

MAINE STATE LEGISLATURE

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The Small Enterprise Growth Fund Program

1999 Annual Report to the Maine Legislature

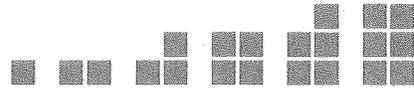
**Prepared for Presentation to the Joint Standing
Committee on Business and Economic Development**

March 2, 2000

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small enterprise growth fund



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March 8, 2000

Joint Standing Committee on Business & Economic Development

RE: The Annual Report of the Small Enterprise Growth Board

Dear Committee Members:

We are very pleased to provide you with the Annual Report for the Small Enterprise Growth Board. This is the third year since the Fund's inception. We are very proud of our accomplishments to date and we are positive about our future prospects.

You will note that we have invested in several companies and that some of these are doing exceptionally well. For example, EnvisioNet Computer Services Inc. had 30 employees when the Enterprise Growth Board first invested. The Company now has over 1,000 employees and is expected to add significantly to that number. There are several other companies that are also showing excellent rates of growth as well. However, as expected, not all of our companies have fared as well. Some of our portfolio companies are experiencing financial problems and some have actually failed. This speaks to the risk involved with investing in early stage companies. On balance, however, the Fund is providing significant benefits to the State of Maine.

I look forward to meeting with you and to discussing this report in the near future and to answering any questions that you may have regarding the Small Enterprise Growth Fund.

Sincerely,

A handwritten signature in black ink that reads "Rand N. Stowell". The signature is written in a cursive style with a large initial "R".

Rand N. Stowell
Chairman, Small Enterprise Growth Fund Board

I. Introduction

It is often difficult for early stage companies to access financing to support growth. The difficulty arises from the risk associated with investments in young companies and types of funding sources typically available to such companies. In Maine, as in other states, there are few institutional sources of funds for companies seeking less than \$500,000 in equity; friends, family and private investors typically fill this need. Banks will not typically lend to early stage companies that have little or no sales revenue and lack collateral to sufficiently secure the loan.

The Small Enterprise Growth Program was created by the Maine Legislature in April 1996 when it enacted PL1995, Chapter 699, "An Act to Create the Small Enterprise Growth Program". The enabling legislation was then amended in the past legislative session by PL1999, Chapter 504 (see Appendix A). The law created the Small Enterprise Growth Fund ("the Fund") which provides capital to small Maine businesses that show potential for high growth and public benefit.

The Fund was capitalized with \$5,000,000 from State issued general obligation bonds approved by voter referendum in November 1996. Currently, the maximum investment is \$500,000 per company.

The Small Enterprise Growth Board ("the Board") oversees the Fund. The Board establishes rules for its operation, approves or denies applications for investments from the Fund, and monitors investments.

The Fund balance is deposited with the Finance Authority of Maine, which administers the accounting for the Fund. The Authority has also been engaged by the Board to provide support for the program with outreach, application processing, record keeping, legal advice and investment monitoring.

II. FUND HIGHLIGHTS

DETAIL OF INVESTMENTS CAN BE VIEWED ON EXHIBIT B

ACTIVITY SINCE FUND INCEPTION THROUGH February 1, 2000:

Total # of Investment Requests	85
Total # Funded	10
Total # Approved, pending funding	2
Percentage of Requests Funded/Approved	14%

NUMBER OF DIRECT EMPLOYEES RETAINED/CREATED:

At Investment Total # of Employees	190
# of Employees as of 2/2000	1,266
Current Percentage of Growth since Investment	566%
# of Employees Projected 12/2000	2,215

KEY FINANCIAL RATIOS:

	FYE 6/30/98	FYE 6/30/99	YTD11/30/99
Investment/Interest Income	209,241	269,311	102,413
Annual Expenses	(71,248)	(65,507)	(42,762)
Provision for losses	(180,345)	(356,878)	(33,610)
Net Gain (Loss)	(42,352)	(153,074)	26,040
Notes Receivable, net of loss provisions	267,521	779,421	1,087,503

Investments are carried at the original investment amount.

The majority of the investments contain a provision enabling the Fund to acquire an equity interest in the business through a warrant to purchase common stock of the enterprise at a set price in the future. The Fund has not assigned any value to the warrants at this time. Since the 1999 passage of the amending legislation authorizing the Fund to obtain an immediate equity interest in a company, the Board has obtained a preferred stock position in portfolio companies. The Fund has not assigned any market value to the preferred stock positions at this time.

III. Current Status of the Fund

Since the Board reviewed its first Stage 1 applications at its July 7, 1997 meeting, it has closed on eleven investments to ten companies. The Board has approved additional investments to two new companies and a follow-on investment in an existing portfolio company (see Appendix B).

Of the \$2,200,000 of total investments closed to date, the fund has experienced a loss of \$300,000 due to the dissolution of two of its investment companies, Kreative Technical Solutions ("KTS") and Yachtsaver, Inc. Despite the two losses to the fund, which makes up only 13.6% of investments closed to date, there were approximately seven new computer technology jobs created with the Fund's investment that survived KTS's failure via a spin-off operation. Yachtsaver, Inc.'s closure was due to an unforeseen problem with its core technology. At the time of the SEGF investment, all product tests had been favorable, the product was gaining market share and the Board's investment was matched with a significant amount of outside equity to support marketing of the product.

The remaining eight portfolio companies received an aggregate of \$1,900,000 in SEGF investments and \$1,900,000 in marching investments. Intellicare America, Inc. received two investments, the first \$150,000 investment was made in August 1998 and the second \$350,000 investment was made in November 1999. The 1999 amendment allowing the increase in the SEGF maximum investment to \$500,000 allowed the Board an opportunity to invest additional funds in another equity round, participating with a private fund investor. The valuation of Intellicare has increased since the Board's initial investment. If their growth continues as anticipated, the Fund should realize a strong return on its investment.

Committed funds of \$800,000 are expected to close in the first quarter of 2000. Again, an existing portfolio company will benefit from the maximum investment size increase with an additional \$200,000 committed to Lyceum Communications, LLC which received its first SEGF investment in March 1999.

Of the eight active companies currently in the portfolio (excludes the two that dissolved), at the time of application total number of employees was 178. As of February 2000 the total number of employees had grown to 1,266 a 611% increase. Employment growth is projected for most portfolio companies in FY2000 ranging from 4 to 3,000 new employees per company. The most notable employee growth has been realized from the Board's first investment of \$150,000 made in December 1997 to EnvisioNet Computer Services, which had 31 employees at the time of the application and currently has approximately 1,000 employees. Six of the eight investment companies have 50 or fewer employees and their growth is impressive as well at approximately 129%.

