist will hand deliver the fee and an accompanying check transfer form to the individual within OII responsible for processing deposits. When returned, the deposit receipt is placed in the licensing file.
- c. **Personal History Statements and Fingerprint Cards:** The program support specialist will review all Statements of Personal History (SBA Form 2182, Exhibits H and I) and fingerprint cards submitted with the license application to make sure they are complete and signed by the correct individual, and will determine (in consultation with the Licensing Chief) whether any additional individuals or entities are required to submit information (see SBA Form 2182, Exhibit G). When the required forms have been completed, the program support specialist will prepare a memorandum transmitting them to the Office of the Inspector General. Upon delivery, an OIG employee will countersign and date the transmittal memo to indicate receipt.
 - (1) Results of the FBI criminal history checks are reported to the OIG and are forwarded by memo to the Licensing Unit. This process occurs concurrently with other licensing steps. SBA has no control over the time frame for the FBI checks, which may take as little as a few weeks or as long as several months. An applicant can be licensed before all of its criminal history checks have been completed, but is not

permitted to apply for a leverage commitment until results of FBI fingerprint checks for all individuals have been received by SBA and found to be acceptable.

(2) Sensitive personal information, including an individual's social security number, is requested on Statement of Personal History and fingerprint card. This personal information is subject to the Privacy Act and should be considered to constitute controlled unclassified information (CUI). Licensing analysts must comply with all applicable SBA CUI guidance regarding Privacy Act protected information in Standard Operating Procedures 00 41 2 (Records Management Program) 40 03 3 (Disclosure of Information), 40 04 3 (Privacy Act Procedures) 90 50 (Breach Notification Response Plan) and 90 49 1 (Appropriate Use of SBA Automated Information Systems), and must consider SBA policies and procedures on CUI found on SBA's internal website, including Controlled Unclassified Information Office Notice 2011-01, and Initial Implementation Guidance for Executive Order 13556.

d. A subsequent fund application must meet the following conditions in order to be accepted (see also the subsequent fund requirements in Chapter 2, paragraph 4):

(1) No unresolved regulatory violations by any of the existing SBICs.

(2) The most recently licensed existing SBIC must have invested a dollar amount equal to at least 70% of the sum of private capital and assumed leverage OR have less than 18 months remaining in its active investment period.

2. Request for OGC Review

By email, the Chief of Licensing informs OGC of applications ready to be reviewed for legal sufficiency. OGC informs the Licensing Unit of the attorney who will review each application. The reviewing attorney will provide the Licensing Unit with written comments, which may deal with program policy issues as well as legal issues.

3. Comment Letter

a. After the licensing analyst has completed his/her own evaluation of the license application and has received and reviewed comments from OGC, the analyst will prepare a comment letter for the Licensing Chief's signature.

b. The comment letter may request additional information, clarifications or corrections regarding any items in the application and supporting documentation submitted by the applicant. The letter must identify any actual or potential regulatory compliance issues, provisions that may pose an unacceptable risk to SBA, and departures from established SBA policy. If an applicant fails to respond to a comment letter within 30 calendar days from the date of the letter, the licensing analyst should inform the Licensing Chief. The Chief may contact the applicant to impose a deadline for submission of a response; if the

applicant misses the deadline, the application can be dismissed with the concurrence of both the Licensing Chief and the Director of Licensing and Program Standards. The Chief will notify the applicant of the dismissal in writing, and will offer the applicant the option of having its application materials either returned or disposed of by SBA.

- c. The licensing analyst and OGC attorney will both review the applicant's comment letter response. If unresolved issues remain, one or more additional comment letters may be sent.

4. Licensing Action

After the licensing analyst and OGC have completed their evaluation of the application, the licensing analyst prepares a draft Licensing Action and submits it to the Licensing Chief for review. The Licensing Action updates and expands upon the investment memorandum prepared by Program Development.

5. Presentation to the Divisional SBIC Licensing Committee

- a. The Divisional SBIC Licensing Committee generally meets weekly (as needed). Prior to a meeting, for each application that will be considered, the licensing analyst posts the Licensing Action, capital certificate and any other documents in the Investment Committee folder on OII's shared network drive. The Licensing Action includes the recommendations for or against licensing by the licensing analyst and the Licensing Chief, and must be signed by both individuals. Preferably, the reviewing attorney will also sign off for legal sufficiency on behalf of OGC, but this step can be deferred until after the meeting if, for example, the applicant has not yet submitted its final capital certificate and bank letter.
- b. A majority of the Divisional committee members eligible to vote on the application must participate (in person or by telephone) to constitute a quorum. If a member is absent from the office (as defined in Chapter 3, paragraph 2 of SOP 00 01), or is unable to perform the duties of his or her position, the individual who is filling the position in an acting capacity, under a written line of succession, may serve on the Divisional committee during the member's absence or inability. In addition, if one of the positions listed as a member of the Divisional committee is vacant, the individual serving in that position in an acting capacity may serve on the Divisional committee.
- c. An application can be presented to the Divisional committee provided that all issues, including all legal issues, have been resolved in principle and any necessary changes to documents have been specifically identified and agreed upon. Final changes to documents may be submitted after the Divisional meeting. SBA encourages applicants to submit a signed capital certificate and bank letter showing the required Leverageable Capital before the meeting, but this is not a requirement.

