Small Business Administration § 108.160

Capital and Leverageable Capital must be owned and controlled by three Persons unaffiliated with your management and unaffiliated with each other, whose investments are significant in dollar and percentage terms as determined by SBA. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single “acceptable” Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are “acceptable” for this purpose:

1. Entities whose overall activities are regulated and periodically examined by state, Federal or other governmental authorities satisfactory to SBA;
2. Entities listed on the New York Stock Exchange;
3. Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;
4. Public or private employee pension funds;
5. Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and
6. Other Institutional Investors satisfactory to SBA.

(d) Voting requirement. The investors required for you to satisfy diversity may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior SBA approval.

(e) Requirement to maintain diversity. You must maintain management-ownership diversity while you are a NMVC Company. If, at any time, you no longer have the required management-ownership diversity, you must:
1. Notify SBA within 10 days; and
2. Re-establish diversity within six months.

§ 108.160 Special rules for NMVC Companies formed as limited partnerships.

(a) Entity General Partner. (1) A general partner which is a corporation, limited liability company or partnership (an “Entity General Partner”) shall be organized under state law solely for the purpose of serving as the general partner of one or more NMVC companies.

(2) SBA must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner. This provision must be stated in an Entity General Partner’s Certificate of Incorporation, operating agreement, limited partnership agreement or other similar governing instrument.


(4) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(5) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in §108.50.

(b) Other requirements for Partnership NMVC Companies. If you are a Partnership NMVC Company:
1. You must have a minimum duration of 10 years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership NMVC Company may be terminated by a vote of your partners;
2. None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;
3. Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a
limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (b) in your limited partnership agreement.

(c) Obligations of a Control Person. All Control Persons are bound by the disciplinary provisions of sections 365 and 366 of the Act and by the conflict-of-interest rules under §108.730. The term NMVC Company, as used in §§108.30, 108.460, and 108.680, includes all of the NMVC Company’s Control Persons. The conditions specified in §108.1810 and §108.1910 apply to all general partners.

(d) Liability of general partner for partnership debts to SBA. Subject to section 365 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(e) Special Leverage requirement. Before your first issuance of Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

CAPITALIZING A NMVC COMPANY

§ 108.200 Adequate capital for NMVC Companies.

You must meet the requirements of §§108.200–108.230 in order to qualify for designation as a NMVC Company and to receive Leverage.

§ 108.210 Minimum capital requirements for NMVC Companies.

You must have Regulatory Capital of at least $5,000,000 and Leverageable Capital of at least $500,000 to become a NMVC Company.

§ 108.230 Private Capital for NMVC Companies.

(a) General. Private Capital means the contributed capital of a NMVC Company, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a NMVC Company.

(b) Contributed capital. For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members’ paid-in capital of a LLC NMVC Company, or the partners’ paid-in capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) Exclusions from Private Capital. Private Capital does not include:

(1) Funds borrowed by a NMVC Company from any source.
(2) Funds obtained through the issuance of Leverage.
(3) Funds obtained directly from any Federal agency or department.
(4) Any portion of a commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor’s net worth.
(5) A commitment from an investor if SBA determines that the collectability of the commitment is questionable.

(d) Limitations on including non-cash capital contributions in Private Capital. Private Capital does not include capital contributions in a form other than cash, except as provided in this paragraph (d). Subject to SBA’s prior approval, Private Capital may include payments made on behalf of an Applicant or Conditionally Approved NMVC Company before the Applicant or Conditionally Approved NMVC Company becomes a NMVC Company for organizational expenses and Management Expenses incurred by the Applicant or the Conditionally Approved NMVC Company prior to its becoming a NMVC Company.

(e) Contributions with borrowed funds. You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person’s net worth is at least twice the amount borrowed; or
(2) SBA gives its prior written approval of the capital contribution.