94-457 FINANCE AUTHORITY OF MAINE

Chapter 307: MAINE SEED CAPITAL TAX CREDIT PROGRAM

Summary: This rule establishes the procedures and standards applicable to the Maine Seed Capital Tax Credit Program, pursuant to which the Authority may authorize tax credits to investors in an amount not more than 40% of the amount of cash actually invested by that investor in an eligible Maine business or in an eligible private venture capital fund for investment in other eligible Maine businesses in any calendar year. Total aggregate investments eligible for tax credit certificates may not exceed $3,500,000 for any one eligible business, and no more than $2,000,000 for any one business in any calendar year. Investors under the Program make their own investment decisions. The issuance of a certificate by the Authority does not imply approval or endorsement of the business or the prudence of the investment. Copies of referenced statutes are available upon request.

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1. Definitions

A. "At-risk" means that the repayment of an investment is entirely dependent upon the success of the business operations.

B. "Authority" means the Finance Authority of Maine.

C. "Business" means a business meeting the applicable eligibility criteria of Section 3, in which an investor proposes to make an investment.

D. "Certificate" means a tax credit certificate issued by the Authority in accordance with this rule.

E. "Chief Executive Officer" means the Chief Executive Officer of the Finance Authority of Maine, or a person acting under the supervisory control of the Chief Executive Officer.

E-1. “Extraordinary Labor Event” means a sudden and significant change in employment in an area, on account of, among other things, a business closure or employee layoff, closure of a military base through a base closure and realignment commission process, increase in population, or other like, but out-of-the-ordinary, occurrences, as determined by the Chief Executive Officer.

E-2. “Flow-Through Entity” means a distinct private legal entity that is treated for federal tax purposes as a flow-through entity, such that the entity itself is not taxed, but income or loss is passed through to the owners of the entity in proportion to their percentage of ownership in the entity, or as provided in the entity’s organizational documents. Such entities may include, but are not limited to, S Corporations, limited liability companies, partnerships, and certain trusts. For the purposes of this rule, Private Venture Capital Funds shall not be treated as flow-through entities unless they so elect, in which case they shall be eligible only for non-refundable tax credits at the 60% level for investments prior to January 1, 2014, at the 50% level for investments made on or after January 1, 2014 and before April 1, 2020, and at the 40% level for investments made on or after April 1, 2020.

F. "Fund” means each distinct private legal entity organized for the purpose of combining monies from two or more unrelated parties to be used to make equity or equity-like investments in businesses unrelated to such entity, in which an investor proposes to make an investment. This definition applies only to investments made prior to January 1, 2012.

G. "Gross sales" means amounts received or to be received from the sale of goods or services in the ordinary course of business.

G-1. “High unemployment area” means a Labor Market Area (as defined by the Maine Department of Labor), which has an average unemployment rate greater than the average unemployment rate for the State as determined by the Maine Department of Labor, such status to be determined annually by the Chief Executive Officer based on the unemployment determinations made for the twelve months ending the preceding October, to be effective for the next succeeding calendar year.

In addition to the foregoing: (1) the Chief Executive Officer may add Labor Market Areas to the list of high unemployment areas when an extraordinary labor event in such area has caused the unemployment rate for such area to increase significantly to a rate above then current State average, all as determined by the Chief Executive Officer. For a business to be considered to be located in a high unemployment area, the business must have its sole location in such an area, or, for businesses with more than one location, the business must establish to the satisfaction of the Authority, that the investment for which a credit is sought is to be used almost exclusively in connection with its location in a high unemployment area. Whether a business is located in a high unemployment area shall be determined as of the date of the applicable investor’s application, provided however, that if the Labor Market Area in which the business is located is added to the list of high unemployment areas in connection with an extraordinary labor event as set forth above, after the date the investor’s application is received but prior to the issuance of the investor’s credit, then the business shall be considered to be in the high unemployment area for the purposes of that investor’s application; and (2) the footprint of a former United States military installation in the State that is closed pursuant to a base closure and realignment commission process shall be considered a “high unemployment area” for a period of 10 years commencing on the date that the real estate on the former base is transferred to a redevelopment authority or similar entity. This definition applies only to investments made prior to January 1, 2012.

