

§ 107.809 Investment adviser.

(a) *General.* A Licensee may contract in writing with an individual or non-Licensee concern to serve on a continuing basis as its investment adviser. Services performed shall be advisory only and shall not include the actual performance of management or operating activities of the Licensee. The Licensee shall, on or before the effective date thereof, furnish SBA with a copy of such contract. Where the Licensee is indebted to SBA, SBA reserves the right to approve the compensation of the investment adviser.

(b) *Common investment adviser.* Two or more Licensees may, with prior SBA approval, contract in writing with an individual or non-Licensee concern to serve on a continuing basis as their common investment adviser.

(c) *Exempt contracts.* Contracts for appraisal, custodial, collection, bookkeeping, accounting, and legal services shall not be considered advisory services for the purposes of this section.

§ 107.810 Assets acquired in liquidation.

Where property is acquired by a Licensee in full or partial satisfaction of an obligation of a portfolio concern, Licensee may incur reasonably necessary expenditures for the care and preservation of such property: *Provided, however,* That except as specifically permitted in writing by SBA, such expenditures (other than ordinary and necessary expenses for the maintenance of such assets) plus Licensee's funds attributable to such assets in liquidation shall not exceed an amount equivalent to Licensee's investment limit under § 107.301(c). Licensee shall take steps to dispose of assets in liquidation within a reasonable period of time.

§ 107.811 Additional investment by bank.

A bank which on January 9, 1968, holds fifty (50%) percent or more of any class of equity securities issued by a Licensee and having actual or potential voting rights, may, pursuant to section 302(b) of the Act, make further investments in such Licensee only if such investments would not increase its percentage holdings of such securities. Such capital increases shall be subject to SBA post-approval under § 107.1105.

RESTRICTED ACTIVITIES**§ 107.901 Control of small business concern.**

(a) *General:* The Act does not contemplate that Licensees shall operate business enterprises or function as holding companies exercising control over such enterprises. Accordingly, neither a Licensee, nor a Licensee and its Associates, nor two or more Licensees may, except as hereinafter set forth, assume control over a small business concern pursuant to management agreements, voting trusts, majority representation on the board of directors, or otherwise.

(b) *Presumption of control:* Control over a small business concern will be presumed to exist whenever a Licensee, or a Licensee and its Associates or two or more Licensees acting in concert, own, hold, or control, directly or indirectly, voting securities equivalent to (1) 50 or more percent of the outstanding voting securities, if the voting securities of such concern are held by less than 50 shareholders; (2) 25 or more percent of the outstanding voting securities, if the voting securities of such concern are held by 50 or more shareholders, or (3) a block of stock of 20 or more percent of the outstanding voting securities which is as large as or larger than, any other outstanding block of stock. This presumption may be rebutted by the submission of appropriate evidence satisfactory to SBA.

(c) *Temporary control permitted:* A Licensee may acquire temporary control over a small business concern in connection with financing supplied to it only where assumption of control is reasonably necessary for the protection of Licensee's investment.

(d) *Plan to relinquish or divest control:* A Licensee shall not assume control over a small business concern pursuant to paragraph (c) of this section unless it has negotiated and has entered into a fair and reasonable written plan at the time of financing, as a contractual obligation on its part enforceable by the small concern or its shareholders providing for relinquishment of control within a reasonable period of time not exceeding 7 years. Such plan shall contain provisions expressly stating that it is subject to SBA approval under this section and that the parties consider the plan to be fair and reasonable. The plan shall be filed with SBA not later than thirty (30) days after acquisition of control and shall be subject to SBA's postapproval as a condition for the continuance of the License. The plan shall be deemed approved unless Licensee is notified to the contrary by SBA within ninety (90) days after its receipt by SBA. Where the