- d. After an applicant has been presented and discussed, the committee votes on whether or not to recommend the applicant for licensing; each member's vote is recorded on the signature page attached to the Licensing Action. If a majority of the committee votes in favor, the application will be forwarded for review by the Agency SBIC Licensing Committee. If a majority is opposed, the application will not be considered further and the Licensing Chief will so notify the applicant in writing, unless the applicant prefers to withdraw.
- e. The licensing analyst is responsible for preparing draft minutes of the Divisional committee meeting. The Director of Licensing and Program Standards will review the minutes and circulate them to the full committee for comment.

6. Presentation to Agency SBIC Licensing Committee

- a. Applications recommended for approval by majority vote of the Divisional SBIC Licensing Committee will then be considered by the Agency SBIC Licensing Committee. Meetings are generally scheduled once a month, subject to the availability of the members. Prior to each meeting, the program support specialist distributes packages to the members containing the Licensing Actions, final signed capital certificates, and Divisional minutes for the applicants to be discussed.
- b. A majority of the Agency committee members eligible to vote on the application must participate (in person or by telephone) to constitute a quorum. If a member is absent from the office (as defined in Chapter 3, paragraph 2 of SOP 00 01), or is unable to perform the duties of his or her position, the individual who is filling the position in an acting capacity, under a written line of succession, may serve on the Agency committee during the member's absence or inability. In addition, if one of the positions listed as a member of the Agency committee is vacant, the individual serving in that position in an acting capacity may serve on the Agency committee.
- c. An application can be presented to the Agency committee only if the following conditions have been satisfied:
 - (1) All substantive issues have been resolved and legal documents are in final form, although they may be unexecuted.
 - (2) SBA has received a signed capital certificate and bank letter indicating that the applicant has met the minimum Regulatory Capital, Leverageable Capital, and management-ownership diversity requirements.
 - (3) The reviewing attorney has signed off for legal sufficiency on behalf of OGC.
- d. After an applicant has been presented and discussed, the committee votes on whether or not to recommend the applicant for licensing. If a majority of the committee votes in

favor, the application will be forwarded to the Administrator for final approval. If less than a majority is in favor, the application will not be considered further and the Licensing Chief will so notify the applicant in writing.

- e. The Committee members indicate their votes on SBA Form 58, "Record of Clearance and Approval" (Appendix 4). The licensing analyst summarizes the results of the meeting on SBA Form 606 (Appendix 5).
- f. The licensing analyst is responsible for preparing draft minutes of the Agency committee meeting. The Director of Licensing and Program Standards or Licensing Chief will review and revise the minutes as needed, and will send the draft to OGC for review and approval. The Director or Chief will then send the minutes to all members of the Agency committee with a request that any changes or comments be submitted by the close of the following business day. If no changes or comments are submitted, the minutes are adopted as final.

7. Final Approval by the Administrator

- a. Applications recommended for approval by the Agency SBIC Licensing Committee will be submitted to the Administrator (or his/her delegate) for final approval after SBA has received executed copies of all final documents and a certification executed by the applicant's attorney or one of its principals that no changes have been made to the documents. The licensing analyst prepares a package consisting of all the information provided to the Agency committee, plus the Agency minutes, Forms 58 and 606, and a ratification page for the Administrator's signature, which the program support specialist delivers to the Executive Secretariat. Licensing analysts should advise applicants that approval by the Administrator is a substantive step of the licensing process and should not be considered automatic.
- b. Upon approval by the Administrator, the program support specialist will prepare a letter for the signature of the Associate Administrator for Investment, informing the applicant that it has been licensed as an SBIC. The approval date will be the date the ratification page was signed by the Administrator.
- c. If one or more of the FBI criminal history checks have not been completed at the time of licensing, the approval letter will be conditional and will state that the licensee cannot apply for a leverage commitment until all results have been received by SBA and determined to be acceptable. Appendices 6 and 7 contain the "standard" and "conditional" approval letters.

8. Advice of Action

Upon approval of the application, the program support specialist prepares CO Form 176, Advice of Action (Appendix 8). The Director of Licensing and Program Standards reviews

and signs the form, and copies are distributed to the Office of SBIC Operations, Office of SBIC Examinations, Office of Licensing and Program Standards, and Office of the Chief Administrative Officer. The Data Management branch of the OCAO enters the information in the Investment Division Information System database.

