

**§ 4290.800**

the change in business or commercial activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If the Secretary approves your request to retain a Financing under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

- (1) Retain your investment; and
- (2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

STRUCTURING RBIC FINANCING OF ELIGIBLE ENTERPRISES—TYPES OF FINANCINGS

**§ 4290.800 Financings in the form of Equity Securities.**

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

- (a) Become a general partner in any unincorporated business; or
- (b) Become jointly or severally liable for any obligations of an unincorporated business.

**§ 4290.810 Financings in the form of Loans.**

You are permitted to make Loans to an Enterprise only if:

- (a) The maturity or term of the Loan is five years or less; and
- (b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

**§ 4290.815 Financings in the form of Debt Securities.**

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

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(b) *Restriction of options obtained by RBIC’s management and employees.* If you have outstanding Leverage or plan to obtain Leverage, your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

- (1) They participate in the Financing on a *pari passu* basis with you; or
- (2) The Secretary gives its prior written approval; or
- (3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

**§ 4290.820 Financings in the form of guarantees.**

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

- (1) You would become subject to State regulation as an insurance, guaranty or surety business; or
- (2) The amount of the guaranty plus any direct Financings to the Enterprise exceed the overline limitations of § 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC’s assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

**§ 4290.825 Purchasing securities from an underwriter or other third party.**

(a) *Securities purchased through or from an underwriter.* You may purchase