As noted in Appendix B, investments have been made across the various industry sectors. It is too early to determine the overall return on investment to the Fund, with the oldest investment in its third year. However, there are currently four portfolio companies that have raised significant additional venture capital since the Board's investment, bringing capital into the State and funding continued growth for these Maine companies.

The Board's investment in EnvisionNet was structured as a convertible debenture with a regular schedule of principal and interest payments after a three-month deferral period. It is the only investment in the portfolio that makes regular monthly payments. Additionally, it is the only investment in the portfolio that limits the Fund's maximum return to 100% of the investment. Therefore, the Fund's expected maximum return on this investment would be \$300,000 plus interest (\$150,000 principal repayment and \$150,000 investment return). Despite the limited financial return on this investment, the job growth has exceeded the Board's expectations.

As of February 2000, there is approximately \$2,000,000 available for further investments (includes initial \$5,000,000 plus investment earnings of \$572,527 less reserve for Fund expenses of \$600,000). At the current maximum investment level of \$500,000, the Board could exhaust its initial funding with investments in four more companies.

On average the Board reviews two to three applications per month. As of February 2000, the total number of investment requests totaled 85, with eleven investments closed and term sheets issued for three additional investments. Based on these figures, approximately 1 out of 6 applications are funded.

IV. Investment Strategy

The Program is designed to leverage the State's Small Enterprise Growth Fund capital investment with an equal amount of private capital. Investments are targeted at small businesses that will produce a strong public benefit to the State. The Board strives to support young businesses at a critical stage in their development that can lead to multiple returns to the State through revenue generation and job growth. Additional benefits can accrue by supporting several businesses in a given sector of the economy. This helps create momentum for further new business development as the success of the original companies attracts new entrepreneurs and develops a supporting infrastructure in the local economy for these kinds of businesses.

The statute and the rule give guidance to the Board on what types of companies to consider as follows:

- A. Company at the time of application must employ 50 or fewer full-time employees or have had gross sales of \$5,000,000 or less within the past 12 months.
- B. The company must be engaged in one of the following industries:
 1. Marine science;
 2. Biotechnology;
 3. Manufacturing;
 4. Export of goods or services out of state which brings capital back into the State;
 5. Software development;
 6. Environmental services or technologies;
 7. Financial or insurance services;
 8. Produce value added goods from natural resources; and
 9. Other enterprises that the Board determines will further the intent of the program.
- C. The company must demonstrate that it has obtained or will obtain prior to SEGB investment other cash at risk in the business in an amount at least equal to the investment amount.
- D. The company must demonstrate that it has the potential for high growth and it will provide public benefit.
- E. The company must provide evidence of its need for financial assistance to realize its projected growth and achievement of public benefit.

The company must demonstrate an ability to provide a return on the investment.

In addition to the statutory requirements, the Board also uses the breadth of experience from its own membership to assess the viability of applicants. Among other attributes it looks for are evidence of market demand for the product or service, a strong management team, and an adequate overall capital structure. All of these components are necessary to see a company successfully through its early stages of growth.

V. Program Administration

The Board is comprised of eleven members with specific statutory qualifications, each member is appointed for a two-year term by the Governor. The Governor has the discretion to reappoint members for additional terms. The required composition of the Board is as follows:

- An experienced commercial lender;
- An attorney with knowledge of securities law;
- Five members of the public who have knowledge and experience in managing or investing in high-growth, small businesses;
- Three members of the public who have knowledge and experience in the development of technological innovation; and
- The Commissioner of Economic and Community Development or the commissioner's designee, who serves as a voting ex officio member of the board.

The first slate of Board members was appointed March 12, 1997. The list of current members is attached (see Appendix C). The Board has developed an operating rule (see Appendix D), application procedures, and standard investment structures. The Board holds its business meetings, alternating between Portland and Augusta, on the first Monday of each month, with the exception of a Monday holiday in which case the meeting is held the following Monday.

In lieu of a full-time office staff and program manager, the Board has engaged staff support from the Finance Authority of Maine. The Authority provides support in the form of outreach, application processing, assisting the Board with due diligence on applicants, portfolio monitoring, logistical planning, accounting, legal advice and other similar services. The Board utilizes Verrill & Dana LLP for outside legal services. For fiscal year ending June 30, 1999, total fund expenses were \$65,507 (see Appendix E).

VI. Application Procedures

The Board feels that it must make well-informed decisions about applicants as soon as reasonably practicable. To provide rapid response and to simplify the process as much as possible, the Board adopted an application process with standard information and application materials available (see Appendix F). The applicant will typically follow these steps:

- A. A pre-application phone conference either when the applicant first requests information or after the applicant has an opportunity to review the program information. FAME staff is available for a pre-application telephone conference to help determine if the project profile is appropriate for an investment from the Fund. Staff discusses the statutory requirements as well as the other items the Board may focus on such as the management team and the viability of the market.

The pre-application telephone conference is designed to eliminate time and expense invested by entrepreneurs in preparing applications that may not be eligible for consideration.

- B. Stage I applications are limited to two sides of a page highlighting responses to eleven questions listed on page 2 of the application in addition to providing historical and projected financial statements and key personnel resumes.

The purpose of the Stage I application is to give the Board a concise view of the company, its potential, and management's ability to clearly explain the investment opportunity for the Fund. The completed application is reviewed by the full Board at its regular monthly meeting. At that point, applicants are either invited to participate in Stage II of the process or denied on the basis of the Stage I application.

- C. Stage II of the application process allows further due diligence by the Board, in the month following the Stage I application review. Typically, a three-person subcommittee of the Board with some experience or knowledge in the particular field of the applicant is established to further study the company and the investment opportunity. The subcommittee receives the company's complete business plan and makes a site visit to the business, or otherwise meets with key personnel to review their plan. In some instances, the applicants are invited to make a presentation to the full Board.

FAME provides administrative support for the Board, by reviewing the business plan, attending the site visit, providing a summary of the investment opportunity (see Appendix G) and following up with any

additional information the subcommittee may need in order to make a recommendation to the full Board. Board members may check references and seek information from contacts in the industry.

At the next regular monthly Board meeting, the subcommittee reports back to the Board with a recommended position on the investment request. Often, the company is requested to make a brief presentation to the full Board highlighting issues raised by the subcommittee and to answer specific questions. After a full Board discussion on the investment request a decision is made by the full Board to approve or deny the request.

- D. If approved, a Term Sheet is issued to the company outlining the investment structure, currently either convertible debenture or preferred stock. Investments are closed and disbursed either by FAME's counsel or using pre-approved outside counsel on form documents developed for the Board. Portfolio companies are required to submit quarterly reports to the Board that include a year-to-date financial statement along with the current status of the company. Borrowers are also required to submit at a minimum, review quality, fiscal yearend financial statements prepared by a certified public accountant each year.