9. Transfer of Files

- a. An applicant's files (consisting of a "licensing file" and a "legal file") should be transferred to the OII file room within 30 days after an applicant is licensed. The licensing analyst gives the licensing file documents and the legal file documents to the program support specialist who delivers one set of files to the OII file room and a second set to the Office of SBIC Examinations. In addition, copies of the documents listed in subparagraphs b(6) and b(11) through b(18) are given to the Operations analyst assigned to that particular licensee.
- b. The licensing file includes the following documents (note that the cited forms and exhibits are as they appear in the 2013 revision of the MAQ/license application package and that form and exhibit references may vary for applications submitted before June 30, 2014):
 - (1) Original (signed) SBA Form 2181, "SBIC Management Assessment Questionnaire and License Application"
 - (2) Original (signed) SBA Form 2182, Exhibit H (Individuals) or I (Entities), "Statement of Personal History" for (1) each principal of the SBIC; (2) each "Control Person" as defined in 107.50; (3) each 33% or greater investor and, if the investor is an entity, its three top officials (unless the entity is exempt per SBA Form 2182, Exhibit G); and (4) any advisory board members of a limited partnership who have a highly influential role, as determined by SBA.
 - (3) All documentation associated with the applicant's pre-licensing investments.
 - (4) Copy of check for licensing fee.
 - (5) Copy of letter from SBA accepting the application.
 - (6) Clearance memorandum from OIG on all individuals and entities for which Statements of Personal History and/or fingerprint cards were submitted.
 - (7) Licensing analyst's due diligence documentation and notes.
 - (8) All comments received from OGC concerning its review of the license application and related legal documents.

- (9) Copies of SBA comment letter(s) sent to the applicant and applicant's response(s).
 - (10) All correspondence between SBA and the applicant, notes and other documents relevant to the licensing process.
 - (11) Original (signed) Capital Certificate.
 - (12) Original Bank Letter addressed to the SBA.
 - (13) Licensing Action.
 - (14) SBA Forms 606 and 58 reflecting the Agency SBIC Licensing Committee's recommendation of the applicant.
 - (15) Minutes of the Divisional and Agency SBIC Licensing Committee meetings.
 - (16) Administrator's signature approving the applicant for licensing.
 - (17) Copy of SBA's approval letter to the new licensee.
 - (18) CO Form 176, "Advice of Action".
- c. The legal file includes the following legal documents and correspondence:
- (1) SBA Form 2183, Exhibit O (Organizational Documents of Applicant) including draft and final documents for Investment Adviser/Manager and entity general partner or managing member, as appropriate.
 - (2) SBA Form 2183, Exhibit P (Opinions of Counsel).
 - (3) SBA Form 2183, Exhibit S (Legal Document Certification)
 - (4) Copy of State Certificate of SBIC Limited Partnership or Certificate of Incorporation.
 - (5) Copy of State Certificate of General Partner.
 - (6) Any legal correspondence.

Appendix 1: Invitation to file a license application (“Green Light Letter”)

DATE

Via e:mail:@.com

Mr./Ms. _____.

Name of SBIC

Street Address

City, State Zip Code

Re: Status of the Proposed [Debenture] [Non-leveraged] SBIC License Application of
[Name of Proposed SBIC Applicant]

Dear Mr./Ms.:

The U.S. Small Business Administration has received the proposed SBIC applicant’s Management Assessment Questionnaire, submitted to the Office of Investment and Innovation (OII) on [Date]. Based upon the materials you submitted (and your presentation to OII’s Investment Committee on [Date]), we are pleased to report that your firm has passed our initial review of the management team.

We invite you to file a formal license application for processing by SBA within 18 months from the date of this letter. When filed and accepted the license application will be processed according to the steps detailed in the attached Exhibit A.

OII has established the following requirements for the submission of a license application:

Capital: In order for the application to be accepted into active processing, the applicant must have commitments at least equal to the minimum amount required to close the fund (as established in your private placement memorandum, limited partnership agreement, or other organizational document) and sufficient to execute the applicant’s business plan as presented to its investors and SBA. In no event can this amount be less than \$5 million, which is the minimum regulatory capital for a debenture or non-leveraged applicant. All commitments must be evidenced by written letters of intent, subscription agreements, or some other similar binding and enforceable agreement and must be reflected on a completed capital certificate.

Legal: The appropriate SBA Model Limited Partnership Agreement should be used, and you must submit a copy of your limited partnership agreement that is marked to show changes from SBA’s model. All legal documents must be submitted with the application as they apply to your situation, including the private placement memorandum, limited partnership agreement, general partnership agreement, corporate documents, management services contracts, legal opinions as to

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formation and taxed and any other relevant legal documents.

Ownership: The management-ownership diversity requirement outlined in 13 CFR Section 107.150 must be satisfied at the time of filing the application.

Pre-licensing Investments: May not be submitted until after you have filed your license application and received an application acceptance letter from SBA. Further instructions will be provided at the time your application is accepted for processing.

