

## § 107.1850

## 13 CFR Ch. I (1–1–23 Edition)

part of the original Class 2 Appreciation for up to an additional 24 months (the “extension period”).

(3) At the end of any extension period, you may submit a new request to retain the use of the original Class 2 Appreciation, repeating the steps in paragraphs (a)(1) and (2) of this section.

(4) SBA may reconsider its approval to retain the use of the original Class 2 Appreciation at any time based on information that may affect the value of an investment.

(b) Any time you submit a request for SBA approval to retain the use of the original Class 2 Appreciation under paragraph (a) of this section, you may also request SBA’s written approval to modify your computation of Adjusted Unrealized Gain under §107.1840(d)(4) as provided in paragraph (c) of this section.

(c) If SBA determines that the appreciation on an investment, based on its current fair value, is at least two times the original Class 2 Appreciation on the investment, SBA may allow you, based on relevant information, to compute your Adjusted Unrealized Gain for the duration of the extension period as follows:

(1) Compute Adjusted Unrealized Gain in accordance with §107.1840(d)(4).

(2) If your result in paragraph (c)(1) of this section was computed using the first line of the table in §107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c), and

(ii) Add it to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

(3) If your result in paragraph (c)(1) of this section was computed using the second line of the table in §107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c).

(ii) Subtract your Class 1 Appreciation from your Net Appreciation, and multiply the result by 50 percent.

(iii) Add the lesser of (c)(3)(i) and (ii) of this section to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

[77 FR 25054, Apr. 27, 2012]

### **§107.1850 Exceptions to Capital Impairment provisions for Licensees with outstanding Participating Securities.**

The provisions in this §107.1850 apply only if at least two-thirds of your outstanding Leverage consists of Participating Securities, and at least two-thirds of your Loans and Investments (at cost) consist of Equity Capital Investments.

(a) *Forbearance period for Participating Securities issuers.* During the first forty-eight (48) months following your first issuance of Participating Securities, you will not have a condition of Capital Impairment if your Capital Impairment Percentage is below 85 percent.

(b) *Extended forbearance period for early stage investors.* If at least two-thirds of your Loans and Investments (at cost) are in Start-Up Financings, the forbearance period in paragraph (a) of this section is extended to 60 months.

(c) *Forbearance based on actions by Licensee.* The provisions of this paragraph (c) apply only during the fifth and sixth years following your first issuance of Participating Securities. If your Capital Impairment Percentage, as determined either by you or by SBA, exceeds the maximum permitted under §107.1830(c) but is below 85 percent, you will not have a condition of Capital Impairment if you do either of the following within thirty (30) days of such determination:

(1) Increase your Regulatory Capital by a cash contribution placed in an escrow account or other account satisfactory to SBA, for its benefit. The contribution must equal, during the fifth year, 15 percent of your outstanding Leverage or, during the sixth year, 30 percent.

(2) Provide a guarantee, satisfactory to SBA and for its benefit, for the amount of the cash contribution required in paragraph (c)(1) of this section. SBA will credit any escrowed funds or guarantee received in the fifth year toward the requirements for the sixth year.

(d) *Conditions for forbearance under paragraph (c) of this section.* (1) You cannot count any funds placed in an escrow or other account under paragraph

(c) of this section as Leverageable Capital.

(2) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and earned Adjustments.

(3) If there is an acceleration or mandatory redemption under §107.1810 or §107.1820, any funds in the escrow account and/or any guarantee received under paragraph (c) of this section will be applied toward repaying any amounts due SBA.

(4) If you reduce your Capital Impairment Percentage to zero, SBA will release and return any escrowed funds and/or any guarantee received under paragraph (c) of this section.

### **Subpart K—Ending Operations as a Licensee**

#### **§ 107.1900 Surrender of license.**

You may not surrender your license without SBA's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the Licensee.

### **Subpart L—Miscellaneous**

#### **§ 107.1910 Non-waiver of SBA's rights or terms of Leverage security.**

SBA's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. SBA's failure to require you to perform any term or provision of your Leverage does not affect SBA's right to enforce such term or provision. Similarly, SBA's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in §107.1810 or §107.1820 does not constitute a waiver of any succeeding breach of such term or provision or condition.

#### **§ 107.1920 Licensee's application for exemption from a regulation in this part 107.**

You may file an application in writing with SBA to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. SBA may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act. Your application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that:

(a) The proposed action is fair and equitable; and

(b) The exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and the regulations in this part.

#### **§ 107.1930 Effect of changes in this part 107 on transactions previously consummated.**

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

## **PART 108—NEW MARKETS VENTURE CAPITAL ("NMVC") PROGRAM**

### **Subpart A—Introduction to Part 108**

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108.10 Description of the New Markets Venture Capital Program.

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### **Subpart B—Definition of Terms Used in This Part 108**

108.50 Definition of terms.