**From:** Fallon-Houle, Nancy   
**Sent:** Wednesday, March 19, 2014 1:03 AM)  
**Subject:** Investor Counting Rules for 3(c)(1) Fund

Counting Rules for a 3(c)(1) Fund. The maximum number of “beneficial owner” investors is 100 (“not more than 100”), so you can have 100 beneficial owners.

Counting Rules toward the 100:

**Related Party Investors**

* Exclude the fund’s General Partner or Managing Member’s accounts (don’t count any investment accounts held by Fund Manger).
* Exclude “knowledgeable employees” accounts (Officers or Managing Members) (don’t count accounts of owners and officers of Fund Manager).
  + However, **do** count the accounts of the other family members of the managers, even if they do work for the funds, if they are not Officers or Managers.
* Exclude the IRAs and retirement accounts of the managers of the manager
* Exclude any entity investors of which either the mangers of manager are the sole owner, or them with their spouses, or any entity owned by one or more of them with their spouses, and they make the investment decisions.
* Exclude any “family investment company” in which the managers of manager and/or their spouse contributed the assets, and the manager of manger has the sole authority to make investment decisions.
* If an Officer and his spouse invest jointly, then don’t count the spouse. But *do* count the spouse if she invested in a separate account. (Interesting question if the manager of manager is managing the spouses account)

**Regular Investors (Not GLL Related Parties):**

* Where 2 spouses jointly own the interest, count them as 1 investor.
* Where 2 spouses each have separate accounts, count them as 2 investors.
* If the investor owns one interest jointly with spouse, and he owns another interest separately, only count that investor one time as a beneficial owner. Don’t count the spouse, unless she has a separate individual account. Spouse is excluded from the joint investor count. Therefore John & Mary Smith = 1. Then John Smith separate account, counts as 0, since we counted him already in the joint account.
* If the investor is an entity, don’t count it if it has identical ownership or beneficiaries to another investor, i.e.
  + Don’t count the IRA of an investor, if the IRA is owned solely by the investor
  + Don’t count the investor’s investment partnership, LLC or corp, if that entity is owned solely by the one investor (or by a group of investors we already counted elsewhere)
* If an investor divorces or dies, and his previous 1 investment, is split into more than one account for the benefit of the divorcee or the deceased investor’s estate, then only count the original investor as 1 investor. Do not count the divorcee or the estate. Rule 3(c)(6)
* If an investor account is a “transferee” (such as a gift to a family trust of the investor’s family, or to an investment entity owned by the investor, or a donee child of the investor) which received the interests by a gift or bequest from the original investor, then only count the 1 original investor/grantor as 1 investor, but don’t count his trusts, donees or entities that received his interests.
  + Exclude the donee or transferee only if you have counted the original grantor as an investor already.
  + Exclude the family trust only if the original investor you counted put the money into the trust or entity.
    - It is not enough that there is a trust or entity in existence, but requirement is that the investor grantor must have gifted the interests to the trust or entity, or the trust holding the interests must have come from the grantor investor.

Rule 3(c)(6)

* + The parent, grantor, must still have investment discretion over the trust or the child’s account in order to exclude the trust from the count.  [Not 100% sure about this portion of the rule, need to research further if you have facts that come under this rule]
    - If the trust or the investment interest is owned by an adult child who makes their own investment decisions, then you must count the adult child as an investor.
    - If a separate trustee makes the investment decisions for the child’s trust, then you must count the child as an investor.

I will flesh this out with citations to Rules and Sec Releases in a full memo. I will clarify whether the grantor must still have control over a trust in order to exclude the trust from the count.

But I know you are anxious to know the bullet points of the counting rules. So I’ve provided to you here, the rest of the rules.

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