Please provide a copy of your application materials on a CD-ROM. Exhibit E and your financial projections (prepared in accordance with the instructions in section 8 of Form 2181) must be in Excel format. Other materials may be in Word or pdf format. Note, three hard copies of the application materials are also required, one with original signatures.

Please be advised that this letter is only an invitation to file an application and is NOT a guarantee or assurance that you will be licensed upon filing an application. SBA will consider the qualifications and investing experience of the application. Any adverse change in the status of unrealized investments in the track record of the members of the management team subsequent to the date of this letter may result in a negative decision on the application.

This letter applies solely to the specific application, business plan and management team submitted by you. Nothing in this letter is intended to constitute express or implied approval of any business plan or any management team (or of any individual member of a management team) submitted in connection with any other potential future application or business plan.

From time to time, SBA receives inquiries from parties who may wish to consider investing in an SBIC license applicant. If you would like SBA to share your fund's name, contact information and target fund size with such potential investors, please email your assent to such information sharing to Samuel.boyd@sba.gov. If SBA does not receive an email from you agreeing to the release of your fund's name, contact information and target fund size, SBA will not share such information with potential investors.

Please feel free to contact me directly at (202) 205-7098 if you have any general questions regarding the SBIC program. Thank you for your and the Applicant's interest in the SBIC program.

Sincerely,

Chief, Licensing Unit

Attachments:

Effective Date: 8/6/2014

Exhibit A “Licensing Review Process”

cc: _____, Associate Administrator/OII
_____, Deputy Associate Administrator/OII
_____, Director, Office of Licensing & Program Development
_____, Director, Office of SBIC Operations
Area Chief
Applicant’s attorney (if known)

Appendix 2: Invitation to file a subsequent fund license application (“Green Light Letter”)

Date

Via e:mail: @.com

Mr./Ms. _____

Proposed Applicant Name

Street Address

City, State, Zip Code

Re: Status of the Proposed [Debenture] [Non-leveraged] Subsequent SBIC License Application of [Name of Proposed SBIC Applicant]

Dear Mr./Ms.:

The U.S. Small Business Administration has received the proposed SBIC applicant’s request to file an application for a subsequent SBIC license, submitted to the Office of Investment and Innovation (OII) on [Date]. Based upon the experience and qualifications of the management team, and the financial and regulatory history of the current SBIC licensee, we are pleased to accept an application for a subsequent SBIC fund from this management team.

We invite you to file a formal license application for processing by SBA within 18 months from the date of this letter. When filed and accepted the license application will be processed according to the steps detailed in the attached Exhibit A.

OII has established the following requirements for the submission of a license application:

Capital: In order for the application to be accepted into active processing, the applicant must have commitments at least equal to the minimum amount required to close the fund (as established in your private placement memorandum, limited partnership agreement, or other organizational document) and sufficient to execute the applicant’s business plan as presented to its investors and SBA. In no event can this amount be less than \$5 million, which is the minimum regulatory capital for a debenture or non-leveraged applicant. All commitments must be evidenced by written letters of intent, subscription agreements, or some other similar binding and enforceable agreement and must be reflected on a completed capital certificate.

Legal: The appropriate SBA Model Limited Partnership Agreement should be used, and you must submit a copy of your limited partnership agreement that is marked to show changes from SBA’s model. All legal documents must be submitted with the application as they apply to your situation, including the private placement memorandum, limited partnership agreement, general partnership agreement, corporate documents, management services contracts, legal opinions as to formation and taxed and any other relevant legal documents.

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Ownership: The management-ownership diversity requirement outlined in 13 CFR Section 107.150 must be satisfied at the time of filing the application.

Pre-licensing Investments: May not be submitted until after you have filed your license application and received an application acceptance letter from SBA. Further instructions will be provided at the time your application is accepted for processing.

Please provide a copy of your application materials on a CD-ROM. Exhibit E and your financial projections (prepared in accordance with the instructions in section 8 of Form 2181) must be in Excel format. Other materials may be in Word or pdf format. Note, three hard copies of the application materials are also required, one with original signatures.

Please be advised that this letter is only an invitation to file an application and is NOT a guarantee or assurance that you will be licensed upon filing an application. In particular, SBA will consider the the financial and regulatory performance of the current licensee(s) at the time of licensing, in determining whether to approve an application for a subsequent SBIC fund. Any adverse change in the financial and/or regulatory performance of the current licensee(s) subsequent to the date of this letter may result in a negative decision on the application.

This letter applies solely to the specific application, business plan and management team submitted by you. Nothing in this letter is intended to constitute express or implied approval of any business plan or any management team (or of any individual member of a management team) submitted in connection with any other potential future application or business plan.

