



Acquiring Companies with Outstanding PPP Loans

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Outline

1. Initial Considerations
2. Recent Guidance
3. Structuring and Drafting Best Practices

Initial Considerations

- Affiliation and the Present Effect Rule
 - “Agreement in Principal”
 - Mandatory SBA review for PPP loans greater than \$2M
- PPP Loan Due Diligence
 - Necessity certification
 - Use of proceeds
 - Documentation and record keeping
 - Accuracy of financial information provided to PPP lender

Recent Guidance

- Change of Ownership
 - At least 20% of the common stock or other ownership interest of a PPP borrower is sold or otherwise transferred;
 - The PPP borrower sells or transfers at least 50% of its assets (measured by fair market value); or
 - A PPP borrower is merged into another entity.
- PPP Lender Consent
 - Review PPP note and other loan documents
 - SBA Form 7(a) Loan Note

Recent Guidance

- No Restrictions if:
 - PPP note is repaid in full; or
 - Loan forgiveness application is completed and (i) SBA has remitted funds to the PPP lender in full satisfaction of the PPP note or (ii) the PPP borrower has repaid any remaining balance on the PPP loan.
- SBA consent not required (asset sales)
 - (i) The PPP borrower completes a forgiveness application reflecting its use of all of the PPP loan proceeds and submits it to the PPP lender and (ii) an interest-bearing escrow account controlled by the PPP lender is established with funds equal to the outstanding PPP loan balance and the escrow funds are first disbursed to repay any remaining PPP loan balance, plus interest, after the forgiveness application process is complete.

Recent Guidance

- SBA consent not required (equity sale)
 - The sale or transfer is of 50% or less of the ownership interest of the PPP borrower; or
 - (i) The PPP borrower completes a forgiveness application reflecting its use of all of the PPP loan proceeds and submits it to the PPP lender and (ii) an interest-bearing escrow account controlled by the PPP lender is established with funds equal to the outstanding PPP loan balance and the escrow funds are first disbursed to repay any remaining PPP loan balance, plus interest, after the forgiveness application process is complete.

Recent Guidance

- SBA consent is required
 - Does not meet the conditions for a change of ownership without SBA consent for equity or asset sales
 - Submit a request that includes:
 - The reason the PPP borrower cannot fully satisfy the PPP note or escrow funds as required to avoid needing SBA consent;
 - Details of the requested transaction;
 - A copy of the executed PPP note;
 - Any letter of intent and the purchase or sale agreement;
 - Disclosure of whether the buyer has an existing PPP loan (and the loan number thereof); and
 - A list of all 20% owners of the buyer.
 - SBA review will be completed and a determination issued within 60 calendar days.

Structuring and Drafting Best Practices

- Purchase Price Adjustment
- Escrow
- Covenants
 - Use of PPP Loan Proceeds
 - Forgiveness Application, Audit and Appeal
 - Further assurances
- Reps and Warranties
 - Loan Application and Certification
- Indemnification
 - Unforgiven debt
 - Audit
 - Civil and criminal penalties

Speakers - Biographies



Bryan P. Bylica, Partner (Chicago, IL)

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Bryan focuses on private equity and venture capital transactions, mergers and acquisitions, and securities and corporate finance. He routinely works with independent sponsors and capital providers, including family offices, in all levels of the capital stack to put together lower middle market deals across a breadth of industries.

He also advises emerging-growth and early-stage companies, particularly in the technology space, as they work to advance their business objectives and goals. Bryan works to provide value beyond just legal services by opening doors for clients through thoughtful introductions and networking opportunities.

He has significant experience representing Small Business Investment Companies (SBIC Funds) and Rural Business Investment Companies (RBIC Funds). He also regularly represents institutional investors, pension plans, and endowments making private equity, venture capital, and hedge fund investments.

A full professional profile can be found [here](#).



Mark A. Kromkowski, Partner (Chicago, IL)

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Mark has represented investment funds and portfolio companies in all types of private equity and corporate MA transactions. He also has extensive experience counseling fund managers in all aspects of fund formation and administration.

He has developed a substantial practice in the areas of complex financings, mergers and acquisitions, and general corporate representation for private and public companies. He also represents regional and national banks in connection with private equity subscription lines of credit and related credit facilities.

He is among a small group of lawyers in the United States who have significant transactional and regulatory experience with Small Business Investment Companies (SBIC Funds) and Rural Business Investment Companies (RBIC Funds). Mark is the chairman of the firm's fund formation, SBIC practice and the community and regional banking industry team.

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Questions or Comments?

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Join us for our upcoming webinars:

Mezzanine Lenders: Navigating an Insolvent Borrower
November 4 | 12:00 pm – 1:00 pm ET

Managing Your Fund Through Uncertain Times
November 12 | 12:00 pm – 1:00 pm ET

