SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG57

Small Business Investment Companies—Investments in Passive Businesses

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to revise the regulations for the Small Business Investment Company (SBIC) program concerning investments in passive businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended, as well as under SBIC program regulations. Currently these program regulations provide for exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through under certain limited circumstances. One such exception provides that an SBIC may make an investment in a passive small business that passes through the investment proceeds to one or more subsidiaries, each of which must be a non-passive small business. The proposed rule would modify this exception to allow an SBIC to structure an investment utilizing two passive small businesses as pass-through entities. This modification would place SBICs on an equal footing with their non-SBIC counterparts in the venture capital and private equity sectors, in which investments structured with two passive levels, are not uncommon.

This proposed rule also includes several technical corrections. Specifically, the proposed rule would update the regulations by replacing obsolete Standard Industrial Classification (SIC) codes with their equivalents under the North American Industrial Classification System (NAICS); correct erroneous paragraph cross-references; and modernize the options for meeting the record preservation requirements by removing the reference to ''microfilm.''

DATES: Comments on the proposed rule must be received on or before January 22, 2014.

ADDRESSES: You may submit comments, identified by RIN 3245–AG57, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Pravina Raghavan, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the information to Carol Fendler, Investment Division, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Investment and Innovation, (202) 205–7559 or *sbic@sba.gov*.

SUPPLEMENTARY INFORMATION:

A. Passive Businesses

Section 107.720—Small Businesses That May Be Ineligible for Financing

The Small Business Investment Act of 1958, as amended, prohibits an SBIC from making passive investments. Accordingly, SBA promulgated 13 CFR 107.720(b), which states as a general rule that an SBIC is not permitted to finance a passive business. The regulation defines a business as passive if: (1) It is not engaged in a regular and continuous business operation; (2) its employees do not carry on the majority of day-to-day operations, and the company does not exercise day-to-day control and supervision over contract workers; or (3) the business passes through substantially all financing proceeds to another entity.

The current regulation provides exceptions to the general prohibition that allow SBICs to employ certain structures in which the direct recipient of financing is a passive business, but the end recipient is an active business. SBA is proposing to expand the exception set out in § 107.720(b)(2), which permits an SBIC to finance a passive Small Business (as defined in 13 CFR 107.50) if it passes through substantially all the proceeds to one or more ''subsidiary companies, each of which is an eligible Small Business that is not passive.'' A subsidiary company is currently defined as one in which the financed passive business owns at least 50 percent of the outstanding voting securities. This exception allows, for example, an SBIC to provide financing to ABC Holdings, a passive Small Business, as long as the proceeds are passed through to and used by its subsidiary, ABC Manufacturing, a non-passive Small Business. SBA also interprets § 107.720(b)(2) to permit a financing to ABC Holdings that is used to acquire an ownership interest in ABC Manufacturing, which post-acquisition would be a subsidiary of ABC Holdings.

To summarize, current § 107.720(b)(2) allows an SBIC to finance a passive Small Business only if it passes the proceeds directly to one or more non-passive Small Business subsidiaries (or uses the proceeds to acquire one or more non-passive Small Businesses that will become its directly-owned subsidiaries). The proposed rule would modify the definition of a subsidiary company to allow financing proceeds to pass through a second passive business before reaching a non-passive subsidiary. Under proposed § 107.720(b)(2), a ''subsidiary company'' would be defined as one in which the passive business that receives financing from an SBIC owns at least 50 percent of the outstanding voting securities, either (1) as the direct owner of the subsidiary company, or (2) as the direct owner of a second passive Small Business, which in turn is the direct owner of the voting securities of the subsidiary. This revised definition would not change the requirement that a passive recipient of SBIC financing own at least 50% of the active business that ultimately receives the proceeds (or that the proceeds are used to acquire); rather it would allow for indirect ownership through a second passive Small Business.

Following is an example of a transaction structure that the proposed revision of § 107.720(b)(2) would permit: An SBIC proposes to provide financing to Newco, a newly-formed passive holding company, to help acquire an active Small Business, ABC Manufacturing Company (''ABC Mfg''). Newco will participate in the acquisition with other investors. The investor group forms passive ABC Acquisition Company (''ABC Acquisition''), with 50 percent of its voting securities being owned by Newco. ABC Acquisition acquires 100 percent of the voting securities of ABC Mfg. Post-acquisition, Newco owns 50 percent of the outstanding voting securities of ABC Mfg indirectly through its ownership of ABC Acquisition. Therefore, ABC Mfg qualifies as a subsidiary of Newco, and the proposed financing is permitted.