From time to time, SBA receives inquiries from parties who may wish to consider investing in an SBIC license applicant. If you would like SBA to share your fund's name, contact information and target fund size with such potential investors, please email your assent to such information sharing to Samuel.boyd@sba.gov. If SBA does not receive an email from you agreeing to the release of your fund's name, contact information and target fund size, SBA will not share such information with potential investors.

Please feel free to contact me directly at 202-205-7098 if you have any general questions regarding the SBIC program. Thank you for your and the Applicant's interest in the SBIC program.

Sincerely,

Chief, Licensing Unit

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Attachments:
Exhibit A “Licensing Review Process”

cc: _____, Associate Administrator/OII
_____, Deputy Associate Administrator/OII
_____, Director, Office of Licensing & Program Development
_____, Director, Office of SBIC Operations
Area Chief
Applicant’s attorney (if known)

Appendix 3: Guaranty of investor’s commitment

GUARANTY OF PAYMENT BY AN INDIVIDUAL

This Guaranty of Payment (this “Guaranty”) is entered into by the undersigned Guarantor as of _____, 20__.

Guarantor agrees as follows:

1. Definitions. When used in this Guaranty, capitalized terms have the meanings set forth in Exhibit A. In addition, the following terms have the following meanings:

- a. “Guarantor” means: _____
- b. “Partner” means: _____
- c. “Partner’s Capital Commitment” means: \$_____
- d. “SBIC” means: _____

2. Relationship. Guarantor is _____
(describe relationship to Partner)

3. Guaranty of Payment of Obligation. In order to induce the SBIC and the SBA to treat the Partner’s Unpaid Capital Commitment as “Regulatory Capital” as defined in 13 CFR § 107.50, Guarantor absolutely, unconditionally and irrevocably guarantees to the SBIC and its respective successors, indorsees, transferees and assigns, the prompt and complete payment when due of the Obligation. The obligations of Guarantor hereunder shall be the same as those that would exist if Guarantor were the Partner under the Partnership Agreement and other Partner Documents. Guarantor will pay the Obligation in full to the SBIC, without set-off or counterclaim, in lawful currency of the United States of America at the office of the SBIC as set forth in the Partnership Agreement. THIS IS A GUARANTY OF PAYMENT, NOT OF COLLECTION. THE SBIC MAY SEEK TO COLLECT PAYMENT OF THE OBLIGATION FROM GUARANTOR AS THOUGH THE OBLIGATION WERE THE DIRECT AND PRIMARY OBLIGATION OF GUARANTOR WITHOUT MAKING ANY DEMAND FOR PAYMENT OF THE OBLIGATION FROM THE PARTNER OR TAKING ANY OTHER ACTION TO COLLECT THE OBLIGATION.

4. Consent. Guarantor hereby consents that, with the consent of SBA to the extent required by the SBIC Act or the Partnership Agreement (including the Partnership Agreement), the Obligation may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the SBIC, and any of the Partnership Documents may be amended, modified, supplemented or terminated, in whole or in part, and any collateral security or guaranty or right of offset at any time held by the Partnership for the payment of the Obligation may be sold, exchanged, waived, impaired, surrendered or released, all without the necessity of any reservation of rights against Guarantor and without notice to or further assent by Guarantor, who will remain bound under this Guaranty, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, impairment, surrender or release. However, this Guaranty shall not be applicable to any increase in the amount of the Capital Commitment without the prior written consent of Guarantor. The SBIC shall not have any obligation to protect, secure, perfect or insure any collateral security document or property subject thereto at any time held as security for the Obligation or this Guaranty. When making any demand under this Guaranty against Guarantor, the SBIC may, but shall be under no obligation to, make a similar demand on Partner or any other guarantor, and any failure by the SBIC to make any such demand or to collect any payments from Partner or any such other guarantor or any release of Partner or such other guarantor shall not relieve Guarantor of Guarantor's obligations or liabilities under this Guaranty, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of the SBIC against Guarantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings.

5. Subrogation. Notwithstanding any payment or payments made by Guarantor under this Guaranty or any set-off or application of funds of guarantor by the SBIC, Guarantor shall not be entitled to be subrogated to any of the rights of the SBIC against Partner or any collateral security or guaranty or right of offset held by the SBIC for the payment of the Obligation, nor shall Guarantor seek any reimbursement from the Partner in respect of payments made by the Guarantor under this Guaranty, until all amounts owing to the SBIC by Partner for or on account of the Obligation are paid in full. Any claim, set-off or recoupment against Partner and/or the SBIC to which Guarantor may become entitled shall be and hereby is made subordinate to the prior payment in full of all amounts owed to the SBIC by Partner, Guarantor will not seek to collect any such claim, set-off or recoupment, and any such amounts collected shall be held by Guarantor in trust for the SBIC and shall be paid over to the SBIC and credited against the amount owed to the SBIC by Partner.

6. Enforcement. No act of commission or omission of any kind or at any time upon the part of the SBIC or SBA in respect of any matter whatsoever shall in any way affect or impair the rights of the SBIC to enforce any right, power or benefit under this Guaranty.