H. "Investment" means a transaction in which an eligible business or eligible fund or private venture capital fund receives cash from an eligible investor for business purposes authorized under the applicable provisions of Section 3, 3-A or 3-B of this rule, and includes loans.

I. "Investor" means an individual, partnership, trust, limited liability company, corporation or other legal business entity, and includes a prospective investor where the context requires. In the case of entities treated as flow-through entities for tax purposes, the individual shareholders, members, partners or beneficiaries shall be treated as the investors under this rule.

J. "Members" means the members of the Finance Authority of Maine.

K. "Natural resource enterprise" shall have the meaning given that term in 10 M.R.S.A. §963-A(41), which includes agricultural, forestry and fishing enterprises but does not include selling of food at wholesale or retail except when that selling is carried out as part of the natural resource enterprise.

L. "Principal owners" means one or more persons who control the business, whether by owning an aggregate of 50% or more of the business, by holding any ownership interests in the business and being directly involved in the day-to-day management of a business as a full-time professional activity, or otherwise, all as determined by the Chief Executive Officer. For investments made prior to January 1, 2012, to the extent the principal owners do not collectively own 50% or more of the business, the business must designate additional holders of ownership interests in the business who, when aggregated with the principal owners, own a total of at least 50% of the business, which such designated holders of interests shall not participate in the program.

L-1. “Private Venture Capital Fund” means a professionally managed pool of capital organized to make equity or equity-like investments in multiple unrelated private companies using capital derived from multiple limited partners or members, at least half of which, measured in dollar commitments, are unaffiliated and unrelated, and includes any venture capital fund licensed by the U.S. Small Business Administration. Funds organized to invest in a single company are not eligible unless part of a related group of funds under common management, with more than 50% of the fund investors in such fund having invested in one or more related funds. A Private Venture Capital Fund may but need not be a Fund as defined in this Rule. This definition applies only to investments made on or after January 1, 2012.

L-3 “Professionally managed” when referring to a Private Venture Capital Fund, shall mean independent management, by individuals with fund management experience, and with investment management discretion and authority, reasonably compensated for their services.

M. "Program" means the Maine Seed Capital Tax Credit Program governed by this rule.

N. “Value-Added” means an enhancement to a product or service that increases the value or marketability of the product or service.

2. Application Procedures

A. An investor and the business, flow-through entity, Private Venture Capital Fund or fund into which the investor proposes to make an investment, shall submit an application which complies with the requirements of this rule on such forms as may be required by the Chief Executive Officer.

B. The Chief Executive Officer shall be responsible for making application forms available and assisting investors, businesses, flow-through entities, Private Venture Capital Funds and funds in preparing applications.

C. No application will be considered complete unless substantially all questions are answered and all supporting information is provided.

D. The application shall include general information identifying and describing the business, flow-through entity, Private Venture Capital Fund or fund, the amount, source and purpose of the investment, and terms and conditions of the investment. The application shall contain such provisions as the Chief Executive Officer may require releasing the Authority from any suits or claims arising out of the investment. In the case of businesses with more than 10 employees, the application shall also include an employment plan on a form provided by the Chief Executive Officer. The business, Private Venture Capital Fund or fund must certify that it is in compliance with all federal and State laws, including securities laws and regulations. The application shall also include such additional information and documentation as the Chief Executive Officer may require.

E. The application of a business shall include a nonrefundable $750 application fee.

F. The application of an investor (including an investor investing through a flow-through entity) shall include a nonrefundable $350 application fee.

G. The application of a fund or Private Venture Capital Fund shall include a non-refundable $650 application fee.

H. Investment applications must be filed with the Authority before the investment is made, or within 90 days thereafter. The investor must certify that it was aware of the Program and the Business' participation in Program prior to the investment, and that the Program was a material factor in its investment decision.

3. Eligibility – Direct Investments in Eligible Businesses

A. To be eligible under the Program, each business in which an investment is made must meet the following criteria:

1. The business must be a for-profit enterprise located within the State of Maine, which is:

(a) a manufacturer, as determined by the Chief Executive Officer;

i. a business shall not be considered a manufacturer unless the goods are manufactured in Maine, by the business's employees or under contract by an independent contractor located in Maine by its Maine employees.

