

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING



ANNUAL REVIEW OF

Wilshire DC Partners, LLC

FOR THE PERIOD

JANUARY 1, 2009 THROUGH DECEMBER 31, 2009

SALUTATION

Washington, DC
November 29, 2010

The Honorable Gennet Purcell
Commissioner, District of Columbia
Department of Insurance, Securities and Banking
810 1st Street, NE, Suite 701
Washington, DC 20002

Commissioner Purcell:

Pursuant to your instructions and in accordance with D.C. Official Code § 31-5237(a) a review of Wilshire DC Partners, LLC (“the CAPCO”) has been performed to assess CAPCO compliance with the requirements for Certified Capital Companies contained in D.C. Official Code § 31-5231 et seq.

FORWARD

This report format sets forth reportable observations of both a positive and negative nature and notes material adverse findings. This is a report by exception. No material adverse findings were noted.

SCOPE OF REVIEW

This review covers the period from January 1, 2009 through December 31, 2009, including any material transactions or events occurring during the fieldwork and noted during the review. In reviewing material for this report, the Reviewer relied on records and materials maintained by the CAPCO and provided to the Reviewer in response to

requests for information initiated by the Department of Insurance, Securities and Banking (“DISB”) and the Reviewer.

The review included consideration of the CAPCO’s compliance concerning operational and funding requirements contained in D.C. Official Code § 31-5231 et seq., including:

- Certification requirements
- Satisfaction of requirements for “Qualified Businesses”
- Aggregate limitations on premium tax credits
- Qualification for premium tax credits
- Requirements for continuance of certification

METHODOLOGY

The review process involved a review of D.C. Official Code § 31-5231 et seq. to identify the various standards and requirements applicable to CAPCOs operating in the District of Columbia that would be considered during the review and information provided by the CAPCO to determine compliance with each of the standards and requirements. Following the completion of a work plan, an initial request for documentation and submission to the CAPCO was prepared. Supplemental requests for information were made as needed. Documents and other materials in response to the information request were provided by the CAPCO in hard copy and electronic format. The information was examined to determine whether the CAPCO satisfied the various tests and standards set forth in D.C. Official Code § 31-5231 et seq. Findings pertaining to the Reviewer’s findings were noted and were used in the preparation of the report.

Presentation of the Reviewer’s findings track D.C. Official Code § 31-5231 et seq., i.e., requirements and legal standards applicable to the operation of the CAPCOs, and separate requirements applicable to Qualified Businesses. Substantive findings in the report contain: (i) an initial statement of the specific requirement or legal standard contained in D.C. Official Code § 31-5231 et seq; (ii) a brief summary of the information reviewed; and (iii) the Reviewer’s findings relative to that requirement or legal standard.

FINDINGS

REVIEW OF CAPCO

1. *D.C. Official Code §31-5232(d) requires the CAPCO to maintain its principal office in the District of Columbia.*

According to the CAPCO's business plan, filings with DISB, and information on the CAPCO's website indicate that the CAPCO is located at 1667 K St., NW, Washington, DC 20006.

2. D.C. Official Code §31-5232(e) requires that at least two of the CAPCO's principals or two employees engaged to manage the funds for the CAPCO have three or more years of experience in the venture capital industry.

In curricula vitae provided as part of the CAPCO's response to the Reviewer's request for information, the CAPCO identified four senior members of the management team. Barry Sloane functions as the CEO and claims 20 plus years' venture capital experience. Other members of the management team include Seth Cohen, who serves as the CFO and claims 10 years of experience in the venture capital industry, Craig Brunet, EVP and CIO and Matt Ash, Chief legal counsel. No exceptions to this requirement were noted.

3. D.C. Official Code §31-5232(h) prohibits an insurance company, either directly or through an affiliate, from owning more than 15% of the voting equity interests or other voting ownership interests in the CAPCO.

According to materials provided to the Reviewer, the CAPCO is a subsidiary of Newtek Business Services, Inc. No insurance company has a 15% ownership interest in either the CAPCO or Newtek Business Services, Inc.

4. D.C. Official Code §31-5231(13) requires that the CAPCO's debt instruments be issued at par or at a premium, with an original maturity date at least 5 years from the date of issuance and a repayment schedule which is no faster than a level principal amortization over 5 years, which does not permit the Certified Investor to receive prepayment of interest, and which contains no interest, distribution, or payment features which are related to the profitability of the CAPCO or the performance of its investment portfolio.

The CAPCO provided copies of the debt instruments executed with each of the insurance CAPCO lenders. The notes are in compliance with the statutory requirements.

5. D.C. Official Code §31-5231(14) defines "Qualified Distributions," i.e., payments of the CAPCO in connection with the following:

(A) Reasonable costs and expenses that can be paid in connection with the CAPCO's formation or syndication, or related costs;

(B) Reasonable management costs, including payment of an annual management fee not to exceed 2.5% of Certified Capital.

(C) Projected increases in federal or state taxes of direct or indirect equity holders of the CAPCO resulting from the earnings or other tax liability of the CAPCO to the extent the increase is related to the investment in the ownership of a CAPCO.