7. Continuing Effect. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of the Obligation is rescinded or must otherwise be restored or returned by the SBIC upon the insolvency, bankruptcy,

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dissolution, liquidation or reorganization of Partner, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee, custodian or similar officer for Partner or any substantial part of its property, or otherwise, all as though such payments had not been made.

8. Notice. Guarantor hereby waives notice of default of Partner under the Partnership Agreement, notice of acceptance of this Guaranty or reliance thereon, notice of the non-payment of the Partner's Capital Commitment, and any other notices to which Partner or Guarantor may be entitled and which may be legally waived.

9. Representations of Guarantor. Guarantor hereby represents and warrants to and covenants with the SBIC as follows:

a. The Guaranty is binding and enforceable in accordance with its terms;

b. The certifications as to the Guarantor's status as an Institutional Investor and other matters as set forth on Exhibit B attached hereto and incorporated herein are true and correct;

c. Guarantor has read the Partnership Documents, including, but not limited to, the Partnership Agreement, and is aware of the rights of the SBIC and SBA to enforce payment by the SBIC of the Unpaid Capital Commitment and knows that this Guaranty gives the SBIC and SBA the right to require Guarantor to pay such amount to the SBIC as provided in the Partnership Agreement as if Guarantor were the Partner;

d. Guarantor has no defense to any suit, action, or proceeding at law, or otherwise, that may be instituted on this Guaranty; and

e. Guarantor's execution of this Guaranty will not result in a default under or conflict with any other agreement to which Guarantor is a party or any instrument, judgment, decree, code, statute, rule or regulation applicable to Guarantor.

10. Delay. No failure to exercise and no delay in exercising, on the part of the SBIC any right, power or privilege shall preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

11. SBA Provisions.

a. SBA shall be deemed an express third party beneficiary of the provisions of this Guaranty to the extent of the rights of the SBA, its successors and/or assigns, as provided in the Partnership Agreement, and SBA, its successors and assigns shall be entitled to enforce the provisions of this Guaranty for their respective benefit, as if each were a party hereto.

b. No provision of this Guaranty may be waived, amended, supplemented or released except with the prior written consent of SBA.

c. Notwithstanding anything to the contrary contained herein, this Guaranty shall not be construed so as to permit the SBIC to waive, release, forgive, terminate or discharge the obligation of the Partner to pay the Obligation to the SBIC without the consent of SBA as provided in the Partnership Agreement.

12. Associate Status. Guarantor shall be an “Associate” (as defined in 13 CFR § 107.50) of the SBIC to the extent Partner is an “Associate” of the SBIC.

13. Consideration. Guarantor acknowledges the adequacy, sufficiency and receipt of the consideration given for this Guaranty.

14. Defenses. Guarantor hereby waives any and all defenses to the enforcement of this Guaranty based upon (a) the capacity or authority of Partner to execute, deliver or perform any of the Partnership Documents, (b) the due execution and delivery of any of the Partnership Documents by Partner, (c) lack of consideration, (d) duress or coercion, (e) release or discharge of any party primarily or secondarily liable for the Obligation, whether or not notice is given to Guarantor, (f) the preservation of rights by the partnership or the SBA against any other persons, and (g) the bankruptcy, dissolution or liquidation of Partner.

15. Waiver, Amendment and Assignment. No provision of this Guaranty shall be waived, amended, supplemented or released except by written instrument executed by Guarantor and the Partnership and with the consent of SBA as provided in Section 11.b. Guarantor may not assign this Guaranty or any obligations under this Guaranty except with the prior written consent of the Partnership and the SBA.

16. Governing Law. This Guaranty shall be governed by and be construed and interpreted in accordance with the laws of the State of _____.

17. Subsequent Changes. Guarantor will give prompt notice to the Partnership and to the SBA if any of the representations or warranties given by the Guarantor cease to be true.

18. Entire Agreement. This Guaranty represents the entire understanding and incorporates all discussions and negotiations between Guarantor, the SBIC and Partner and supersedes all prior agreements with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered as of the date first set forth above.

“Guarantor”

(Print Name)

(Signature)

(Address)

Facsimile Number: _____

Exhibit A

DEFINITIONS

“Institutional Investor” has the meaning set forth in the SBIC Act.

“Obligation” means the sum of (i) the Unpaid Capital Commitment, including, without limitation, any portion thereof called by the SBIC, and (ii) any amount which becomes due and payable by the Partner to the Partnership on account of the Partner’s failure to pay all or any part of the Unpaid Capital Commitment when due, including, but not limited to, the payment of interest, costs of collection, and attorneys’ fees. Obligation includes any renewal, extension, refunding, replacement or modification thereof.

“Partner Documents” means the Partnership Agreement, any subscription agreement or other agreements pertaining to the Partner’s obligation to pay the Unpaid Capital Commitment to the SBIC.