(b) a seller of goods or a provider of services, 60% or more of the customers of which are located or are from out of the State and the employment functions are carried out predominantly within the State, as determined by the CEO;

i. a business shall not be considered a qualified seller of goods or provider of services, if the goods to be sold are not produced in Maine (for sellers of goods) or if the services are not rendered predominantly by Maine resident employees or contractors (for service providers).

(c) engaged in the development or application of advanced technologies, as determined by the CEO;

(d) a value-added natural resource enterprise, as determined by the CEO; or

(e) certified as a visual media production company under 5 M.R.S.A. §13090-L.

2. The business receiving the investment must have annual gross sales of $5,000,000 or less as of the date the application is received, as determined by the Chief Executive Officer based on the business's most recent annual financial statements, as well as its most recently available internally prepared interim statements.

3. The principal owners of the business must be one or more individuals and the operation of the business must be a substantial professional activity of at least one of the principal owners. The principal owners and their spouses are not eligible for a credit for investment in that business. The principal owner's parents, brothers, sisters and children (and their spouses) are not eligible for a credit for investment in that business if they have any existing ownership in that business. Investors may participate in the operation of the business on a part time basis.

4. The business must be formed as a corporation, partnership, limited liability company, joint venture, or other legal business entity, and, if applicable, must be in good standing and authorized to do business in the State of Maine.

5. The business must be a Maine-based business. In determining whether a business is a Maine-based business, the authority will consider:

(a) Whether the business maintains a dedicated, independent physical presence in Maine;

(b) Whether a majority of employees of the business are residents of Maine;

(c) Whether a senior level officer of the business is a Maine resident, and either (i) more employees of the business reside in Maine than in any other single state; or (ii) the business has significant vendor relationships with companies located in Maine; and/or

(d) Whether the business otherwise demonstrates a significant economic impact in Maine, as determined by the Chief Executive Officer.

B. To be eligible under the Program, each investment must meet the following criteria:

1. The investment must be at-risk in the business and may not be secured by a lien on business assets or a personal guaranty of any principal owner. The investment must be provided to and used by the business for acquisition, improvement, or maintenance of real property or fixed assets, research and development or working capital, and not for repayment of equity investment. Other uses may be approved by the Chief Executive Officer on a case-by-case basis provided that

the use is consistent with the purposes of the Program and is not intended to utilize the tax credit without a bona fide, corresponding benefit to the business.

2. The investment must be made under an agreement whereby the investment may not be repaid to the investor during the five-year period beginning on the date the cash is received by the business, unless circumstances, such as the sale of the business, result in significant change in ownership or operations of the business, as determined in the discretion of the Chief Executive Officer. Any early repayment must be approved in advance by the Chief Executive Officer. The investor may receive a reasonable return on the investment from the business in the form of royalties, stock or other ownership interests, options or warrants for additional ownership interests, interest, dividends, distributions or other form of return not intended to be a repayment of principal during the five-year period. Whether and the extent to which any such return may be paid by the business shall be determined in the sole discretion of the Chief Executive Officer prior to the payment of any return. Nothing in this paragraph is intended to limit the ability of the applicant to sell or transfer his or her interest in the enterprise or investment to another person or entity (other than the business itself or a principal owner), at any time, provided prior written notice is given to the Authority, together with a signed acknowledgement by both the transferor and the transferee that the investment remains subject to the limitations of this Rule, and provided further that the Authority finds that the intent of the transfer is not the avoidance of the limitations of the Program.

3. For investments made prior to January 1. 2012, the investment may not result in the investor, in conjunction with any other investors participating in the Program, owning 50% or more of the business in which the investment is made. For investments made on or after January 1, 2012, the investment may not result in the investor who applies for a tax credit owning 50% or more of the business in which the investment is made. For the purposes of this limitation, an investor's ownership interest in an eligible business shall include all interests held in the investor's personal name, and a pro rata share of all interests held jointly with other individuals or entities, or held by another legal entity in which the investor has an interest, including a private venture capital fund. Nothing in this subsection shall preclude an investor or private venture capital fund from making a later investment that results in its ownership interest equaling or exceeding 50% of an eligible business, so long as (i) neither the investor nor the private venture capital fund applies for a Program tax credit for such later investment, and (ii) there was no intent by the investor or the private venture capital fund to take such additional interests at the time of the original investment for which it received a Program tax credit.

