

SBIC TechNotes

February 12, 2013 – Number 17

Determination of SBIC Common Control

1. Introduction:

This TechNote discusses the criteria that SBA will consider in determining whether two or more SBICs are under “Common Control”. Common Control is particularly important in establishing maximum leverage eligibility, since the Small Business Investment Act limits total leverage for multiple licenses under Common Control to \$225 million, versus \$150 million for a single fund.

2. Definitions

13 CFR §107.50 provides the following definitions:

- “Common Control” is defined as “a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person.”
- “Control” is defined as “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or other concern, whether through the ownership of voting securities, by contract, or otherwise.”

3. Conditions Triggering Common Control

SBA will consider two or more SBICs to be under Common Control when a Person Controls each of the SBICs. If the Person Controls one SBIC but not another, SBA will not consider the SBICs to be under Common Control.

Control may be triggered by ownership, ability to impact SBIC management or investment decisions, or other factors. SBA will determine whether the Person has Control in each SBIC based on the totality of the circumstances, although SBA will generally consider a Person to have Control if *any* of the following circumstances exist:

- a. The Person has significant direct or indirect ownership in the SBIC or General Partner (GP) as follows:
 - (1) The Person owns or controls (by contract or otherwise) 33% or more of an SBIC; or
 - (2) The Person owns or controls (by contract or otherwise) 10% or more of an SBIC and participates in the investment decision; or

- (3) The Person owns or controls (by contract or otherwise) any portion of the GP, except as a non-managing member solely for the purpose of receiving carried interest no greater than 25%.
- b. The Person's participation in carried interest is over 25%.
- c. The Person is part of the GP's management team.
- d. The Person participates in the investment decision, unless it can be clearly demonstrated to SBA's satisfaction that the Person does not have significant influence in those decisions. Such considerations may include:
 - (1) Whether the remainder of the Investment Committee would qualify for a license without the Person.
 - (2) Whether the Person has veto power or a significant voice in the Committee's decision making.

In determining whether a Person has Control, SBA will also consider other relevant factors, including but not limited to:

- a. Whether the Person's ownership interest in the SBIC, its GP or its management company is large when compared to other ownership interests.
- b. Whether the Person qualifies as an Associate of the SBIC or its GP.
- c. Any indications that the Person may have significant influence over members of the management team.