

DATE: June 20, 2012

TO: All Small Business Investment Companies (“SBICs”)

SUBJECT: Guidance on applying for an SBIC license for a subsequent fund

Many existing SBICs contemplate filing an application for an SBIC license for a subsequent fund. In this letter, the Small Business Administration (“SBA”) provides guidance concerning the submission of a subsequent fund request and sets forth a policy concerning co-investment by two or more SBICs under common control.

As always, all potential subsequent fund applicants should seek guidance and clarification from their analyst.

I. Criteria for Submission of a Subsequent Fund Request

This section governs the submission of a subsequent fund request to the Office of SBIC Operations. Such requests should be directed to the SBA analyst who is responsible for oversight of the existing SBIC(s). The analyst will prepare his/her analysis of the request and will present it to the Investment Committee, which will decide whether to issue a “green light” letter inviting the management team to submit a formal license application.

The following criteria will be used by SBA in its initial consideration of a subsequent fund request. Meeting these will not guarantee that a fund will receive a green light letter. As noted below, SBA may take into account variations in the individual circumstances of applicants.

1. At least two full years of operations from date of licensing of the most recently licensed SBIC. A longer operating history will be expected if track record prior to the licensing of 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.
2. At least one clean audit opinion from the SBIC’s independent public accountant, covering at least one full year of operations.
3. No outstanding regulatory violations and most recent exam should have covered a period ended within 12 months of the request being filed.
4. 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.
5. Permitted co-investment among the proposed and existing SBICs:
 - a. If aggregate leverage (outstanding and committed) would be no more than \$150 million, co-investing is permitted as part of a sound business plan.

- b. 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.
- c. 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.

II. Criteria for Submission of a Subsequent Fund License Application

- 1. No outstanding regulatory violations.
- 2. Existing SBIC has invested a dollar amount equal to at least 70% of the sum of private capital and assumed leverage OR has less than 18 months remaining in its active investment period.

III. Factors Considered by SBA in Evaluating a Subsequent Fund License Application

In general, SBA will evaluate a subsequent fund application based on the same factors that apply to all license applicants (see 13 CFR 107.305). Factors that have particular applicability to a subsequent fund application include, but are not limited to, the following:

- 1. Strategy – SBA generally views a consistent strategy across funds favorably, provided the continuing strategy is compatible with the subsequent fund's intended use of SBA leverage.
- 2. Management team – As with strategy, a consistent management team across funds is viewed favorably.
- 3. LP base – A returning LP base is a positive indicator. However, drop downs from the same parent or the same LP base raise concerns that the subsequent fund is merely an extension of the existing fund and will therefore be limited to a \$150 million cap on aggregate leverage unless the funds comply with the co-investment prohibition in item I.5.c. above.