

Small Business Administration

§ 108.470

to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 108.430 Notification to SBA of transactions that may change ownership or Control.

You must promptly notify SBA as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your capital. If there is any doubt as to whether a particular transaction or event will result in such a change, report the facts to SBA.

§ 108.440 Standards governing prior SBA approval for a proposed transfer of Control.

SBA approval is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by SBA. As a condition of approving a proposed transfer of control, SBA may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by SBA; or

(c) Require compliance with any other conditions set by SBA, including compliance with the requirements for minimum capital and management-ownership diversity as in effect at such time for new NMVC Companies.

§ 108.450 Notification to SBA of pledge of NMVC Company's shares.

(a) You must notify SBA in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged are at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 108.400 or § 108.410, as appropriate.

RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE NMVC COMPANIES

§ 108.460 Restrictions on Common Control or ownership of two (or more) NMVC Companies.

Without SBA's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another NMVC Company; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another NMVC Company.

CHANGE IN STRUCTURE OF NMVC COMPANY

§ 108.470 SBA approval of merger, consolidation, or reorganization of NMVC Company.

You may not merge, consolidate, change form of organization (corporation or partnership) or reorganize without SBA's prior written approval. Any such merger or consolidation will be subject to § 108.440.