“Partnership Agreement” means the agreement of limited partnership pursuant to which the SBIC is formed, including all exhibits, SBA Annexes and amendments thereto.

“Person” means a natural person or any other legal entity.

“SBA” means the United States Small Business Administration.

“SBA Annex” means such of SBA Annex, GDP, SBA Annex PS and/or SBA Annex OP which are attached to and form a part of the Partnership Agreement.

“SBIC Act” means the Small Business Administration Act of 1958, as amended, and the rules and regulations promulgated thereunder by the SBA, as in effect from time to time.

“Unpaid Capital Commitment” means the amount of the Partner’s Capital Commitment which has not been paid to the SBIC. Payment by a Note or other form of indebtedness shall not be considered to have been paid.

Exhibit B

GUARANTOR CERTIFICATE

Capitalized terms defined in the Guaranty of Payment to which this Certificate is attached shall have the same meaning in this Certificate.

1. Institutional Investor. Guarantor certifies, represents and warrants that Guarantor is an “Institutional Investor” as such term is defined in Title 13, Part 107, Section 107.50 of the Code of Federal Regulations, in that the Guarantor qualifies under one of the following categories (*please check all that apply*):

- a. Has a personal net worth of not less than \$2 million, exclusive of the value of the equity in Guarantor’s most valuable residence, which net worth is at least ten times the amount of the Unpaid Capital Commitment.
- b. Has a personal net worth of not less than \$10 million, exclusive of the value of the equity in Guarantor’s most valuable residence.
- c. Is an “Accredited Investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended, by reason of falling within one of the following categories (*please check all that apply*):
 - (i) Is a natural person who has an individual net worth, or joint net worth with that person’s spouse which on the date hereof exceeds \$1,000,000.
 - (ii) Is a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same level in the current year.

If this paragraph c is checked, Guarantor’s Guaranty of Payment must be backed by a letter of credit from a state or national bank acceptable to SBA.

2. Residency. *Please check a or b as applicable.*

- a. Is a permanent resident of the United States.

- b. Is not a permanent resident of the United States, but hereby irrevocably appoints the following person as Guarantor's agent for service of process to enforce the obligation of Guarantor pursuant to the Guaranty:


3. Net Worth. If the Guarantor has a net worth of less than \$10 million, the Unpaid Capital Commitment of the Partner does not exceed 10% of Guarantor's net worth (which does not include the value of the equity in Guarantor's most valuable residence).

4. No Government Funds. No part of Guarantor's funds used to satisfy the Guaranty will be obtained directly or indirectly from any Federal, State or local government, or an agency or instrumentality thereof, unless such funds are qualified non-private funds.

IN WITNESS WHEREOF, the undersigned has signed this Certificate as of the date set forth below.


Date: _____
_____ (Signature)

Appendix 4: Sample SBA Form 58

 U.S. SMALL BUSINESS ADMINISTRATION RECORD OF CLEARANCE AND APPROVAL		IDENTIFICATION NO.				
SUBJECT [SBIC applicant name]		PERSON TO BE CONTACTED ON ATTACHED NAME [licensing unit prog. assistant]				
		OFFICE Oil/Licensing	PHONE			
EXPLANATION The Agency SBIC Licensing Committee ("Committee") recommends the approval of the SBIC license application of [SBIC applicant name]. Votes of the individual members of the Committee and the primary reasons for the Committee's recommendation are noted on the attached SBA Form 606.						
RELEASED FOR CLEARANCE AND DISTRIBUTION <i>If this document is to be distributed electronically, I certify that the accompanying disk contains only one WordPerfect file, which is identical to the official signed document attached.</i>						
TITLE Director, Lic. & Prog. Stds.	SIGNATURE	DATE	DEADLINE DATE FOR CLEARANCE			
CONCURRENCE IS ASSUMED IF NOT RETURNED BY THE DEADLINE DATE						
OFFICE/OFFICIAL	SIGNATURE	DATE	CONCUR		NON-CONCUR	COMMENT ADOPTED
			No Comment	Comment		
[Insert Committee member titles]			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
APPROVED (TITLE)			ROOM NO.			
			RETURN TO:			