If the applicant is denied, a denial letter is issued to the company outlining the primary reasons for the Board's decision. The company may reapply after 90-days if it feels it has adequately addressed the Board's initial concerns.

In a typical scenario, the Board can arrive at a decision to invest within two months of receiving a completed Stage I application. Decisions to deny can come as early as one month if the applicant is turned down at Stage I.

VII. Investment Structure, Risk and Return

The Fund makes investments to businesses to help finance growth. To offset the risk associated with the types of businesses targeted by the Fund, the Board adds conditions to the investments that can create a greater return to the Fund than simple interest payments by themselves.

The Fund is designed to make capital available to companies. Excessive risk is often the reason an applicant is ineligible for a commercial bank loan. In the case of companies that qualify for Small Enterprise Growth Fund, the risk is usually associated with the newness of the company or the product line it is introducing. This "untested" situation is not one that is readily financed by a commercial bank.

When an applicant is approved by the Fund, the Board has decided that the company carries risk but has the potential to survive, become successful and offer public benefit to Maine. At the same time, the Board recognizes that some companies it invests in will fail. Therefore, it must adjust the return on its investments to allow for failures and still keep the fund viable for future investments. The Board currently does this with two investment types: 1) convertible debenture and 2) direct purchase of preferred stock. Only option 1 was available prior to the passage of PL1999, Chapter 504 on June 11, 1999, which among other items allowed the Board to purchase an equity position in portfolio companies.

The convertible debenture is designed to be flexible enough to provide "patient capital" to companies that have not yet generated sufficient cash flow to make regular debt payments. It is typically structured with the deferral of principal and interest for three years and a three-year amortization of principal and interest thereafter. At any time after the third anniversary (or, if earlier, upon specified events) the Board may convert the debenture into Common Stock at a conversion rate specified when the investments made. Interest on this type of investment is currently fixed quarterly at the Wall Street Prime Rate plus 1.25%. When a company is successful the conversion can provide a strong return to the fund. If a company is not successful the conversion has little value, but the fund can still benefit from a return of its investment with the repayment of principal plus interest.

The preferred stock investment is designed to take an equity stake with no set repayment terms on the investment. It is typically structured as a separate class of stock that carries preferences over the class held by management and/or employees of the Company, with nominal dividends accruing at 5% per annum. The conversion ratio is determined at the time of investment based on a valuation of the business, with the SEGB anticipating liquidity in its investments by the sixth or seventh anniversary of the initial investment, unless some other qualifying event occurs sooner, such as a public offering.

The Fund requires that the investment be matched dollar for dollar with another source of cash. The Board will consider using cash investments in the business made within twelve months prior to the SEGB investment closing date as the matching funds. However, it may also determine that new cash matching funds are necessary. Typically the Board will tie its investment funding to the company's projections and achievement of milestones. It is not unusual for an investment to be disbursed in stages tied to the company's performance, especially given the recent increase in the maximum investment size to \$500,000. The Board also seeks to maximize its potential return on an investment by participating on similar terms with other qualified venture capital investors.

The Small Enterprise Growth Fund investment structure provides an appropriate risk-adjusted return when compared with private sector funds that invest in similar, early-stage companies. Private sector funds seek total portfolio returns of 25% to 50% after an expected failure rate of 1/3 of the companies in their portfolio. The Fund must assume that some failures will occur and it must build-in adequate returns from successful companies to allow the Fund to remain viable over the long term. Given the public benefit aspect of the Fund, it is anticipated that the overall return of the Fund will be lower than privately managed venture funds.

It is possible that the Fund could experience a higher failure rate than a typical private sector fund because the Board will likely take more risk than a private sector fund in order to fully support the public benefit goals of the Program. The Board expects most losses to occur in the early years of the Fund's life as most poor performers are quickly weeded out. The Board expects most significant returns to the Fund to start occurring after five or six years as its successful portfolio companies mature and develop meaningful sales and profits.

VIII. Recommendations for Legislative Action

The volunteer Board has been very active in making funds available to Maine businesses and providing due diligence to ensure smart investments are made. At the current rate of investment, it is anticipated they could invest the amounts remaining in the fund prior to June 30, 2000.

The Legislature positively acted on the Board's recommendation in 1999 to modify the investment structure to allow the Fund to take equity positions in investment companies and to increase the maximum investment size to \$500,000. These two modifications quickly revised the nature of the fund to a venture capital effort, with larger requests requiring increased due diligence and board involvement in negotiating the investment strategy and ultimately the company's valuation.

In consideration of the limited capitalization of the Fund, the Board is seeking the following:

- A. Increase Amount of Available Funds:** At the current approval rate the initial funding for the SEGF could be exhausted by the end of June 2000. Because the fund is invested as "patient capital", returns on investments made by the Fund will probably not be significant for another four or five years. It is prudent to begin considering ways to increase available funds for investments in the near term. The Board believes that \$5,000,000 of additional capitalization will help the Program realize its full potential.

APPROVED

APR 11 '96

BY GOVERNOR

FT-09C
CHAPTER

699

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-SIX

—
H.P. 1337 - L.D. 1831

An Act to Create the Small Enterprise Growth Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-F, sub-§17 is enacted to read:

17. Small Enterprise Expenses Only 10 MRSA §471
Growth Board

Sec. 2. 10 MRSA c. 7, as amended, is repealed.

Sec. 3. 10 MRSA c. 13 is enacted to read:

CHAPTER 13

SMALL ENTERPRISE GROWTH PROGRAM

§381. Small Enterprise Growth Program established

There is established the Small Enterprise Growth Program.

§382. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Small Enterprise Growth Board.

2. Fund. "Fund" means the Small Enterprise Growth Fund.

3. Program. "Program" means the Small Enterprise Growth Program.

4. Qualifying small business. "Qualifying small business" means a business employing 25 or fewer employees or having gross sales not exceeding \$2,000,000 within the most recent 12 months for which financial statements are available.

§383. Fund established

1. Creation of fund. There is established the Small Enterprise Growth Fund, which is a revolving fund used to provide funding for disbursements to qualifying small businesses in the State seeking to pursue an eligible project. The fund must be deposited with and maintained and administered by the Finance Authority of Maine and consists of appropriations provided for that purpose, interest accrued on the fund balance, funds received by the board to be applied to the fund, all funds remaining in the Pine Tree Partnership Fund and any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services. The fund is a nonlapsing fund.

2. Administrative expenses. Costs and expenses of maintaining and servicing the fund and administering the Small Enterprise Growth Program established by this chapter may be paid out of amounts in the fund.

