

that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member and shall be deemed to hold a voting interest in the limited liability company that is equal to the member's equity interest.

§ 1.993 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

(a) A limited partner of a limited partnership and a partner of a limited liability partnership shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the partner is prohibited by the limited partnership agreement, limited liability partnership agreement, or other operative agreement from, and in fact is not engaged in, active involvement in the management or operation of the partnership and only the usual and customary investor protections are contained in the partnership agreement or other operative agreement. These criteria apply to any relevant limited partnership or limited liability partnership, whether it is the licensee, a controlling U.S.-organized parent, or any partnership situated above them in the vertical chain of ownership.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless the member is prohibited by the limited liability company agreement from, and in fact is not engaged in, active involvement in the management or operation of the company and only the usual and customary investor protections are contained in the agreement. These criteria apply to any relevant limited liability company, whether it is the licensee, a controlling U.S.-organized parent, or any limited liability company situated above them in the vertical chain of ownership.

(c) The usual and customary investor protections referred to in paragraphs (a) and (b) of this section shall consist of:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership, limited liability partnership, or limited liability company or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent the limited partnership, limited liability partnership, or limited liability company from entering into contracts with majority investors or their affiliates;

(3) The power to prevent the limited partnership, limited liability partnership, or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in the limited partnership, limited liability partnership, or limited liability company to prevent the dilution of the partner's or member's *pro rata* interest in the event that the limited partnership, limited liability partnership, or limited liability company issues additional instruments conveying interests in the partnership or company;

(5) The power to prevent the change of existing legal rights or preferences of the partners, members, or managers as provided in the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other operative agreement;

(6) The power to vote on the removal of a general partner, managing partner, managing member, or other manager in situations where such individual or entity is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (in the case of a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other organizational documents of the partnership or limited liability company with respect to the matters described in paragraphs (c)(1) through (6) of this section.

(d) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (c) of this section shall be considered usual and customary investor protections in a particular case.