The proposed rule would allow SBICs to have greater flexibility in structuring transactions. Private equity and venture capital firms that are not SBICs may structure investments with two passive levels for a number of reasons. For example:

1. In syndicated transactions involving a number of participants, a multi-level structure may make it easier to allocate income to different classes of investors.

2. Some transactions are structured with a mix of taxable and non-taxable entities to accommodate investors' varying needs.

3. Certain transactions involving the purchase of the stock of an S Corporation generally must be structured with two levels of passive entities in order to take advantage of favorable tax treatment under section 338(h)(10) of the Internal Revenue Code.

By putting SBICs on an equal footing with their non-SBIC counterparts in the venture capital and private equity sectors, the proposed rule may help to expand the resources available to Small Businesses through the SBIC program by attracting additional capital and qualified fund managers. At the same time, the proposed rule would continue to limit the complexity of transactions permitted by § 107.720(b)(2) by allowing no more than two passive levels. SBA notes that while a number of SBICs have voiced support for an expansion of the exception in current § 107.720(b)(2), none has indicated a need to structure transactions with more than two levels of passive holding companies.

B. Technical Changes to Regulations

Section 107.600—General Requirement of Licensee To Maintain and Preserve Records

The record-keeping requirements applicable to SBICs are found primarily in § 107.600. This section enumerates various types of records and the periods for which they must be preserved. The final paragraph of the section, § 107.600(c)(4), allows an SBIC to substitute ''a microfilm or computer-scanned or generated copy'' for any original paper record. The proposed rule would modernize this provision by deleting the reference to ''microfilm'' as a preservation medium.

Section 107.720—Small Businesses That May Be Ineligible for Financing

Real Estate Businesses. Under current § 107.720(c), an SBIC is not permitted to finance ''any business classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual'' with exceptions provided for certain business that provide services within the real estate industry (such as title abstract companies). The ''SIC Manual'' refers to the Standard Industrial Classification system formerly used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. In 1997, the Federal government replaced the SIC codes with the North American Industrial Classification System (NAICS).

The proposed rule would update 13 CFR 107.720(c) by replacing SIC codes with their 2012 NAICS equivalents. SBA's intention is to duplicate the existing general prohibitions and permitted exceptions as closely as possible. The following tables show each of the SIC codes referenced in the current regulation and the NAICS code that SBA proposes to replace it with.

CROSSWALK FROM SIC CODES TO NAICS CODES

SIC Code		NAICS Code	
Prohibited Investments			
6512	Operators of nonresidential buildings	531120	Lessors of nonresidential buildings (except miniwarehouses)
6513	Operators of apartment buildings	531110	Lessors of residential buildings and dwellings
6514	Operators of dwellings other than apartment buildings.		
6515	Operators of residential mobile home sites	531190	Lessors of other real estate property
6517	Lessors of railroad property.		
6519	Lessors of real property, not elsewhere classified.		
6552	Land subdividers and developer, except cemeteries	237210	Land subdivision
1531	Operative builders	236117	New housing for-sale builders
		236118	Residential remodelers [1]
		236210	Industrial building construction [1]
		236220	Commercial and institutional building construction [1]

[1] An SBIC may not finance a Small Business classified under this code if such business is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor.

SIC Code		NAICS Code	
Restricted Investments			
6531	Real estate agents and managers (establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others).	531210	Offices of real estate agents and brokers
		531311	Residential property managers
		531312	Nonresidential property managers
		531320	Offices of real estate appraisers
		531390	Other activities related to real estate
Permitted only if business derives at least 80% of its revenue from non-Affiliate sources.		Permitted only if business derives at least 80% of its revenue from non-Affiliate sources.	

SIC Code		NAICS Code	
Permitted Investments			
6541	Title abstract offices	541191	Title abstract and settlement offices

The only SIC code in the current regulation that does not correspond directly to one or more NAICS codes is 1531, ''Operative builders.'' The SIC Manual described this industry as consisting of establishments primarily engaged in the construction (including renovation) of single-family houses and other buildings for sale on their own account rather than as contractors. The industry included speculative builders and condominium developers. The 2012 NAICS codes primarily use the term ''for-sale builder'' to describe businesses engaged in construction or renovation of buildings on their own account. However, except for those engaged in new housing construction (NAICS code 236117), for-sale builders are combined with contractors in three different NAICS codes, depending on whether they are engaged in residential remodeling (NAICS code 236118), manufacturing/industrial building construction (NAICS code 236210), or commercial/institutional building construction (NAICS code 236220). The proposed rule would prohibit an SBIC from providing financing to a Small Business classified under any of these three NAICS codes only if the company were primarily engaged in construction or renovation of buildings as a for-sale builder. Guidance provided by the United States Census Bureau indicates that the key distinction is whether a firm is engaged in construction on its own account, as opposed to having been hired as a contractor. For example, an SBIC would be permitted to provide financing to a firm that primarily renovates or builds additions to homes if the homeowners have contracted for the firm's services. However, a firm that primarily acquires homes to renovate and re-sell at its own risk is a for-sale remodeler that would not be eligible for financing by an SBIC.

Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee

Current § 107.1150(e), which sets forth leverage eligibility provisions for SBICs that make Energy Saving Qualified Investments (as defined in 13 CFR 107.50), erroneously refers to ''paragraph (d)'' instead of ''paragraph (e). The proposed rule would correct these references.

Compliance With Executive Orders 12866, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a ''significant'' regulatory action under Executive Order 12866. This is also not a ''major'' rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

The proposed rule would not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, § 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would affect all SBICs, of which there are currently close to 300. SBA estimates that approximately 75% of these SBICs are small entities. Therefore, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule would not be significant. The passive business provision would provide SBICs with additional flexibility to employ a transaction structure commonly used by private equity or venture capital funds that are not SBICs.

SBA asserts that the economic impact of the rule, if any, would be minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA certifies that this rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 USC 681 et seq., 683, 687(c), 687b, 687d, 687g, 687m, Pub. L. 106–554, 114 Stat. 2763; and Pub. L.111–5, 123 Stat. 115.

§ 107.50 [Amended]

■ 2. Amend § 107.50 by removing the definition of ''SIC Manual''.

■ 3. Revise § 107.600(c)(4) to read as follows:

§ 107.600 General requirement for Licensee to maintain and preserve records.

* * * * *

(c) * * *

(4) You may substitute a computer-scanned or generated copy for the original of any record covered by this paragraph (c).

■ 4. Amend § 107.720 by revising paragraphs (b)(2) and (c)(1), and the introductory text of paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

* * * * *

(b) * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which the Financed passive business either:

(i) Directly owns at least 50 percent of the outstanding voting securities, or

(ii) Indirectly owns at least 50 percent of the outstanding voting securities (by directly owning at least 50% of the outstanding voting securities of another passive Small Business that is the direct owner of at least 50% of the outstanding voting securities of the subsidiary company).

* * * * *

(c) *Real Estate Businesses.* (1) You are not permitted to finance any business classified under North American Industry Classification System (NAICS) codes 531110 (lessors of nonresidential buildings except miniwarehouses), 531120 (lessors of residential buildings and dwellings), 531190 (lessors of other real estate property), 237210 (land subdivision), or 236117 (new housing for-sale builders). You are not permitted to finance any business classified under NAICS codes 236118 (residential remodelers), 236210 (industrial building construction), or 236220 (commercial and institutional building construction), if such business is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor. You are permitted to finance a business classified under NAICS codes 531210 (offices of real estate agents and brokers), 531311 (residential property managers), 531312 (nonresidential property managers), 531320 (offices of real estate appraisers), or 531390 (other activities related to real estate), only if such business derives at least 80 percent of its revenue from non-Affiliate sources.

(2) You are not permitted to finance a Small Business, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

* * * * *

■ 5. Amend § 107.1150 by revising paragraphs (e)(1), (e)(2)(iii), and (e)(2)(iv) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

* * * * *

(e) *Additional Leverage based on Energy Saving Qualified Investments in Smaller Enterprises.* (1) Subject to SBA's credit policies, if you were licensed on or after October 1, 2008, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (e). Any investment that you use as a basis to seek additional Leverage under this paragraph (e) cannot also be used to seek additional Leverage under paragraph (c) of this section.

* * * * *

(2) * * *

(iii) Subtract from your outstanding Leverage the lesser of (e)(2)(i) or (e)(2)(ii).

(iv) If the amount calculated in paragraph (e)(2)(iii) is less than the maximum Leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

Dated: November 14, 2013.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2013–30504 Filed 12–20–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1056; Directorate Identifier 2013–CE–046–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Dornier Luftfahrt GmbH Models Dornier 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes that would supersede AD 2006–11–19. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as chafed or damaged wiring on the flight deck overhead panels (5VE and 6VE). We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 6, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; telephone: +49 (0) 8153–30 2220; fax: +49 (0) 8153–30 4258; email: *custsupport.dornier228@ruag.com*; Internet: *http://www.ruag.com/en/Aviation/Aviation_Home*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching and locating Docket Number FAA–2013–1056; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1056; Directorate Identifier 2013–CE–046–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov*, including any personal information you provide. We will also post a report summarizing each