4. The business must certify, for each investment, that the amount of the investment is necessary to allow the business to create or retain jobs in the State.

5. The eligible business must maintain its status as a Maine business (as determined under section 3(A)(5), and not move substantially all its operations and/or assets outside the State during the four-year period commencing on the date of an investment which is the subject of a tax credit, except in the case of an arm's length, fair value acquisition approved by the Authority, which approval may be contingent on a partial revocation, as determined by the Authority. The Authority may revoke in whole or in part credits issued for investments in such a

business that fails to comply with this requirement.

3-A Eligibility - Investments into Funds Prior to January 1, 2012 and Investments through Flow-Through Entities

Investments by investors in funds prior to January 1, 2012 and in flow-through entities will be eligible under the Program, provided each of the following criteria is met:

A. The amount invested by the fund or flow-through entity in an eligible business (as defined in Section 3 (A)) must be equal to or greater than the amount of the investment in the fund or flow-through entity that is the basis for receiving the tax credit. Except as provided in subparagraph (F) of this Section 3-A, tax credits for investments in funds will not be issued until the fund's investment in such business(es) is (are) made.

B. Each investment received by a business from the fund or flow-through entity must be expended by such business for the purposes allowed in Section 3(B)(1), and must be certified as required by Section 3(B)(4).

C. Both the investor's investment in the fund or flow-through entity, and the fund's or flow-through entity's investment in an eligible business must be at risk, and neither investment may be secured by a lien on business, flow-through entity or fund assets or a personal guaranty of any principal owner of an eligible business.

D. The investor's investment in a fund or flow-through entity must be made under an agreement whereby the investment is subject to loss in its entirety, and may not have unilateral "put" rights during the five-year period beginning on the date the cash is received by the fund or flow-through entity. The investment by the fund or flow-through entity in any eligible business shall be governed by Section 3(B)(2), with the fund or flow-through entity being treated as the investor. Nothing in this paragraph is intended to limit the ability of the applicant to sell or transfer his or her interest in the fund or flow-through entity to another person or entity (other than the fund or flow-through entity itself, a business in which the fund or flow-through entity has invested and sought a credit for, or a principal owner thereof), or to limit the ability of the fund or flow-through entity to transfer its interest in the enterprise to another person or entity (other than a business in which the fund or flow-through entity has invested, which investment was the basis for a credit, or a principal owner thereof), at any time, provided prior written notice is given to the Authority, together with a signed acknowledgement by both the transferor and the transferee that the investment remains subject to the limitations of this Rule, and provided further that the Authority finds that the intent of the transfer is not the avoidance of the limitations of the Program.

E. For investments made prior to January 1. 2012, investors applying for a credit under the Program may not own 50% or more (collectively) in any eligible business receiving an investment from the fund, which investment is the subject of an application for a Program tax credit. For investments made on or after January 1, 2012, the investment may not result in the investor who applies for a tax credit owning 50% or more of the business in which the investment is made. For the purposes of this limitation, an investor's ownership interest in an eligible business shall include all interests held in the investor's personal name, and a pro rata share of all interests held jointly with other individuals or

entities, or held by another legal entity in which the investor has an interest, including a fund, flow-through entity or private venture capital fund. Nothing in this subsection shall preclude an investor from making a later investment that results in its ownership interest equaling or exceeding 50% of an eligible business, so long as (i) the investor does not apply for a Program tax credit for such later investment, and (ii) there was no intent by the investor to take such additional interests at the time of the original investment for which it received a Program tax credit.

F. Notwithstanding the provisions of Section 3-A(A), for money invested in or unconditionally committed (as determined in the discretion of the Chief Executive Officer) to eligible funds after August 11, 2000, but prior to January 1, 2012, where the application is made prior to the investment of funds by the investor into the fund and/or the fund's investment of such sums in an eligible business, the applicable fund investors may receive a tax credit certificate for up to 20% of the investment for which the investor would be eligible had the funds been invested in the fund, and in turn invested by the fund in an eligible business, provided the following conditions are met:

1. The fund is located in Maine;

2. The fund is owned and controlled primarily by residents of the State of Maine;

3. The fund has demonstrated to the satisfaction of the Authority that it has as a major investment objective, the investment in eligible businesses;

4. The investor in fact makes the full Investment in the fund; and

5. The fund in fact invests an amount equal to or greater than the amount of the investment in one or more eligible businesses.