D.C. Official Code §31-5236(a) *permits the payment of Qualified Distributions at any time.*

The CAPCO's total Certified Capital as of the Allocation Date was \$13,104,416. The CAPCO provided financial records reflecting approximately \$366,379 in Qualified Distributions. These payments do not appear to be unreasonable in relation to the types of services that were provided. Included in the CAPCO's Qualified Distributions were payments of \$163,830 in management fees, which is within the 2.5 % statutory cap. No exceptions to this requirement were noted.

6. D.C. Official Code §31-5235(a) *mandates minimum Qualified Investments of its Certified Capital by each CAPCO according to the following schedule: (1) 20% within 30 months after the CAPCO'S Allocation Date; (2) 40% within 4 years after the CAPCO's Allocation Date; and (3) 50% within 5 years after the CAPCO's Allocation Date. Subsection (b) contains an additional provision allowing the CAPCO to receive a credit of \$1.50 for each dollar invested in instances where the Qualified Business certifies in an affidavit that at least 80% of its employees are District residents.*

The CAPCO's allocation date is November 12, 2004. According to information provided by the CAPCO regarding its investments in Qualified Businesses through December 31, 2009 the CAPCO had invested approximately \$6.4 million representing 49% of its Certified Capital. The CAPCO receives \$1.50 credit for investments in two Qualified Businesses where 80% or more of the employees are D.C. residents. Applying the \$1.50 credit to those investments, the CAPCO's percentage of invested capital is 63.56%.

7. D.C. Official Code §31-5235(d) *prohibits any single investment in a Qualified Business from exceeding 15% of its total Certified Capital.*

The Qualified Business Applications as well as records of funding approvals from the DISB indicate the CAPCO have not exceeded the 15% cap on investments in any one Qualified Business.

8. D.C. Official Code §31-5235(f) *places restrictions on investments a CAPCO is permitted to make in investments other than Qualified Businesses, e.g., a prohibition against investing any more than 5% of Certified Capital in a security issued by a Certified Investor or its affiliate unless the investment is guaranteed or otherwise secured in favor of the Certified Investors.*

The CAPCO provided information stating that other than temporary investments in U.S. Treasuries the CAPCO makes no investments of its Certified Capital other than in Qualified Businesses. No exceptions were noted.

9. D.C. Official Code §31-5235(g)(2) *requires each CAPCO to report annually to the DISB on the following: (1) the amount of Certified Capital at the end of the prior year; (2) whether the CAPCO has invested more than 15% of its total certified capital in any one business; and (3) all Qualified Investments made in the prior year.*

The CAPCO provided a copy of its Annual Report to the DISB. That report contained the information required by the statute. No exceptions were noted.

10. D.C. Official Code §31-5235(g)(3) *requires each CAPCO to provide an annual, audited financial statement, as well as an agreed-upon procedures report conducted by the independent auditor to assess compliance with the requirements in Chapter 52-A.*

The CAPCO provided copies of audited financial statements and agreed upon procedures reports to the Reviewer. No exceptions were noted.

11. D.C. Official Code §31-5235(g)(4) *requires payment of an annual \$10,000 certification fee to the DISB.*

Documentation and other information provided by the CAPCO in response to the Reviewer's request indicated that the required payments were made to the DISB on or before January 31st of each year. No exceptions were noted.

12. D.C. Official Code §31-5236 *prohibits a CAPCO from making any distribution other than a Qualified Distribution before 100% of its Certified Capital has been distributed in Qualified Investments.*

The CAPCO provided financial records reflecting payments made during the review period. Those records do not evidence any distributions other than a Qualified Distribution or a Qualified Investment.

REVIEW OF QUALIFIED BUSINESSES

13. D.C. Official Code §31-5231(12)(A)(i) *establishes physical and operational contact requirements with the District of Columbia. Each Qualified Businesses must: (i) be headquartered in the District; (ii) have their principal place of operations located in the District; and (iii) use the Qualified Investments it receives to support business operations in the District.*

The CAPCO did not make any investments in 2009.

14. D.C. Official Code §31-5231(12)(A)(ii) *requires that at the time of initial funding a minimum of 25% of employees of a Qualified Business reside in the District.*

The CAPCO did not make any investments in 2009.

15. D.C. Official Code §31-5231(12)(A)(iii) *requires that at the time of initial funding a minimum of 75% of employees of a Qualified Business be employed at a location within the District.*

The CAPCO did not make any investments in 2009.

16. D.C. Official Code §31-5231(12)(A)(iv) *requires that Qualified Businesses meet the definition of a Small Business Concern as defined in 21 CFR § 121.201.*

The CAPCO did not make any investments in 2009.

17. D.C. Official Code §31-5231(12)(A)(v) *requires certification in an affidavit that the Qualified Business was unable to obtain conventional funding, i.e., that the business tried and failed to obtain conventional financing, or that the business cannot be “reasonably expected” to qualify for conventional financing.*

The CAPCO did not make any investments in 2009.

18. D.C. Official Code §31-5231(12)(B) *prohibits Qualified Businesses from engaging in professional services provided by lawyers, accountants, or physicians.*

The CAPCO did not make any investments in 2009.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Scott R. Harrison', with a long horizontal flourish extending to the right.

Scott R. Harrison
Harrison Law Office, PC
Washington, DC