§384. Board

1. Establishment; membership. There is established the Small Enterprise Growth Board, which consists of 11 members appointed by the Governor as follows:

A. An experienced commercial lender;

B. An attorney with knowledge of securities law;

C. Five members of the public who have knowledge and experience in managing or investing in high-growth small businesses;

D. Three members of the public who have knowledge and experience in the development of technological innovation; and

E. The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve as a voting ex officio member of the board.

2. Chair. The board shall annually elect a chair from among its members.

3. Terms. The members other than the Commissioner of Economic and Community Development or the commissioner's designee serve for one-year terms and may be reappointed.

4. Compensation. Members are entitled to compensation in accordance with Title 5, chapter 379.

§385. Duties of board

The board has the following powers and duties.

1. Receipt of money and property. The board may accept and receive gifts, grants, investments, bequests or devises from any source, including funds from the Federal Government or any subdivision of the Federal Government.

2. Administer program. The board must administer the Small Enterprise Growth Program and may contract with the Finance Authority of Maine, financial institutions, educational institutions, business enterprises, nonprofit institutions and organizations or individuals for such assistance in administering the program as the board may require.

3. Ownership interests. The board may not hold an ownership interest in a private enterprise unless it is determined by the board that such an interest is necessary to recover amounts due to the fund and the agreement between the board and the private enterprise contains a specific plan for the board to divest itself of the ownership at some future time.

4. Rules. The board may adopt rules, in accordance with the Maine Administrative Procedure Act, to carry out this chapter.

§386. Eligible projects

In order for a qualifying small business to be eligible for financial assistance under the program, the following criteria must be met.

1. Engagement; involvement. The qualifying small business must be engaged in or involve at least one of the following:

A. Marine science;

B. Biotechnology;

C. Manufacturing;

D. Export of goods or services to locations outside the

State or activities that result in significant amounts of capital being imported into the State:

E. Software development:

F. Provision or development of environmental services or technologies:

G. Provision or development of financial or insurance products or services:

H. Production of value-added goods from natural resources:
or

I. Other enterprises that the board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism and agricultural production.

2. Growth; public benefit. The qualifying small business must demonstrate the potential for high growth and public benefit.

3. Need for assistance. The qualifying small business must provide evidence of each of the following:

A. Commitment of all reasonably available resources to the project:

B. A need for financial assistance from the fund to realize its projected growth and achievement of public benefits; and

C. Inability to access sufficient financial assistance from a financial institution.

4. Financing plan. The qualifying small business must submit a financing plan as part of an overall business plan. The proposed financing plan must include adequate mechanisms to monitor the accomplishment of the business plan as proposed.

The disbursement may not be used to make distributions to or for the benefit of an owner of the business borrowing from the fund or a related entity.

§387. Review of applications

In order to effectively review and process applications under the program, the board may delegate the authority to deny applications for disbursements from the fund to one or more subcommittees of the members. Such delegation may provide that

the action of the subcommittee constitutes final agency action. The board may delegate authority to recommend approval of applications, but final approval may be given only by the board.

§388. Financing terms and conditions

Disbursements may be made from program funds under the following terms and conditions.

1. Disbursements. Disbursements may not exceed \$150,000 to a qualifying small business, including an affiliated entity.

2. Provide evidence. The qualifying small business must provide evidence satisfactory to the board of matching funds in cash in an amount equal to the disbursement. Such matching funds may be in the form of debt or equity, but must be at risk in the qualifying small business for a minimum of 5 years.

3. Agreement. The board must enter into an agreement with the recipient of the disbursement requiring repayment of the full amount disbursed, and providing for the payment of interest at a rate based on the board's assessment of the risk of the disbursement. The agreement may provide for flexible payments based on the financial success of the recipient. In addition, in recognition of the degree of risk of the project, the agreement may require royalties or additional payments based on sales, net cash flow or other financial measures, or rights to equity in the enterprise in the form of warrants or similar rights.

4. Report. The board shall require that each disbursement recipient report to the board at least annually on each of the following factors:

A. Financial performance;

B. Job creation;

C. Technological progress;

D. Market progress; and

E. Any other factors as the board may require.

§389. Cooperation and coordination

The University of Maine System, the Small Business Development Center Program, the Maine World Trade Association and the Maine Science and Technology Foundation shall provide such support and assistance as the board may request, within the expertise of each.

§390. Conflicts of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the board, and each employee, contractor, agent or other representative of the board is deemed an "executive employee" solely for purposes of Title 5, section 18, and for no other purpose. Title 17, section 3104 does not apply to any of those representatives. If a member does not participate in an action or deliberation with respect to a particular project, that member is presumed not to have personally and substantially participated in a decision of the board with respect to that project. Every interest of a board member in any matter before the board must be disclosed to the board in writing.

§391. Disclosure and confidentiality of records

1. Disclosure required. Notwithstanding subsections 2 and 3, and except as provided in paragraph F, the board shall make available the following records, either to any person upon a request that reasonably describes the records to which access is sought or, if no request is made, in any manner and at any time that the board may determine:

A. After a written application or proposal for financial assistance or property transfer has been filed in a form specified by or acceptable to the board:

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Description of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the board, the general terms of transfer and the purposes for which transferred property will be used; and

(5) Number of jobs and the amount of tax revenues projected and resulting from a project;

B. Any information pursuant to a waiver determined satisfactory by the board;

C. Information that, as determined by the board, has

already been made available to the public; and

D. Information necessary to comply with Title 1, section 407, subsection 1.

The board shall provide to a legislative committee the information or records specified in a written request signed by the chair of that legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the board prior to receipt of a written application or proposal, in a form specified by or acceptable to the board, for financial assistance to be provided by or with the assistance of the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection;

B. Any record obtained or developed by the board that:

(1) A person, including the board, to whom the record belongs or pertains has requested be designated confidential; and

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through board records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the board in the case of a person other than the board, to any person to whom the record belongs or pertains;

C. Any financial statement or tax return of an individual or any other record obtained or developed by the board the disclosure of which would constitute an invasion of personal privacy, as determined by the board;

D. Any record, including any financial statement or tax

return obtained or developed by the board in connection with any monitoring or servicing activity by the board, pertaining to any financial assistance provided or to be provided by or with the assistance of the board;

E. Any record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of any person or project; and

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the board, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential.

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information;

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;

C. To a financing institution or credit reporting service;

D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

E. If necessary to ensure collection of any obligation in which it has or may have an interest;

F. In any litigation or proceeding in which the board has appeared, introduction for the record of any information obtained from records declared confidential by this section; and

G. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

§392. Governmental function

The board shall administer and exercise the authority granted to it by this chapter. The carrying out of its powers and duties is considered the performance of an essential governmental function.