A certificate for 20% of the investment will be issued after fulfillment of conditions 1, 2 and 3 above, assuming the fund and the prospective investment are otherwise eligible under this rule. A certificate for the remainder of the credit (or so much thereof as the investor is found eligible) will not be issued until fulfillment of conditions 4 and 5 above, so long as the fund and the investment are otherwise eligible under this rule, and provided credits remain available at such time. To the extent the fund or the investor complies with conditions 4 and 5 above, but in an amount less than the full investment as originally described, the second certificate will be issued based on the actual amount of the credit for which the investor is eligible, less the amount of credit listed on the first certificate.

Any credit awarded under this subparagraph F, prior to an investment being made in an eligible fund or in turn invested by such fund in an eligible business, will be automatically revoked by the Authority three (3) years after issued, to the extent that on or before such date the fund or the investor has not provided to the Authority evidence satisfactory to the Authority that conditions 4 and 5 above have been met. Nothing herein shall preclude an investor from receiving a credit, to the extent available, once all eligibility requirements have been met.

3-B Eligibility - Investments into Private Venture Capital Funds on or after January 1, 2012

Investments by investors made on or after January 1, 2012 in private venture capital funds will also be eligible under the Program, provided each of the following criteria is met, and to the extent applicable and required by the Authority, continues to be met under continuing certifications or agreements:

A. The amount invested by the private venture capital fund in an eligible business (as defined in Section 3(A)) must be equal to or greater than the amount of the investment in the private venture capital fund that is receiving the tax credit. Tax credits will not be issued until the private venture capital fund's investment in such business(es) is (are) made.

B. Each investment received by a business from the private venture capital fund must be expended by such business for the purposes allowed in Section 3(B)(1), and must be certified as required by Section 3(B)(4).

C. Both the investor's investment in the private venture capital fund and the private venture capital fund's investment in an eligible business must be at risk, and neither investment may be secured by a lien on business or private venture capital fund assets or a personal guaranty of any principal owner of an eligible business.

D. The investor's investment in a private venture capital fund must be made under an agreement whereby the investment is subject to loss in its entirety, and may not have unilateral "put" rights during the five-year period beginning on the date the cash is received by the private venture capital fund. The investment by the private venture capital fund in any eligible business shall be governed by Section 3(B)(2), with the private venture capital fund being treated as the investor. Nothing in this paragraph is intended to limit the ability of the applicant to sell or transfer his or her interest in the private venture capital fund to another person or entity (other than the private venture capital fund itself, a business in which the fund has invested and sought a credit for, or a principal owner thereof), or to limit the ability of the private venture capital fund to transfer its interest in the enterprise to another person or entity (other than a business in which the private venture capital fund has invested, which investment was the basis for a credit, or a principal owner thereof), at any time, provided prior written notice is given to the Authority, together with a signed acknowledgement by both the transferor and the transferee that the investment remains subject to the limitations of this Rule, and provided further that the Authority finds that the intent of the transfer is not the avoidance of the limitations of the Program.

E. No investor in a private venture capital fund seeking a tax credit may own 50% or more of any eligible business receiving an investment from the private venture capital fund, which investment is the subject of an application for a Program tax credits. No private venture capital fund seeking a tax credit may own in excess of 50% of any eligible business receiving an investment from the private venture capital fund, which investment is the subject of an application for Program tax credits. For the purposes of this limitation, an investor's ownership interest in an eligible business shall include all interests held in the investor's personal name, and a pro rata share of all interests held jointly with other individuals or entities or held by another legal entity in which the investor has an interest, including the private venture capital fund, and a private venture capital fund's ownership interest shall include those interests held in its name as well as those held by or attributed to (under the language of this subsection) any of its investors. Nothing in this subsection shall preclude an investor or private venture capital fund from making a later investment that results in its ownership interest equaling or exceeding 50%

of an eligible business, so long as (i) neither the investor nor the private venture capital fund applies for a Program tax credit for such later investment, and (ii) there was no intent by the investor or the private venture capital fund to take such additional interests at the time of the original investment for which it received a Program tax credit.

