



[Lowenstein Sandler LLP](#)

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April 7, 2020–12pm EST (version 1.0)

**Venture Capital Affiliation Questionnaire (for [Rule 301\(f\)](#) purposes for SBA 7(a) PPP Business Loans)**

Company name: [INSERT]

State of Incorporation: [State]

Does any holder (with its affiliates) own > 50% of Company’s “voting equity”? [Yes<sup>1</sup>/No]

For [Loan Application](#),<sup>2</sup> does any holder (with its affiliates) own 20% or more of Company’s equity? [Yes/No]

Does a single holder (with its affiliates) have the right to designate 50% or more of the Board? [Yes/No]

Is the presence of any specific Board member (“Director”) required for quorum? [Yes/No]

Does any holder (with its affiliates) have a right to control protective provisions (whether at Board<sup>3</sup> or shareholder level)? And, if so, which provisions? [Yes/No]

Are there any protective provisions related to day-to-day management? And, if so, which provisions? [Yes/No]

Is Company a franchise, has it received “financial assistance” from a Small Business Investment Company, or is it in/related to hospitality (NAICS code 72)? [Yes/No]

Are there outstanding convertible notes, SAFEs, warrants, options, or other convertible or exercisable securities to consider in determining % ownership (see 301(f)(2))? [Yes/No]

Does the CEO, President (or another person who “controls” Company) control any other companies or is there common management/management agreement with another company (see 301(f)(3))? [Yes/No]

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<sup>1</sup>If “yes” there is an irrefutable presumption of affiliation.

<sup>2</sup> We’re seeing superseded versions of application. At April 7, it must be stamped: “OMB Control No.: 3245-0407 Expiration Date: 09/30/2020”

<sup>3</sup> If a protective provision (in Charter or elsewhere) requires unanimous vote or vote of all Board members or of “the Series A Director” or “both Preferred Stock Directors,” then answer this question “yes” and list the provisions.

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Are there any firms or individuals with whom Company shares resources? [Yes/No]

Has the company been in business > two years? [Yes/No]

Other information: [INSERT]

**DISCLAIMER:** We're providing this checklist as of April 7, 2020 at noon Eastern. ***This is not legal advice and its use does not create an attorney-client relationship between our law firm (Lowenstein Sandler LLP) and anyone using this checklist.*** Please do not rely on it -- we expressly disclaim any liability if you do rely on it. We understand that there are various approaches to conducting "affiliation" analysis for purposes of [Section 301\(f\)](#) in the context of applying for SBA Section 7(a) PPP loans. We at Lowenstein Sandler LLP developed this checklist to help our law firm's own attorneys move through the steps of the affiliate analysis. There's no substitute for having counsel review the Company's relevant documents because the affiliate analysis calls for legal conclusions. Accordingly, we advise against reaching the legal conclusions without the advice of counsel having reviewed full and accurate information.

This checklist: (1) doesn't purport to be complete, (2) is geared toward the venture capital/startup community, and (3) as a result, will be as far less relevant outside of that context. While we may provide updates, we do not undertake an obligation to do so or to notify users of changes in the law -- the law regarding these matters has been changing daily.

***Lowenstein Sandler's Team has published these resources (among others) we hope may be helpful.***

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3.15.20 – Forbes, When the Music Stops: SAFEs & Convertible Notes Give VCs Massive Price Protection: [HERE](#)

3.20.20 – Lowenstein Sandler Client Alert: The Families First Coronavirus Response Act–New Paid Leave Mandates for Employers With Fewer Than 500 Employees; Tax Credits To Help Offset Employer Costs: [HERE](#)

3.23.20 – Forbes, Guidance from Top VCs around the Globe During the Pandemic: [HERE](#)

3.27.20 – Lowenstein Sandler Client Alert: Key Tax and Employee Benefits Provisions of the CARES Act: [HERE](#)

3.30.20 – Lowenstein Sandler Client Alert: SBA Paycheck Protection Program: [HERE](#)

3.31.20 – Lowenstein Sandler Client Alert: SBA Section 7(a) Loans for VC Backed Growth Companies/Startups Under the CARES Act: [HERE](#)

4.1.20 – Forbes, detailing analysis of SBA Loans under 301 vs. 103: [HERE](#)

4.2.20 – [VIDEO OF OUR SBA 7\(a\) For Startups/VC](#) W/ LS Team & Congressman Don Beyer (who worked on the legislation)

4.3.20 – Lowenstein Sandler Client Alert: SBA Paycheck Protection Program Update: SBA Interim Rule: [HERE](#)

4.4.20 – Forbes, using new Treasury guidance CONFIRMING 301 vs 103: [HERE](#)

4.5.20 (update 4/7) – Forbes, "Please don't make startups Amend Charters" (TREASURY said SAME): [HERE](#)

4.7.20 – Lowenstein Sandler Client Alert: SBA Paycheck Protection Program Update: Frequently Asked Questions: [HERE](#)

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