Subpart G—Managing the Operations of a NMVC Company

GENERAL REQUIREMENTS

§ 108.500 Lawful operations under the Act.
You must engage only in the activities contemplated by the Act and in no other activities.

§ 108.502 Representations to the public.
You may not represent or imply to anyone that the SBA, the U.S. Government or any of its agencies or officers has approved any ownership interests you have issued or obligations you have incurred. Be certain to include a statement to this effect in any solicitation to investors. Example: You may not represent or imply that “SBA stands behind the NMVC Company” or that “Your capital is safe because SBA’s experts review proposed investments to make sure they are safe for the NMVC Company.”

§ 108.503 NMVC Company’s adoption of an approved valuation policy.
(a) Valuation guidelines. You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA’s Investment Division.
(b) SBA approval of valuation policy. You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:
   (1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or
   (2) Obtain SBA’s prior written approval of an alternative valuation policy.
(c) Responsibility for valuations. Your board of directors, managing members, or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA. If SBA reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party acceptable to SBA to substantiate the valuations.
(d) Frequency of valuations. (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and at the end of your fiscal year.
   (2) On a case-by-case basis, SBA may require you to perform valuations more frequently.
   (3) You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.
(e) Review of valuations by independent public accountant. (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.
   (2) The independent public accountant’s report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 108.504 Equipment and office requirements.
(a) Computer capability. You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA provided software) and transmit them to SBA. In addition, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.
(b) Facsimile capability. You must be able to receive facsimile messages 24 hours per day at your primary office.
(c) Accessible office. You must maintain an office that is convenient to the public and is open for business during normal working hours.

§ 108.506 Safeguarding the NMVC Company’s assets/Internal controls.
You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or
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other formal document describing your control procedures.

§ 108.507 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of this part:

(a) Nonperformance. Nonperformance of any of the requirements of any Debenture or of any written agreement with SBA.

(b) False statement. In any document submitted to SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact. A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 108.509 Employment of SBA officials.

Without SBA’s prior written approval, for a period of two years after the date of your most recent issuance of Leverage (or the receipt of any SBA Assistance as defined in part 105 of this chapter), you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(a) Served as an officer, attorney, agent, or employee of SBA on or within one year before such date; and

(b) As such, occupied a position or engaged in activities which, in SBA’s determination, involved discretion with respect to the granting of SBA Assistance.

§ 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.

§ 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