F. No member, shareholder, equity owner, beneficiary or partner in the private venture capital fund is a principal owner in any business in which the private venture capital fund invests and seeks a tax credit.

G. i. The business must be a Maine business, as determined under section 3(A)(5); and

ii. The eligible business in which the private venture capital fund invests and seeks a credit must maintain its status as a Maine business, as determined under section 3(A)(5), and not move substantially all its operations and/or assets outside the State during the four year period commencing on the date of an investment which is the subject of a tax credit, except in the case of an arm's length, fair value acquisition approved by the Authority, which approval may be contingent on a partial revocation, as determined by the Authority. The Authority may revoke in whole or in part credits issued for investments in such a business that fails to comply with this requirement.

H. The private venture capital fund did not receive a partial Program credit under Section 3-A(F) for the investment in question.

4. Issuance of Certificates

The Chief Executive Officer shall administer the program and may issue certificates upon a determination that the requirements of this rule are met, subject to the following limitations:

A. Subject to Section 3-A(F), a certificate may be issued in an amount not more than 30% of the amount of cash actually invested in the business or fund for any investment made in a business prior to July 1, 2000; not more than 40% for investments made after July 1, 2000 (August 11, 2000 for investments in funds) but prior to July 1, 2002; not more than 60% of the amount of cash actually invested after July 1, 2002 but before January 1, 2012 in a business located in an high unemployment area; not more than 40% of the amount of cash actually invested after July 1, 2002 but before January 1, 2012 in all other businesses; not more than 60% for all investments in eligible businesses (including investments made through flow-through entities, but not including investments via a private venture capital fund) on or after January 1, 2012 but before January 1, 2014; not more than 50% for all investments in eligible businesses via a private venture capital fund on or after January 1, 2012 but before April 1, 2020; not more than 50% for all investments made by investors other than private venture capital fund on or after January 1, 2014 but before April 1, 2020; and not more than 40% for all investments made on or after April 1, 2020.

B. An investor may apply for a tax credit for an investment of no more than an aggregate of $500,000 in any one business (whether directly or via a flow-through entity, fund or private venture capital fund) in any consecutive three (3) - year period, provided that the investor may invest more than $500,000 in the business or fund in any consecutive three (3) - year period, but shall not be entitled to a certificate with respect to any investment in excess of an aggregate of $500,000 in such period. A private venture capital fund applying for a tax credit shall be limited to a $500,000 maximum total investment per

company in any consecutive three (3) - year period, unless it certifies that it is a flow-through entity (as defined in section 1(E-2) of this rule, but without giving effect to the last sentence of such section), that the aggregate investment of such private venture capital fund when divided by the number of members, partners, stockholders, equity owners or beneficiaries, results in a number which is $500,000 or less, that no such parties shall be distributed credits or the benefits of credits attributable to more than $500,000 per company, and that no more than $3,500,000 of investments made in any eligible company by a private venture capital fund shall be entitled to credits. No investor is entitled to a certificate for an investment already made in any business or fund prior to the date an application or notice that an application is being prepared is received by the Authority.

C. Certificates issued with respect to investments in any one business may not exceed an aggregate of $3,500,000 in investment(s), regardless of whether said investments are made directly or via a fund, flow-through entity or Private Venture Capital Fund. Certificates issued with respect to investments in any one business may not exceed $2,000,000 in investment for any calendar year.