Sec. 4. Rules. Any rule adopted by the Small Enterprise Growth Board pursuant to this Act is a technical rule.

APPROVED

CHAPTER

JUN 11 1999

504

STATE OF MAINE

BY GOVERNOR

PUBLIC LAW

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-NINE

S.P. 315 - L.D. 949

An Act to Encourage Economic Development in the State

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §434, sub-§1, as enacted by PL 1995, c. 658, §1, is repealed and the following enacted in its place:

1. Agricultural enterprise. "Agricultural enterprise" means a person or business located in this State and engaged in the commercial growing or harvesting of plants; raising of animals; growing or obtaining plant or animal by-products; aquaculture, as defined in Title 12, section 6001, subsection 1; or further processing, storing, packaging or marketing a raw product derived from plants, animals, plant or animal by-products or aquaculture, as defined in Title 12, section 6001, subsection 1, with the intent that the product be sold or otherwise disposed of to generate income. "Agricultural enterprise" does not include a business engaged primarily in the growing, harvesting or further processing of forest species of trees for the purpose of producing pulp or other materials used in the paper manufacturing or wood manufacturing process.

Sec. 2. 10 MRSA §382, sub-§4, as enacted by PL 1995, c. 699, §3, is amended to read:

4. Qualifying small business. "Qualifying small business" means a business employing 25 50 or fewer employees or having gross sales not exceeding \$2,999,999 \$5,000,000 within the most recent 12 months for which financial statements are available.

Sec. 3. 10 MRSA §384, sub-§3, as enacted by PL 1995, c. 699, §3, is amended to read:

3. Terms. The members other than the Commissioner of Economic and Community Development or the commissioner's designee serve for ~~one-year~~ 2-year terms and may be reappointed for up to 3 consecutive terms. A member may serve for more than 3 2-year terms if the terms are not consecutive.

Sec. 4. 10 MRSA §385, sub-§3, as enacted by PL 1995, c. 699, §3, is amended to read:

3. Ownership interests. The board may ~~not~~ hold an ownership interest in a private enterprise ~~unless~~ when it is determined by the board that such an interest is necessary ~~to recover amounts due to the fund and the agreement between the board and the private enterprise contains a specific plan for the board to divest itself of the ownership at some future time or desirable~~ in order for the fund to obtain a reasonable return on its investment in the private enterprise.

Sec. 5. 10 MRSA §386, sub-§3, ¶C, as enacted by PL 1995, c. 699, §3, is repealed.

Sec. 6. 10 MRSA §388, sub-§1, as enacted by PL 1995, c. 699, §3, is amended to read:

1. Disbursements. Disbursements may not exceed ~~\$150,000~~ \$500,000 to a qualifying small business, including an affiliated entity. The Finance Authority of Maine shall report annually by December 20th of each year to the joint standing committee of the Legislature having jurisdiction over business and economic development matters on all disbursements made under this subsection.

Sec. 7. 10 MRSA §388, sub-§§2 and 3, as enacted by PL 1995, c. 699, §3, are repealed and the following enacted in their place:

2. Provide evidence. The qualifying small business shall provide evidence satisfactory to the board that the small business has obtained or will obtain, prior to the board's disbursement, matching funds in an amount at least equal to the board's investment in the form of debt or equity that is at risk in the small business.

3. Agreement. The board must enter into an agreement with the recipient of the disbursement setting forth the terms of repayment of the fund's investment in the recipient. This agreement may include such terms and conditions as the board

determines will provide a reasonable return on its investment taking into consideration the risk of the investment. These terms and conditions may include one or more of the following:

A. Repayment of the full amount disbursed;

B. Payment of interest based on the board's assessment of the risk of the investment;

C. Payment of return based on the board's ownership interest in the recipient;

D. Flexible payments based on the financial success of the recipient;

E. Royalties or additional payments based on sales, net cash flow or other financial measures;

F. Rights to equity in the enterprise in the form of warrants or similar rights; or

G. Such other terms and conditions as the board determines are appropriate for the investment.

Sec. 8. 10 MRSA §963-A, sub-§31-A, as enacted by PL 1995, c. 4, §4, is amended to read:

31-A. Major business expansion project. "Major business expansion project" means any building, structure, machinery, equipment or facility proposed to be constructed, rehabilitated, expanded, modernized or acquired in the State by a business entity, that has a projected cost of ~~\$5,000,000~~ \$1,000,000 or more, that is projected to result in a net gain of at least ~~100~~ 50 job opportunities within the State or the retention of at least ~~100~~ 50 jobs, directly or indirectly, and that benefits from financing assistance from the authority including use of a capital reserve fund pursuant to section 1053. A major business expansion project does not include electric rate stabilization projects or projects primarily involved in the provision of housing or retail sales to consumers.

Sec. 9. 10 MRSA §1026-B, sub-§4, as amended by PL 1991, c. 511, Pt. A, §6, is further amended to read:

4. Retail store projects. The authority may insure mortgage loans for a retail store project, provided that:

A. The principal amount of mortgage insurance for the project does not exceed ~~\$200,000~~ \$400,000 in the aggregate for all retail projects insured.

~~B.---The project includes only one retail store that is not attached or does not adjoin another retail store that has received an insured mortgage loan under this chapter, and~~

~~C.---The applicant has not received mortgage insurance under this subsection for any other retail store.~~

Sec. 10. 10 MRSA §1100-T, sub-§2, ¶B, as amended by PL 1991, c. 854, Pt. A, §8, is further amended to read:

B. The Maine business must be a manufacturer; must provide a product or service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; must be engaged in the development or application of advanced technologies; or must bring capital into the State, as determined by the authority.

Sec. 11. 38 MRSA §568-A, sub-§2, ¶A, as enacted by PL 1995, c. 361, §5, is amended to read:

A. For purposes of this paragraph, the number of facilities or capacity in gallons owned by the facility owner must be determined at the time of the discovery of the discharge. A facility owner includes any entity that is directly owned by the facility owner or owns the facility owner; any entity of which the facility owner is a franchisee; any entity that is a member of a partnership or limited partnership that includes the facility owner; any entity of which the facility owner is a subsidiary corporation, a parent corporation or a sibling corporation; or any entity that is related, whether directly or indirectly, to a person who owns a majority of shares in any other entity described in this paragraph. Standard deductibles are as follows.

