

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Rhode Island Commerce Corporation

DIVISION: *(If any)*

RULE IDENTIFIER: 870-RICR-30-00-8

RULE TITLE: Rules and Regulations for the Rhode Island Small Business Development Fund

REASON FOR RULEMAKING: This Rule is being promulgated to enable a small business development fund that seeks to have an equity or debt investment certified as a capital investment and eligible for tax credits under chapter 42-64.33, as passed by the General Assembly during the 2019 legislative session.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: N/A

TESTIMONY AND COMMENTS: Testimony and comments were received from Advantage Capital, Enhanced Capital, Stonehenge Capital, Vibco Vibrators,, Squadlocker, the Economic Progress Institute, and members of the Rhode Island General Assembly.

Capital Investment Commitments: Section 8.6(A)(8)(g) of the proposed Rules (hereafter, the “Rules”) requires a certificate from each Small Business Fund Investor confirming the irrevocable commitment of investment in the Applicant. Comments regarding this requirement assert it should be removed because the statute requires capital investments to be issued within 60 days of certification. The Corporation considers this disclosure an appropriate level of transparency beneficial to the application process and the success of the program. Further, the Corporation notes that this would not be a unique requirement to Rhode Island as the Invest CT tax credit, a

similarly structured tax credit, requires an affidavit by each taxpayer committing an investment of eligible capital at the time of application for certification as a fund under that program.

Affiliate information and investment history: Section 8.7(A)(8) of the Rules requires certain evidence be provided that the Applicant or Affiliates of the Applicant have invested \$100,000,000 in non-public companies. Comments received regarding the affiliate information required in this section of the Rules signify there may be some confusion relative to the required information of affiliates. The Corporation declined to make any changes as a result of this commentary as affiliates are included in the statute as being eligible to provide evidence of their investment history to satisfy the statutory investment threshold.

Definition of revenue impact assessment: Section 8.5(A)(36) of the Rules defines the term “Revenue Impact Assessment.” Parties that filed Comments claimed that the definition is awkward as it allegedly excludes certain instances when an eligible business can receive credit for jobs retained. The Corporation considers this definition necessary to specify the requirements of the Revenue Impact Assessment and the parameters that can be used in the required economic modeling.

Background Checks: Section 8.7(A)(10) of the Rules requires each Applicant to include in its application criminal background checks for all executives and managers. Parties submitting comments indicate the background check should be a consent of the applicant to comply with the background check performed by the Corporation. The Corporation concludes that no change to this provision is necessary as the results of the background check are to be provided to the Corporation by the applicant.

CHANGE TO TEXT OF THE RULE:

The following is a summary of post-comment changes to the rule:

Referral and Refusal Letters: The definitions of the referral and refusal letters are set forth in Sections 8.5(A)(32) and (33) of the Rules respectively. Comments regarding the

Referral and Refusal letters suggest that the requirement that a chief executive officer or equivalent officer of a Depository Institution sign the letter may prove burdensome and challenging to comply with in a timely manner. In consideration of this commentary, section 8.5(A)(32) Referral Letter and 8.5(A)(33) Refusal Letter were modified to remove the requirement the signatory of such a letter be a chief executive officer or equivalent officer.

Letter of Support: Section 8.6(A)(8)(o) of the Rules requires an Applicant to include a letter of support from a governmental unit or political subdivision in its Application. Comments indicated that requiring a letter of support may be overly restrictive. Alternatives were suggested, including allowing applicants to supply names and contact information of regulators with whom they worked with in the past. In consideration of this commentary, section 8.6(A)(8)(o) was amended to require either a letter of support or list of references.

Bonding Requirement: Section 8.6(A)(10) of the Rules sets forth the surety requirement required of an Applicant. Comments indicated that section 8.6(A)(10), as written, would be challenging to comply with, costly, and potentially duplicative of requirements of the statute. Commenters suggested alternatives to the proposed regulation including limiting the period of the bond to years 4, 5, and 6 of the program; limiting the bonding requirement to the difference between revenue impact generated for the state and the amount of tax credits issued to date; and allowing alternatives to a bond such as letter of credit or cash deposit in an escrow account. In consideration of this commentary, section 8.6(A)(10) regarding the filling of a bond or other such surety was amended to provide an alternative to the proposed regulation wherein the Board of the Corporation may permit an applicant to enter into an agreement with the Corporation to provide a bond or other surety in tranches over a period of years with optional measurements or calculations of the required bond.

Global Investment Performance Standards (GIPS): Comments indicated that the GIPS compliance requirement in section 8.7(A)(12) would be challenging for several reasons

including, but not limited to, that the requirement would appear to apply retroactively and the varying standards that the potential Applicants have complied with over time would make it difficult to apply GIPS standards retroactively to an Applicant's historic performance. Commenters also indicated there are other voluntary certifications available. Comments received suggested alternatives including a non-GIPS verification letter or that applicants would willingly agree to manage Rhode Island funds in compliance with GIPS standards. In consideration of this commentary, section 8.7(A) (12) regarding Global Investment Performance Standards was amended to allow the option of GIPS compliance or a non-GIPS investment performance letter to be provided by an independent third-party compliance firm.

Board approval of Applications: Section 8.10(D) of the Rules provides that the Board "may condition approval of an Application in its discretion, including but not limited to, requirements for the ongoing review and approval of proposed Qualified Investments." Comments submitted by parties indicated that this section would prevent funds from raising and immediately deploying capital and that this provision added uncertainty and unpredictability in the process after a funds certification. Additional commentary asserted that this section could add delays to a Applicant's process, jeopardizing the ability of the Applicant to move forward with a proposed investment and recommending the time frame for such an approval to 15 days. After considering these comments, Section 8.10(D) was amended to remove language pertaining to the Board conditioning approval of a fund on requirements including, but not limited to the ongoing review and approval of proposed Qualified Investments for compliance.

Employee information in Reporting Requirements: Comments were received that expressed concern regarding the submission of payroll records and detailed personal information at the time of initial investment and on an ongoing basis. In consideration of these comments, Sections 8.18(A)(6) and (7) and (B)(6) and (7) regarding reporting requirements were amended to broaden the information required to be reported to the Corporation so that it does not contain personally identifiable information.

Definition of Debt Investment: Section 8.5(a)(14) of the Rules defines Debt Investment as “a loan with a term of not less than ten years.” One Commenter recommended removing definition on the grounds that a term of ten years does not make sense if the Applicant is eligible to request an exit after the end of six years. In response to commentary received, Section 8.5(a)(14) was amended to change the minimum length of a debt investment to six years.

Definition of eligible business: The definition of an “Eligible Business” in section 8.5(A)(16) means a business that, at the time of the initial Qualifying Investment in the company, “maintains its Principal Business Operations in the State during the term of the Qualifying Investment to such business .” Comments received indicated that the definition is overly burdensome as it creates an ongoing standard that the principal business operation is in the state for the time period of the qualified investment. The Corporation has determined that this definition is integral to the goal of the program to provide funding for small businesses in Rhode Island and the eligible business is expected to maintain its principal business operations in the state as provided in this section. In response to the commentary received, section 8.5(A)(16) was divided into a subsection (a) and (b) to provide definitional clarity.

REGULATORY ANALYSIS:

A regulatory analysis required under §42-35-2.9 was prepared. In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

These proposed amendments do not impact small businesses.