D. Except as provided below for applications attributable to certain 2014 and 2015 investments made by certain funds, applications will be processed in the order received. The Authority will not issue certificates aggregating more than the amount of tax credit certificates authorized by applicable law. Applications received on the same day shall, if approved, be awarded credits on a pro rata basis if there are insufficient credits remaining available to award the full amount requested to all approved applications received on such day. Beginning on January 1, 2014, only investments made in a calendar year are eligible for credits authorized for such year, provided however, for credits authorized for calendar year 2014, only investments made on or after the effective date of PL 2013 Ch. 438 (the "2014 Effective Date"), but on or before December 31, 2014 shall be eligible for credits for such year, unless such investments are made by a fund that received a partial Program credit under Section 3-A(F) prior to January 1, 2014 ("Grandfathered Funds"), in which case the investment can be made at any time during calendar year 2014. For credits authorized for calendar year 2014 and calendar year 2015, Grandfathered Funds shall have priority for the remainder of their Program credit over all other applications for credits for such year. $310,000 of credits authorized for 2014 shall be reserved for Grandfathered Funds by the Authority, with the reserved amounts being available first to Grandfathered Funds that meet all the requirements of this Rule, and who provide proof of required investments to the Authority within 30 days of the investment. The reserved amount for 2014 shall be reduced by any credits awarded to such Grandfathered Funds on or after January 1, 2014, and absent proof of eligible 2014 investments by such Grandfathered Funds by January 31, 2015, any remainder of the 2014 reservation shall lapse and be available for other eligible 2014 investments, to be awarded on a first-come, first-served basis, provided however, no applications for 2014 credits will be accepted by the Authority other than those of Grandfathered Funds, prior to the 2014 Effective Date. The Authority shall reserve the lesser of (a) $310,000 less the amount of credits awarded to Grandfathered Funds for 2014, or (b) $235,000, for credits authorized for 2015 with the reserved amounts being available first to Grandfathered Funds that meet all the requirements of this Rule, and who provide proof of required investments to the Authority within 30 days of the investment. The reserved amount for 2015 shall be reduced by any credits awarded to such Grandfathered Funds for investments made on or after January 1, 2015, and absent proof of eligible 2015 investments by such Grandfathered Funds by

March 31, 2015, any remainder of the 2015 reservation shall lapse and be available for other eligible 2015 investments, to be awarded on a first come first served basis.

For investors other than Grandfathered Funds, the Authority will accept applications for 2015 tax credits in calendar year 2014 (but following the Effective Date), and will reserve up to $1,000,000 in 2015 tax credits for investments that meet the following criteria: (a) the investment is made in the form of a convertible loan (convertible to equity) funded in 2014; (b) the loan is converted to an eligible equity investment on or after January 1, 2015, and on or before January 31, 2015; (c) proof of the conversion is provided to the Authority on or before February 28, 2015. Completed applications for this specific reservation of 2015 credits will be accepted on a first-come, first-served basis, but will not be deemed complete and will not be considered eligible for a reservation until proof of funding of the convertible loan is provided to the Authority. Any 2015 credits so reserved, but not awarded to investors meeting the requirements of this paragraph shall lapse, and be available to other 2015 investments on a first-come, first-served basis.

E. In no event shall issuance of a certificate be deemed to be an endorsement of the business, flow-through entity or fund receiving the investment or the prudence of the investment, nor shall the Authority be responsible to investors for any losses on such investments. The Authority is not obligated to review the financial or business prospects of any business, flow-through entity or fund or to review or approve any materials used by the business, flow-through entity or fund to solicit investment.

F. With respect to certificates issued on account of investments made by flow-through entities where certificates are requested in the names of the individual owners of the entity and not the name of the flow-through entity, the entity must designate the taxpayer to receive the credit(s) and demonstrate that one of the following is true: (i) the percentage of credits issued or to be issued to such taxpayer, out of the total credits issued on account of the flow-through entity's investment for which the credit is sought, is equal to or less than such taxpayers percentage ownership or rights in the flow-through entity; or (ii) such taxpayer directly contributed to the flow-through entity, for the purpose of making the eligible investment, an amount which would have entitled such taxpayer to receive the credit had such contribution been used as an investment directly in the eligible business. Where separate certificates are issued for one investment in an eligible business via a flow-through entity, each request for a certificate shall be made with a separate application and shall be accompanied by the applicable application fee.

5. Reserved.

6. Effect of Certificates; Conditions; Revocation; Reporting

A. A recipient of a certificate shall be entitled to a tax credit in the amount of the certificate, and such credit must be taken in conformance with the requirements of 36 M.R.S.A. Section 5216-B

B. The Chief Executive Officer may establish conditions on the use of invested monies or repayment terms which conditions are in addition to those established in this rule, if the

Chief Executive Officer determines such conditions are necessary or desirable in order to assure that the purposes of the Program are carried out.