(1) For expenses related to a leaking underground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Number of underground storage facilities owned by the facility owner	Deductible
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 20	25,000
21 to 30	40,000
over 30	62,500

(2) For expenses related to a leaking aboveground oil storage facility, the deductible amount is determined in accordance with the following schedule:

Total aboveground oil storage capacity in gallons owned by the facility owner	Deductible
Less than 1,320	\$500
1,321 to 50,000	2,500
50,001 to 250,000	5,000
250,001 to 500,000	10,000
500,001 to 1,000,000	25,000
1,000,001 to 1,500,000	40,000
greater than 1,500,000	62,500

(3) For facilities with both aboveground and underground tanks when the source of the discharge can not be determined or when the discharge is from both types of tanks, the standard deductible is the applicable amount under subparagraph (1) or (2), whichever is greater.

SMALL ENTERPRISE GROWTH FUND ACTIVITY LIST

2/1/00

Company	Location	Business Type	Investment Made	INVESTMENT AMOUNT		EMPLOYEES		
				Original	Current Outstanding	At Investment	Current	Projected 2000
INVESTMENT MADE:								
CONVERTIBLE DEBENTURE:								
EnvisioNet Computer Service, Inc.	Augusta	Computer Services	12/2/97	\$ 150,000	\$ 105,473	31	1000	2000-3000
ComNav Engineering, Inc.	Portland	Electronic Mfg	1/22/98	\$ 150,000	\$ 150,000	13	42	65
Intellicare America, Inc.	Portland	Health Care Services	8/26/98	\$ 150,000	\$ 150,000	20	85	90-100
MacMahon Tool & Mfg., Inc.	Limerick	Manufacturer Precision Tool	8/31/98	\$ 150,000	\$ 150,000	12	14	14
Capricorn Products, Inc.	Scarborough	Biotech	10/16/98	\$ 150,000	\$ 150,000	7	7	7
Envatec, LLC	So. Portland	Environmental Monitoring	12/11/98	\$ 150,000	\$ 150,000	2	4	uncertain
Lyceum Communication, LLC	Portland	Educational Software	3/8/99	\$ 150,000	\$ 150,000	2	14	20
PREFERRED STOCK:								
Intellicare America, Inc.	Portland	Health Care Services	11/16/99	\$ 350,000	\$ 350,000	85	85	90-100
Common Census	Portland	Insurance Software	12/22/99	\$ 500,000	\$ 175,000	6	15	19
Sub-Total				\$ 1,900,000	\$ 1,530,473	178	1266	
						Employee Growth	611%	
Investment Closed not disbursed:								
Common Census					\$ 325,000			
APPROVED NOT FUNDED:								
Coast of Maine	Marion Township	Marine Waste compost mfg		\$ 100,000			6	
EnviroLogix Inc.	Portland	Biotech		\$ 500,000			5	
Lyceum Communication, LLC	Portland	Educational Software		\$ 200,000			14	
Sub-Total				\$ 800,000				
CHARGE OFF INVESTMENT:								
Kreative Technical	So Portland	Software	11/3/97	\$ 150,000	\$ 150,000	6	Defunct	
Yachtsaver, Inc.	Round Pond	Manufacturer Flotation Devic	10/13/98	\$ 150,000	\$ 150,000	6	Defunct	
Sub-Total				\$ 300,000				

Total of Investments Approved as of January 3, 2000

\$ 3,000,000

SMALL ENTERPRISE GROWTH FUND ACTIVITY LIST

2/1/00

Company	Location	Business Type	INVESTMENT AMOUNT		EMPLOYEES	
			Requested		Current	Projected 2000
REQUESTS IN PIPELINE:						
Information Tools, Inc.	Portland	Internet info & financial services	\$ 150,000		2	
Hearing Solutions, Inc.	Scarborough	Mfg. Hearing aids	\$ 300,000		31	
CommunityBids.com, Inc.	Cape Elizabeth	On line auction fund raiser	\$ 375,000		2	
Professional Software Solution	Portland	Municipal software	\$ 75,000		3	
Petit Industries Inc.	Biddeford	Mfg. Energy conservation & home improvem	\$ 250,000		7	
Aurora & Quanta Productions	Portland	Information Technology	\$ 200,000		16	
BroadcastAmerica.com	Portland	Information Technology	\$ 500,000		62	
Total of Investments Pending			\$ 1,850,000			
Grand Total			\$ 4,850,000			

Fiscal Year 2000

Available Cash @ 12/31/99	\$ 3,781,306
Less Reserve for Fund Management Expenses	\$ (600,000)
Less Investment Closed not disbursed	\$ (325,000)
Less Approved not Funded	\$ (800,000)
Less Request in Pipeline	\$ (1,850,000)
Estimated Available Funds:	\$ 206,306

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Chapter 701: SMALL ENTERPRISE GROWTH PROGRAM – AMENDMENT 2

Summary: This Rule establishes the procedures and standards applicable to the Small Enterprise Growth Program, a statewide program which provides funding to eligible small businesses demonstrating potential for high growth and significant public benefit.

1. Definitions

- A. Reference to Act Definitions. Certain terms used in this rule, which are defined in 10 M.R.S.A. § 381 and following (the "Act"), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.
- B. Defined Terms.
1. "Administrative contract" means a contract between the Board and a service provider to administer specified aspects of the program.
 2. "Applicant" means an individual or entity which has submitted a complete application to the Board.
 3. "Authority" means the Finance Authority of Maine, or as the context requires, the Chief Executive Officer and employees of the Authority.
 4. "Board" means the Small Enterprise Growth Board.
 5. "Recipient" means a qualified small business in which the Board makes an investment from the program fund and includes prospective recipient where the context requires, and also includes any related entity having 50% or greater common ownership or beneficial interest with the recipient or any individual or entity having a 50% or greater ownership or beneficial interest in the recipient.
 6. "Disbursement Agreement" means an agreement between the recipient and the Board setting out the terms on which the Board will provide funds to the recipient and on which the recipient will repay the funds.
 7. "Fund" means the Small Enterprise Growth Fund.
 8. "Program" means the Small Enterprise Growth Program.

9. "Public benefit" means that the disbursement will advance and assist the people of the State of Maine.
10. "Qualifying small business" means a business which employs the full time equivalent of 50 or fewer individuals at the time of application or has gross sales not exceeding \$5,000,000 within the most recent 12 months for which financial statements are available.

2. Administration

- A. The Board has the power to approve disbursements to qualifying small businesses from the fund. The Board may not delegate the final authority to approve disbursements.
- B. The Board may delegate to one or more subcommittees the authority to review applications. The subcommittee may be given the authority to deny applications for disbursements. The Board may determine in advance that such a denial will be final agency action, not subject to appeal to the full Board.
- C. The Board may create such other subcommittees as it may deem necessary for the administration of the Board's business.
- D. The Board may enter into administrative contracts with one or more entities to perform the administrative functions necessary to the efficient conduct of the program. Without limitation, services contracted for may include development of rules, procedures, documentation, financial reporting, publicity, analysis and recommendations with respect to applications received. The contracts may provide compensation for services rendered and reasonable expenses.

