other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

(c) SBA approval required. You must obtain SBA’s prior written approval of any management contract that does not satisfy paragraphs (a) or (b) of this section.

(d) Recordkeeping requirements. You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

(e) Transaction fees. (1) You may charge reasonable transaction fees for work you or your Associate perform to prepare a client for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

Subpart H—Non-leveraged Licensees—Exceptions to Regulations

§107.1000 Licensees without Leverage—exceptions to the regulations.

The regulatory exceptions in this section apply to Licensees with no outstanding Leverage or Earmarked Assets.

(a) You are exempt from the following provisions (but you must come into compliance with them to become eligible for Leverage):

(1) The overline limitation in §107.740.
(2) The restrictions in §107.530 on investments of idle funds, provided you do not engage in activities not contemplated by the Act.
(3) The restrictions in §107.550 on third-party debt.
(4) The restrictions in §107.880 on expenses incurred to maintain or improve assets acquired in liquidation of Portfolio securities.
(5) The recordkeeping requirements and fee limitations in §107.825 (b) and (c), respectively, for securities purchased through or from an underwriter.

(b) You are exempt from the requirements to obtain SBA’s prior approval for:

(1) A decrease in your Regulatory Capital of more than two percent under §107.585 (but not below the minimum required under the Act or these regulations). You must report the reduction to SBA within 30 days.
(2) Disposition of any asset to your Associate under §107.885.
(3) A contract to employ an Investment Adviser Manager under §107.510. However, you must notify SBA of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution. In order to become eligible for Leverage, you must have the contract approved by SBA.
(4) Your initial Management Expenses under §107.140 and increases in your Management Expenses under §107.520. However, you must have your Management Expenses approved by SBA in order to become eligible for Leverage.
(5) Options obtained from a Small Business by your management or employees under §107.815(b).

(c) You are exempt from the requirement in §107.880 to obtain SBA’s post approval of new directors and new officers, other than your chief operating officer. However, you must notify SBA of the new directors or officers within 30 days, and you must have all directors and officers approved by SBA in order to become eligible for Leverage.

Subpart I—SBA Financial Assistance for Licensees (Leverage)

GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

§107.1100 Types of Leverage and application procedures.

(a) Types of Leverage available. You may apply for Leverage from SBA in one or both of the following forms:

(1) The purchase or guarantee of your Debentures.
(2) The purchase or guarantee of your Participating Securities.

(b) Applying for Leverage. The Leverage application process has two parts.
§ 107.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must:

(a) Demonstrate a need for Leverage, evidenced by your investment activity and a lack of sufficient funds for investment. For your first issuance of Leverage, if you have invested at least 50 percent of your Leverageable Capital, you are presumed to lack sufficient funds for investment.

(b) Have adequate Private Capital to satisfy the requirements for financial viability under §107.200.

(c) Meet the minimum capital requirements of §107.210, subject to the following additional conditions:

(1) If you were licensed after September 30, 1996 under the exception in §107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000.

(2) If you were licensed on or before September 30, 1996, and have Regulatory Capital of less than $5,000,000 (less than $10,000,000 if you wish to issue Participating Securities):

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in §107.710(a)); and

(ii) You must demonstrate to SBA’s satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of $150 million, certify that none of the Licensees has a condition of Capital Impairment. See also §107.1150(b).

(e) For any Leverage request pursuant to §107.1150(c)(2)(i), certify that at least 50 percent (in dollars) of your Financings made on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(f) For any Leverage request pursuant to §107.1150(c)(2)(ii), certify at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(g) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in §107.710(b).

(h) Show, to the satisfaction of SBA, that your management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, the regulations in this part and your business plan.

(i) Be in compliance with the regulations in this part.

(j) If required by SBA, have your Control Person(s) assume, in writing, personal responsibility for your Leverage, effective only if such Control Person(s) participate (directly or indirectly) in a transfer of Control not approved by SBA.


§ 107.1130 Leverage fees and additional charges payable by Licensee.

(a) Leverage fee. You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) Payment of leverage fee. (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from