E. The Chief Executive Officer may revoke a certificate if any representation to the Authority in connection with the application for the certificate proves to have been false when made or if the investor violates any conditions established by the Authority and stated in this rule or in the certificate. The revocation may be in full or in part as the Chief Executive Officer may determine, and shall be communicated to the investor and the State Tax Assessor, provided that the investor shall have an opportunity to appeal any revocation to the members prior to notification of the State Tax Assessor.

F. Every business eligible to have investors receive a tax credit under the Program must, for the year its application is approved, and continuing each calendar year thereafter through and including the three (3) years following the year for which the last certificate is issued, report to the Authority the following information if so requested by the Authority: (1) the total amount of private investment received, both those investments qualifying for Program credits and those not qualifying; (2) the total number of employees employed as of December 31; (3) the total number and geographic location of jobs created and retained by the eligible business stated separately for all jobs in the State and for those jobs that would not have been created or retained in the absence of the credit; (4) the total annual payroll of the eligible business stated separately for all employees in the State and for those employees who would not have been employed in the absence of the credit; (5) total sales revenue of the eligible business stated separately within and outside the State; and (6) such other information as the Authority shall request. Such information shall be submitted on a form provided by the Authority and must be received by the deadline set by the Authority. In the event such information is not timely submitted, the Chief Executive Officer may revoke the credits awarded in any one or more of the preceding four (4) years and or may revoke the eligibility of such business to participate in the Program.

G. An investor eligible for a tax credit under this section shall notify the authority when a business that received an investment from that investor eligible for a credit under this section ceases operations and the likely reasons for the cessation of business.

H. The authority shall report annually to the joint standing committee of the Legislature having jurisdiction over taxation matters and to the Office of Program Evaluation and Government Accountability on all activity under this section during the prior calendar year. The authority shall identify in its report businesses receiving investments eligible for a credit under this section and the authority's determination as to whether the investments would have been made in the absence of the credit.

7. Public Information

The names of participating investors and funds, the amount of certificates issued to each investor, the names of businesses benefiting from investments, the nature of the business and the intended use of proceeds shall be public information.

8. Appeal

In the event that an application is rejected in full or in part by the Chief Executive Officer, or in the event that conditions are imposed by the Chief Executive Officer in the certificate, or if the Chief Executive Officer determines that a certificate should be revoked, the investor and the business or fund shall have the right to appeal the Chief Executive Officer's decision to the members of the Authority. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's decision should be reversed shall be given to the Chief Executive Officer in writing within 20 days after the date on which the Chief Executive Officer has mailed the notice of decision to the investor and the business or fund. The appeal shall be heard at a meeting of the members and the investor or a principal owner of the business or principal manager of the fund must be present to support the appeal. The appeal shall be based on the record before the Chief Executive Officer on the date of the decision. If new evidence or information is to be submitted, it should be submitted to the Chief Executive Officer with a request for reconsideration. The decision of the Chief Executive Officer shall be final unless the members determine that it was arbitrary, capricious or an abuse of discretion, in which event the members may reverse the decision and direct the Chief Executive Officer to take such further action as would be consistent with their decision.

9. Waiver of Rule

The Chief Executive Officer may waive any requirements of this rule, except to the extent that the requirement is mandated by statute, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

STATUTORY AUTHORITY: 10 M.R.S.A. c. 110, subchapter 1 §969-A(14); subchapter 9 §1100-T

EFFECTIVE DATE:
August 28, 1988

AMENDED:
May 9, 1992
July 7, 1992 – (Amendment 1)

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 4, 1996

AMENDED:
October 14, 1997 – (Amendment 2)
July 13, 1998 – (Amendment 3)

CORRECTIONS:
August 12, 1998 - 1(H), 3(A)(2), 3-A(A, D)

AMENDED:
September 5, 2000 – (Amendment 4)

NON-SUBSTANTIVE CORRECTION:
February 19, 2001 - corrected latest effective date

AMENDED:

September 17, 2002 – (Amendment 5)
February 13, 2011 – filing 2011-48 (Amendment 6)
January 1, 2012 – filing 2011-479 (Amendment 7)
May 7, 2014 – filing 2014-087 (Amendment 8)
July X, 2020 –filing 2020-XXX (Amendment 9)
_____ ___, 2025—filing 2025-___ (Amendment 10)