3. Loan Fund Administration

- A. The Authority shall maintain and invest the fund at the direction of the Board and shall report periodically to the Board regarding the balance of the fund.
- B. Appropriations, interest on investments, interest on disbursements to recipients, principal repayments, grants, endowments and gifts will be added to the fund. The fund will be used to make disbursements to recipients and to pay costs and expenses associated with maintaining, servicing and administering the fund and the program.

4. **Eligibility.** To be eligible to receive funds from the program an applicant must meet each of the criteria in A-C below:

- A. Must be engaged in or involve at least one of the following:
 - 1. Marine Sciences
 - 2. Biotechnology
 - 3. Manufacturing
 - 4. Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State
 - 5. Software development
 - 6. Provision or development of environmental services or technologies
 - 7. Provision or development of financial or insurance products or services
 - 8. Production of value-added goods from natural resources
 - 9. Other enterprises that the Board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism and agricultural production.
 - B. The qualifying small business must demonstrate that it has the potential for high growth and that it will provide public benefit.
 - C. The qualifying small business must provide evidence of its need for financial assistance from the fund to realize its projected growth and achievement of public benefit.
5. Application Procedure and Contents.
- A. Application forms are to be submitted to the Board. The initial application must include a summary of the proposed use of the disbursement containing the following information:
 - 1. A description of the applicant, which identifies the business of the applicant, including the legal form of the business entity.
 - 2. A statement of how the disbursement will be used.
 - 3. The background and experience of all individuals essential to the applicant. (Resumes may be attached to fulfill this requirement.)

4. A description of the goal and/or opportunity which inspired the applicant.
 5. A description of the current status of the applicant, including an assessment of the stage it is at in its effort to achieve its goal or opportunity.
 6. A description of all previous investments received by the applicant.
 7. An assessment of the current value of the applicant.
 8. An estimate of the amount of capital needed to achieve the goal or opportunity of the applicant.
 9. A description of the competition of the applicant.
 10. A statement of how the applicant will obtain the required matching funds.
 11. A description of the potential of the applicant for high growth and public benefit.
 12. The profit and loss statement and balance sheet for the most recent two years or such shorter time as the applicant has conducted the business.
 13. The applicant's projected financial statements for the next three years, including a profit and loss statement, balance sheet and any other projections the Board requests.
 14. A disclosure of any actions, suits, proceedings or investigations pending against or, to the knowledge of the applicant or the individuals managing the applicant, threatened against or affecting the applicant or the individuals managing the applicant.
- B. The applicant shall provide such additional information related to the business or the individuals managing the business as the Board may reasonably request.
6. Board Action
- A. A quorum of at least five (5) Board members is necessary for Board action, except in the case of denials acted on by a subcommittee of the Board. A majority of those present and voting is necessary for approval of an application or other action, provided, however, that at least four (4) Board members must vote to approve an investment. In the event at least five (5) members of the Board are present when a vote on an application

is taken, but less than five (5) members of the Board participate in the vote because of conflict of interest, a quorum will be deemed to have been present.

- B. No Board member may participate in a vote on an application where that member has a direct or indirect pecuniary interest in the outcome of the vote. Every interest of a board member in any matter before the board must be disclosed to the Board in writing.
- C. In cases where the Board approves a disbursement, the Board may issue a commitment to disburse funds, including terms and conditions of the disbursement. In cases where the application for a disbursement from the fund is denied, the Board shall issue a letter of denial, which includes an explanation for the denial.
- D. Board members may participate in meetings and vote on action by teleconference. Board members participating in the meeting by teleconference will not be deemed present for the purposes of determining a quorum.

7. Delegation of Application Review to Subcommittee

- A. Affirmative action by the Board is necessary to delegate review of applications to a subcommittee.
- B. Each subcommittee shall be composed of at least 3 members.
- C. Each decision of a subcommittee must be approved by a majority of all members of the subcommittee.
- D. Subcommittees may meet and take action by means of teleconference.

8. Terms and Conditions of Disbursements

- A. Disbursements shall be made in an amount which is reasonable as shown by materials submitted by the qualified small business. In no event shall any disbursement or the sum of all disbursements to any recipient exceed \$500,000.
- B. Disbursements from the fund may be in a form determined by the Board in recognition of the degree of risk of the proposal. The disbursement agreement may require royalties or additional payments based on sales, net cash flow or other financial measures, or rights to equity in the enterprise in the form of debentures, warrants, stock ownership or similar rights.

- C. The qualifying small business must provide the Board satisfactory evidence that it has obtained other cash funds in an amount at least equal to the investment. The matching cash may be in the form of debt or equity, but must be at risk in the qualifying small business for a term at least equal to the Board's investment, must be invested no later than the date of the Board's investment and may be invested prior to the Board's investment as approved by the Board. If the Board approves an investment made prior to the Board's investment as the matching investment, it must remain at risk in the recipient for at least as long as the Board's investment.
- D. The Board may make incremental disbursements to the recipient based on specific events or conditions established at the time of approval.
- E. The recipient will be required to report to the Board at least annually on each of the following performance measures:
 - 1. Financial performance;
 - 2. Job creation;
 - 3. Technological progress;
 - 4. Market progress; and
 - 5. Any other measures the Board requires.
- F. The recipient may not use the disbursement to make distributions to or for the benefit of an owner of the recipient or a related entity.
- G. No member, employee or agent of the Board may disclose to any person the contents of any business or marketing plan for any application, any financial statements or reports pertaining to any recipient, or any other records which may be confidential pursuant to 1 M.R.S.A. § 401 and following and 10 M.R.S.A. § 391 or any successor or similar provisions.

9. Fees and Other Charges

- A. [Repealed Effective _____, 1999]

The Board may require the recipient to be responsible for costs and expenses of closing, administering and collecting on the disbursement.

10. Advisory Rulings

The Board is authorized to issue nonbinding advisory rulings as to the applicability of the program or the Board's rules to the applicant. Requests for

advisory rulings must be in writing and must specifically identify the section or provision of the statute or rule on which the ruling is sought. The Board may decline to issue any ruling if the request is not sufficiently specific, is not accompanied by adequate information, does not adequately identify the applicant or the purpose for which the ruling is sought, or if the Board determines that issuance of a ruling would not assist the applicant or would be contrary to the purposes of the program. All rulings shall be in writing. Rulings shall not be binding upon the Board. The Board may charge an applicant for a ruling the Board's actual, out-of-pocket costs and expenses, if any, in preparing any ruling.

