

§ 107.200

13 CFR Ch. I (1–1–99 Edition)

member agreement, Limited Partnership Agreement or other similar governing instrument which must, in each case, accompany the license application.

(2) An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§107.1800 through 107.1820, and 107.30, 107.410 through 107.450, 107.470, 107.475, 107.500, 107.510, 107.585, 107.600, 107.680, 107.690 through 107.692, 107.865, and 107.1910 apply also to an Entity General Partner of a Licensee.

(3) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(4) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in §107.50.

(5) If your Entity General Partner is a limited partnership, it is subject to paragraph (a) of this section.

(c) *Other requirements for Partnership Licensees.* If you are a Partnership Licensee:

(1) You must have a minimum duration of ten years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership Licensee may be terminated by a vote of your partners. (For purposes of this provision SBA is not considered a partner.);

(2) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;

(3) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (c) in your Limited Partnership Agreement.

(d) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 313 and 314 of the Act and by the conflict-of-in-

terest rules under section 312 of the Act. The term Licensee, as used in §§107.30, 107.460, and 107.680 includes all of the Licensee's Control Persons. The term Licensee as used in §107.670 includes only the Licensee's general partner(s). The conditions specified in §§107.1800 through 107.1820 and §107.1910 apply to all general partners.

(e) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(f) *Reorganization of Licensee.* A corporate Licensee wishing to reorganize as a Partnership Licensee, or a Partnership Licensee wishing to reorganize as a Corporate Licensee, may apply to SBA for approval under §107.470.

(g) *Special Leverage requirement.* Before your first issuance of Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

CAPITALIZING AN SBIC

§107.200 Adequate capital for Licensees.

You must meet the requirements of this §107.200 to qualify for a license, to continue as a Licensee, and to receive Leverage.

(a) You must have enough Regulatory Capital to provide reasonable assurance that:

(1) You will operate soundly and profitably over the long term; and

(2) You will be able to operate actively in accordance with your Articles and within the context of your business plan, as approved by SBA.

(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.