

Small Business Administration

§ 108.530

MANAGEMENT AND COMPENSATION

§ 108.510 SBA approval of NMVC Company's Investment Adviser/Manager.

You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing members, or general partner. If you have Leverage or plan to seek Leverage, you must obtain SBA's prior written approval of the management contract. SBA's approval of an Investment Adviser/Manager for one NMVC Company does not indicate approval of that manager for any other NMVC Company.

(a) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to the Small Businesses in your Portfolio; and

(2) Indicate the basis for computing Management Expenses.

(b) *Material change to approved management contract.* If there is a material change, both you and SBA must approve such change in advance. If you are uncertain if the change is material, submit the proposed revision to SBA.

§ 108.520 Management Expenses of a NMVC Company.

SBA must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

- (1) Salaries;
- (2) Office expenses;
- (3) Travel;
- (4) Business development;
- (5) Office and equipment rental;
- (6) Bookkeeping; and
- (7) Expenses related to developing,

investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

CASH MANAGEMENT BY A NMVC COMPANY

§ 108.530 Restrictions on investments of idle funds by NMVC Companies.

(a) *Permitted investments of idle funds.* Funds not invested in Small Businesses must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount.* (1) You are permitted to deposit funds in a federally insured institution in excess of the institution's insured amount, but only if the institution is "well capitalized" in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103).

(2) Exception: You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 108.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

§ 108.550

BORROWING BY NMVC COMPANIES FROM NON-SBA SOURCES

§ 108.550 Prior approval of secured third-party debt of NMVC compa- nies.

(a) *Definition.* In this section, “secured third-party debt” means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get SBA’s written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), “expansion of the scope of a security interest or lien” does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Conditions for SBA approval.* As a condition of granting its approval under this section, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

- (1) You are in regulatory compliance;
- (2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;
- (3) Your request is for approval of a secured line of credit that would not cause your total outstanding bor-

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rowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

VOLUNTARY DECREASE IN REGULATORY CAPITAL

§ 108.585 Voluntary decrease in NMVC Company’s Regulatory Capital.

You must obtain SBA’s prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 108.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 355(d) of the Act.

Subpart H—Recordkeeping, Re- porting, and Examination Re- quirements for NMVC Com- panies

RECORDKEEPING REQUIREMENTS FOR NMVC COMPANIES

§ 108.600 General requirement for NMVC Company to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA’s standard chart of accounts for SBICs, unless SBA approves otherwise. You may obtain this chart of accounts from SBA.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

- (1) All your accounting and other financial records;
- (2) All minutes of meetings of directors, stockholders, executive committees, partners, or other officials; and
- (3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or non-SBA lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker’s per-account insurance coverage.