SBA FORM 58 (7-95) Use 9-94 Edition Until Exhausted

Appendix 5: Sample SBA Form 606

	CORRESPONDENCE DIGEST OR MEMORANDUM		
TO	<input type="checkbox"/> The Administrator		
	<input type="checkbox"/> Deputy Administrator		
<p>FROM: Associate Administrator for Investment</p> <p>SUBJECT: SBIC License Application of [SBIC name] [city, state]</p> <p>The Agency SBIC Licensing Committee (“Committee”) recommends approval of [SBIC name] to operate as a [Debenture] [non-leveraged] SBIC. The primary reasons this application has been recommended for approval are listed below:</p> <ul style="list-style-type: none"> • [Describe how licensee will assist small businesses in its operating area] • [Describe investment experience and positive past performance of fund managers] • [Describe other strengths of the applicant as discussed in the licensing action, e.g. past success in the SBIC program, strong team history, special focus on underserved markets] <p>The Committee’s recommendation is based on a [unanimous] [majority] vote by all Committee members in attendance. The Committee members voted as follows:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <u>In Favor:</u> [list names] </td> <td style="width: 50%; vertical-align: top;"> <u>Opposed:</u> [list names] </td> </tr> </table> <p>The Committee’s discussion concerning the Applicant is documented in the attached minutes.</p> <p>Please execute the appropriate line on the attached signature page.</p>		<u>In Favor:</u> [list names]	<u>Opposed:</u> [list names]
<u>In Favor:</u> [list names]	<u>Opposed:</u> [list names]		

RECOMMENDATION: **Approve the SBIC license approval for
[SBIC Name]**

Approve: _____

Decline: _____

Date: _____

Administrator

Appendix 6: Standard license approval letter

[Date]

License No.: XX/XX-XXXX

[Name(s) of Principal(s)]

[Name of SBIC]

[Street Address]

[City, State Zip Code]

Dear Messrs. :

The U.S. Small Business Administration has approved your company's license application to operate as a Small Business Investment Company (SBIC) under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended, effective [Month, Day, Year].

This approval does not constitute agreement by SBA with any specific elements of the Licensee's financial projections or assumptions. All financing and investing activities of the Licensee and all distributions shall be governed by SBA regulations.

We are pleased to have you in the SBIC program. We hope that this association will be long and rewarding with the resultant benefits to the small business concerns throughout your area of operation.

Sincerely,

Associate Administrator
for Investment and Innovation

cc: Lic. Analyst
Licensing Chief
Director, Licensing & Program Standards
Lic. Unit Program Assistant
Chron File
Lic File
Director, Office of SBIC Operations
Area Chief, OSO
Financial Analyst, OSO

Effective Date:

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Appendix 7: Modified license approval letter (FBI criminal history checks not complete)

[Date]

License No.: XX/XX-XXXX

[Name(s) of Principal(s)]

[Name of SBIC]

[Street Address]

[City, State Zip Code]

Dear Messrs. :

The U.S. Small Business Administration has conditionally approved your company's license application to operate as a Small Business Investment Company (SBIC) under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended, effective [Month, Day, Year].

This approval does not constitute agreement by SBA with any specific elements of the Licensee's financial projections or assumptions. All financing and investing activities of the Licensee and all distributions shall be governed by SBA regulations.

On a procedural note, SBA has not yet received the results of required criminal history checks on [name of individual(s)]. Also, the name check for [name of entity] has not been received. As such, SBA will not consider any application for a leverage commitment from [name of SBIC] until it has received and reviewed these results. In the event that the results disclose unfavorable information concerning either of these individuals or of the entity, SBA reserves the right to reconsider its approval of the license application.

Sincerely,

Associate Administrator
for Investment and Innovation

cc: Lic. Analyst
Licensing Chief
Director, Licensing & Program Standards
Lic. Unit Program Assistant
Chron File
Lic File
Director, Office of SBIC Operations
Area Chief, OSO
Financial Analyst, OSO

Effective Date:

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Appendix 8: Sample CO 176 Advice of Action

ADVICE OF ACTION

Licensee: _____

Date: _____

Address: _____

License No.: _____ EIN: _____

Type of Leverage

[No. of tiers] Debentures ____ Non-Leveraged

Type of License

Private ____% Bank Owned (if 70% or more by a single bank entity) ____%

Name of Bank or Bank Holding Company _____

2nd Fund? (Y) or (N)? If Yes, Name & Lic. # of 1st SBIC(s): _____

ACTIONS

DATE

INITIAL CAPITAL

License Issued _____ Regulatory \$ _____

Leverageable \$ _____

License transferred to Office of Liquidation _____

License Surrendered _____ Revoked _____ Merged _____ Other

Licensee under Investigation _____

BRANCH OFFICE ADDRESS:

Date Established _____ Date Closed _____

Phone #: _____ Fax #: _____

CHANGE IN NAME, ADDRESS, OR AGENT

Old _____

New _____

REMARKS Contact: _____ Phone #: _____ Fax #: _____

E-Mail: _____

By _____

Director

Effective Date:

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DISTRIBUTION

Licensing File - [Licensing Analyst]
Dir. - Licensing & Prog. Stds.
Chief - Licensing
Dir. - Operations
Chief- Area [II, III, or IV]
Operations Analyst, Area [II, III, or IV]
Office of Examinations
Chief, Data Management
Funding Control Officer
Program Assistant, Data Management
Chief Admin. Officer
Program Assistant, Licensing

CO FORM 176 (07-13)