



SBIC Licensees Required to Recertify Institutional Investor Status

By Mark Kromkowski and Alan Roth

The Investment Division of the SBA has re-initiated its efforts to have all SBIC Licensees recertify the status of all limited partners classified as Institutional Investors. Because the unfunded portion of an Institutional Investor's commitment to a Licensee is included when calculating Regulatory Capital, the SBA has determined that it is essential to take steps on a regular basis to ensure all Institutional Investors remain qualified for that designation. If certain limited partners are no longer qualified, Regulatory Capital must be adjusted accordingly and a new Capital Certificate must be filed.

The level of Regulatory Capital has a direct bearing on a Licensee's operations including its Capital Impairment Ratio, Over line Limitation, Management Fee Calculation, Leverage Commitment Eligibility, etc. Misstatements of Regulatory Capital can be a violation of Federal law and may subject violators to criminal prosecution and civil penalties.

In light of the impact of the Institutional Investor designation, the SBA's Investment Division will now require recertification annually. To that end, SBIC Licensees are required to recertify the status of their investors by submitting to your SBA Operations Analyst either:

- **OPTION 1:** a fully executed Capital Certificate which reflects any revisions in its Institutional Investors and/or Regulatory Capital, or
 - **OPTION 2:** a letter certifying that a review of unfunded commitments and Institutional Investors has occurred and that no changes are required in the Capital Certificate most recently filed with the SBA.
- Based on the level of Regulatory Capital on the last Capital Certificate submitted to the SBA, please recertify according to the following schedule:

Unfunded Commitments

Schedule	Low	High
June 2007	\$20,000,000	\$20,000,000+
July 2007	\$12,500,000	\$19,999,999
August 2007	\$7,500,000	\$12,499,999
September 2007	\$5,000,000	\$7,499,999
October 2007	\$2,500,000	\$4,999,999
November 2007	\$1	\$2,499,999

The Private Equity Practice at Wildman Harrold is dedicated to keeping our clients advised of new legislative and judicial developments as they occur. If you have any questions regarding these issues, please feel free to contact your primary attorney at Wildman Harrold, Mark Kromkowski, Alan Roth or email us at privateequity@wildman.com for further information.

Client Bulletin

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