

**GUIDELINES FOR CERTIFICATION AS A MINORITY-CONTROLLED COMPANY
UNDER THE
NMSDC GROWTH INITIATIVE CERTIFICATION PROGRAM**

GENERAL

The NMSDC Growth Initiative Certification Program allows certain minority business enterprises (“MBEs”) to be certified by NMSDC as a Minority-Controlled Company where the MBE (a) has raised or is currently raising equity financing and (b) the equity ownership of the MBE held by minority persons is or will be below 51%.

ELIGIBLE APPLICANTS

To be an “Eligible Applicant” for certification under the Program, a company must be either be:

- A. A NMSDC Certified Applicant, or
- B. A company that has raised or is currently raising a substantial amount of equity financing from a Qualified Program Investor or from a Public Offering where Ethnic-Minority Group Members own or will own less than fifty-one percent (51%) of the company’s outstanding equity.

CERTIFICATION REQUIREMENTS

An Eligible Applicant may be certified as a Minority-Controlled Business under the Program if it meets all the following requirements:

- A. Ethnic-Minority Group Members retain no less than 25% of the Eligible Applicant’s Economic Equity. However, Ethnic-Minority Group Members need only retain a minimum of 20% of the Eligible Applicant’s Economic Equity if a Certified Investment Fund owns or will own all or substantially all of the Eligible Applicant.
 - 1. To meet this requirement the Eligible Applicant must:
 - a. Provide a detailed analysis showing the percentage of the outstanding equity owned by Ethnic-Minority Group Members is no less than twenty-five percent (25%), and
 - b. provide a detailed analysis showing the Ethnic-Minority Group Members would receive a minimum of twenty-five percent (25%) of the proceeds upon a hypothetical sale or liquidation of the Eligible Applicant at its current fair market value accounting for any conversion rights, liquidation preferences, dividend payments, accelerated option vesting, etc.
 - c. Provide detailed analysis showing Ethnic-Minority Group Members own twenty percent (20%) of the outstanding equity and would receive twenty percent (20%) of the proceeds upon its hypothetical sale or liquidation if a Certified Investment Fund owns or will own all or substantially all of the Eligible Applicant.

- B. Ethnic-Minority Group Members maintain day-to-day management and control of the operations of the entity consistent with NMSDC certified MBE status.
- C. Ethnic-Minority Group Members have the voting power to elect or appoint the majority of the Eligible Applicant's Board of Directors.
- D. The Eligible Applicant's Board of Directors must:
 - 1. Have a Chairman that is an Ethnic-Minority Group Member;
 - 2. Have a minimum of 25% of its entire Board of Directors be Ethnic-Minority Group Members that are not Affiliates of the Qualified Program Investor(s); and
 - 3. Be comprised of a majority of (a) Ethnic-Minority Group Members that are not Affiliates of the Qualified Program Investor(s) and (b) Independent Directors

The non-affiliation requirements in 2 and 3 above will not apply if the Qualified Program Investor is either a Certified Investment Fund that owns all or substantially all of the Eligible Applicant or the Eligible Applicant is undertaking a Public Offering.

Independent Directors of an Eligible Applicant that is undertaking a Public Offering or is currently a publicly traded company must meet the requirements of an independent director as set forth by the applicable rules of the stock exchange where the Eligible Applicant's stock is or will be traded.

The NMSDC has the sole authority to make all determinations under these Guidelines and may deny any applicant certification under the Program for any reason and in its sole and absolute discretion.

INVESTMENTS BY CERTIFIED INVESTMENT FUNDS

The following provisions shall apply when a Certified Investment Fund will be an investor in an Eligible Applicant:

- A. Voting Power: In determining the amount of voting power held by Ethnic-Minority Group Members, 100% of the votes attached to the shares owned by a Certified Investment Fund or for which such Certified Investment Fund has voting power shall be deemed votes by Ethnic-Minority Group Members.
- B. Economic Equity: The amount of a Certified Investment Fund's equity ownership that will be deemed owned by Ethnic-Minority Group Member will equal the number of shares owned by the Certified Investment Fund multiplied by the Certified Fund Percentage.

DEFINITIONS

"Accredited Investors" has the meaning as defined in Regulation D under the Securities Act of 1933.

"Affiliate" means any person (A) who, directly or indirectly, owns 25% of the equity or has voting control over such other Person, (B) that is an officer, director, partner, member or employee of such other Person, or (C) either directly or indirectly, controls, is controlled by or under common control with such other Person.

"AUM" means assets under management which shall equal the total market value of the securities that a Person owns or manages including cash.

"Certified Fund Percentage" shall equal the Certified Investment Fund's general partner's carried interest percentage plus the Ethnic-Minority Group Members ownership percentage of the Certified Investment Fund (Certified Fund Percentage = GP Carried Interest % + EMGM ownership %)

"Economic Equity" means equity in an entity that gives the owner a residual claim on the entity's economic assets.

"Ethnic-Minority Group Member" means an individual who is a U.S. citizen and at least 25% of the following: African American, Asian-Indian American, Asian-Pacific American, Hispanic/Latin American, and Native American, as determined by NMSDC. Green card holders/resident aliens/legal permanent residents are not eligible for certification. Documentation to support a claim of ethnicity may be required from the Eligible Applicant.

