

Small Business Administration

§ 107.830

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the Small Business, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* If you have outstanding Leverage or plan to obtain Leverage, you must keep records available for SBA's inspection which show the relevant details of the transaction, including, but not limited to, date, price, commissions, and the underwriter's certifications required under paragraph (c) of this section.

(c) *Underwriter's requirements.* If you have outstanding Leverage or plan to obtain Leverage, the underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase, provided it is no more than 25 percent of the total offering. If you buy more than 25 percent of the offering, the amount you pay to the Associate underwriter must not exceed the total of the application and closing fees and reimbursable expenses permitted by §107.860.

(d) *Securities purchased from another Licensee or from SBA.* You may purchase from, or exchange with, another Licensee, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio Securities (or any interest therein) on a recourse basis, you shall include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of a Small Business from a non-issuer not previously described in this §107.825 if:

(1) Such acquisition is a reasonably necessary part of the overall sound Financing of the Small Business under the Act; or

(2) The securities are acquired to finance a change of ownership under §107.750.

STRUCTURING LICENSEE'S FINANCING OF AN ELIGIBLE SMALL BUSINESS: TERMS AND CONDITIONS OF FINANCING

§ 107.830 Minimum duration/term of financing.

(a) *General rule.* The duration/term of all your Financings must be for a minimum period of one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options or warrants on terms that include redemption by the Small Business, you must not require redemption by the Small Business within the first year of your acquisition except as permitted in §107.850.

(c) *Special rules for Loans and Debt Securities—(1) Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Small Business. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If SBA determines that a prepayment penalty is unreasonable, you must refund the entire penalty to the Small Business. A prepayment penalty equal to 5 percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered reasonable.

[61 FR 3189, Jan. 31, 1996, as amended at 69 FR 8098, Feb. 23, 2004]