"Independent Director" means an individual other than an Affiliate of the Eligible Applicant or its Qualified Program Investor(s), or any other individual having a relationship which may interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this provision, "Family Member" means a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone who shares such person's home. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the Eligible Applicant or its Qualified Program Investor(s);

(B) a director who accepted or who has a Family Member who accepted any compensation from the Eligible Applicant in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

- (i) compensation for board or board committee service;
- (ii) compensation paid to a Family Member who is an employee (other than an officer) of the Eligible Applicant; or
- (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Eligible Applicant or its Qualified Program Investor as an officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an officer of, any organization to which the Eligible Applicant made, or from which the Eligible Applicant received, payments for property or services in the current or any of the past three fiscal years that exceed 10% of its' consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

- (i) payments arising solely from investments in the Eligible Applicant's securities; or
- (ii) payments under non-discretionary charitable contribution matching programs.

(E) a director who is, or has a Family Member who is, a current partner of the Eligible Applicant's outside auditor, or was a partner or employee of the Eligible Applicant's outside auditor who worked on its audit at any time during any of the past three years.

"Minority-Controlled Company" means an MBE certified under the Program.

"NMSDC Certified Applicant" means an MBE currently certified or previously certified within 1 year of the date of submission of its Program application that is currently raising or has raised equity financing resulting in the equity ownership of Ethnic-Minority Group Members to become less than fifty-one percent (51%) of NMSDC Certified Applicant's outstanding equity.

"Person" means a natural person or company.

"Program" means the NMSDC Growth Initiative Certification Program

Public Offering: means where the public will acquire shares in the Eligible Applicant as a result of the Eligible Applicant's public offering of equity securities and such equity securities are listed on a national exchange or when the Eligible Applicant acquires or merges with a publicly traded company and the Eligible Applicant is the surviving company.

"Qualified Program Investor" shall include each of the following types of investors that meet the specified requirements set forth below and are approved by NMSDC:

Angel Investment Group: an entity that invests in early-stage companies that is: (i) comprised entirely of Accredited Investors (minimum 3 members), (ii) has a demonstrable track record of investing in privately held companies or a member that has such an investing track record, and (iii) has a minimum of \$10 million of AUM.

Certified Investment Fund: an Investment Fund certified by NMSDC

Independent Sponsor: an entity that invests in or acquires companies and raises funds for its transactions on a deal-by-deal basis instead of a pool of committed capital that: (i) has a demonstrable track record of making and exiting investments in privately held companies, and (ii) has a minimum of \$25 million of AUM.

Investment Fund: an entity that: (i) is in the business of making equity investments (not managing businesses), (ii) has a minimum of \$25 million of AUM, (iii) has at least 30% of its capital owned and controlled by three (3) persons unaffiliated with the fund's management and unaffiliated with each other, and (iv) has a general partner that consists of at least 2 individuals, or a corporation, partnership, LLC or a combination thereof.

Family Office: an entity that: (i) provides wealth management and concierge services directly to a family, (ii) has a limited number of families for which it provides wealth management services, (iii) does not hold itself out to the public as an investment advisor, (iv) has a demonstrable track record of making and exiting investments in privately held companies, and (v) has a minimum of \$10 million of AUM for each family for which it provides wealth management services.

Foreign Operating Company: an entity that (i) is organized outside of the U.S., (ii) is headquartered, generates at least 75% of its revenue outside the U.S., (iii) has revenue of at least \$250 million (U.S.) and (iv) either:

- (A) Is not in the same industry as the Eligible Applicant, or
- (B) If it is in the same industry as the Eligible Applicant, it meets the following criteria:
 - i. The Foreign Operating Company does not have substantial revenues and operations in the same products and services, and
 - ii. The Foreign Operating Company does not have substantial sales in the same geographic markets as the Eligible Applicant.

NMSDC Corporate Member Investment Subsidiary: an entity that is a subsidiary of a national NMSDC corporate member that primarily invests in companies and has a track record of investing in companies and divesting of such portfolio companies.

APPLICATION

- A. Applications for certification and recertification under the Program are submitted to the NMSDC National Office. Program applications are reviewed by a national Growth Initiative Committee to determine if the applicant meets the requirements for certification under the Program.
- B. Applicants that are denied certification may appeal such decision upon filing a written request with the NMSDC National Office within 30 days of notice of the denial of certification. Decisions may only be appealed on the following grounds:
 - 1. Where there has been a Procedural Error in the review process, or
 - 2. Where the decision is based on a Factual Error.

Procedural Error includes any departure from NMSDC policy regarding undeclared or unawareness of conflict of interest or a failure to provide such information to the Growth Initiative Committee.

Factual Error exists where there is compelling evidence the Growth Initiative Committee based its decision not to certify on a conclusion which is contrary to information clearly stated in the application.

- C. A Minority-Controlled Company must submit its application for recertification within the time frame required by NMSDC.

COMPLIANCE

NMSDC reserves the right to review the status of Minority-Controlled Companies at any given time through the Growth Initiative Committee. The Growth Initiative Committee can recommend suspension or termination of the certification, for good cause, of any Minority-Controlled Company at any time. NMSDC will determine the length of any suspension, and whether and under what circumstance a Minority-Controlled Company or its owners, officers and/or affiliates can be permanently banned or can reapply for certification.

The suspension or termination of certification, for good cause, may be necessary under several circumstances including, but not limited to, when a Minority-Controlled Company:

1. no longer meets any of the certification requirements as set forth in these Guidelines;
2. fails or refuses to allow NMSDC representatives access to and/or the opportunity to inspect its' place of business;
3. ceases or intends to cease its business operations;
4. withholds or fails to provide notice to NMSDC within thirty (30) days of any change in circumstance at the Minority-Controlled Company resulting in it no longer meeting all the certification requirements as set forth in these Guidelines;
5. submits false or misleading information to the NMSDC;
6. is charged or convicted of involvement in illegal activity or any of its directors or officers are so charged or convicted, or
7. fails to submit an application for renewal of certification along with required documentation within the timeframe designated by NMSDC.