11. Hearing Procedures

In any case where applicable law or rule requires the Board to conduct a hearing, the hearing shall be conducted substantially as follows:

- A. The proponent shall make a statement in support of its position, addressing the findings required to be made by the Board in considering the application. The Board may ask questions of the applicant. The Board may allow others to ask questions of the proponent through the chair.
- B. Opponents shall be given an opportunity to state the basis of their opposition to the matter before the Board.
- C. The proponent shall be given an opportunity to respond to the opposition presented.
- D. The Board may require additional information, and may continue the hearing to a later date or specify a period within which it will accept further evidence, but shall not be obligated to do so.

The Board may, in its discretion, retain a court reporter or otherwise make a record of the hearing, and the proponent shall be responsible for any costs and expenses of making the record.

BASIS STATEMENT

Amendment 2

The rule amendment implements the legislative changes enacted by PL 1999, chapter ____.

The changes expand the definition of eligible businesses to include businesses with sales of up to \$5,000,000 or less than 50 employees. It increases the Board's maximum investment in any small business to \$500,000.

The changes allow the Board to accept equity in the business. It further allows the Board to accept as matching funds which are at risk in the business for the same term as the Board's investment. The amendment also includes a requirement that an applicant submit projected financial statements with its application.

The amendments also change the word borrower to recipient and make similar nonsubstantive changes to reflect that the Board is making making an investment in a small business, rather than making a loan.

A public hearing was held on August 2, 1999. No one appeared at the public hearing. No written comments were received.

Economic Impact Analysis Statement/Fiscal Impact Note

A. The cost associated with this Rule amendment will be minimal, consisting of teleconference costs.

B. The Rule amendment will enable the Board to provide economic benefits to the recipients in a more timely manner. Companies will be able to obtain financing necessary to expand businesses demonstrating the potential for high growth and public benefit. The expansion of jobs will have a positive effect across the State's economy. The cost of participation will be minimal. The fees charged are consistent with or less than commercially available fees.

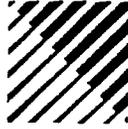
C. The Rule amendment would not affect competition and the employment market.

D. The above statements were made based on the experience of the members of the Board in financing or operating similar businesses.

The proposed Rule amendment will not impose any costs on municipalities or counties.

STATUTORY AUTHORITY: 10 MRSA §385

EFFECTIVE DATE: October 1, 1999, Amendment 2 (changes to sections 1.B. 5., 1.B.6, 1.B.10, 3.B, 4.C., 5.A. 1-14, including the addition of a new section 5.A.13, and the renaming of the prior 5.A.13 to 5.A.14, 5.B., 8.A., 8.B., 8.C., 8.D., 8.E., 8.F., 8.G.,9.A. and 9.B); November 2, 1998, Amendment 1; (June 14, 1997 original rule).



BAKER NEWMAN & NOYES
LIMITED LIABILITY COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Small Enterprise Growth Fund

We have audited the accompanying balance sheets of the Small Enterprise Growth Fund as of June 30, 1999 and 1998, and the related statements of revenues, expenses and changes in accumulated deficit and cash flows for the years then ended. These financial statements are the responsibility of the Small Enterprise Growth Fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Small Enterprise Growth Fund at June 30, 1999 and 1998, and the results of its operations and cash flows for the years then ended in conformity with generally accepted accounting principles.

The supplementary information *Year 2000 Issue* on page 10 is not a required part of the financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and do not express an opinion on it. In addition, we do not provide assurance that the Small Enterprise Growth Fund is or will become year 2000 compliant, that the Small Enterprise Growth Fund's year 2000 remediation efforts will be successful in whole or in part, or that parties with which the Small Enterprise Growth Fund does business are or will become year 2000 compliant.

Baker Newman & Noyes

Portland, Maine
September 20, 1999

Limited Liability Company

SMALL ENTERPRISE GROWTH FUND

BALANCE SHEETS

June 30, 1999 and 1998

ASSETS

	<u>1999</u>	<u>1998</u>
Cash equivalents (note 2)	\$4,043,741	\$4,714,821
Accounts receivable	1,975	-
Notes receivable, net of allowance for losses of \$387,223 in 1999 and \$180,345 in 1998 (notes 3, 4 and 5)	<u>779,421</u>	<u>267,521</u>
	<u>\$4,825,137</u>	<u>\$4,982,342</u>

LIABILITIES AND FUND EQUITY

Accounts payable	\$ 2,095	\$ 1,456
Accrued expenses	<u>5,500</u>	<u>10,270</u>
Total liabilities	7,595	11,726
Commitments and contingencies (note 3)		
Fund equity:		
Contributed capital (note 6)	5,006,767	5,006,767
Accumulated deficit	<u>(189,225)</u>	<u>(36,151)</u>
Total fund equity	<u>4,817,542</u>	<u>4,970,616</u>
	<u>\$4,825,137</u>	<u>\$4,982,342</u>

See accompanying notes.

SMALL ENTERPRISE GROWTH FUND
STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN ACCUMULATED DEFICIT

Years Ended June 30, 1999 and 1998

	<u>1999</u>	<u>1998</u>
Revenues:		
Investment income	\$ 257,449	\$207,783
Interest income on notes receivable	<u>11,862</u>	<u>1,458</u>
	269,311	209,241
Expenses:		
Professional fees and services (note 6)	52,999	51,400
Other operating expenses	<u>12,508</u>	<u>19,848</u>
	<u>65,507</u>	<u>71,248</u>
Excess of revenues over expenses before provision for losses on notes receivable	203,804	137,993
Provision for losses on notes receivable (note 3)	<u>356,878</u>	<u>180,345</u>
Net loss	(153,074)	(42,352)
(Accumulated deficit) retained earnings, beginning of year	<u>(36,151)</u>	<u>6,201</u>
Accumulated deficit, end of year	<u><u>\$(189,225)</u></u>	<u><u>\$(36,151)</u></u>

See accompanying notes.

SMALL ENTERPRISE GROWTH FUND

STATEMENTS OF CASH FLOWS

Years Ended June 30, 1999 and 1998

	<u>1999</u>	<u>1998</u>
Cash flows from operating activities:		
Net loss	\$ (153,074)	\$ (42,352)
Adjustments to reconcile net loss to net cash used by operating activities:		
Investment income	(257,449)	(207,783)
Provision for losses on notes receivable	356,878	180,345
Changes in assets and liabilities:		
Increase in accounts receivable	(1,975)	-
Increase in accounts payable	639	1,084
(Decrease) increase in accrued expenses	(4,770)	10,270
Principal payments received on notes receivable	31,222	2,134
Disbursements for new notes receivable	<u>(900,000)</u>	<u>(450,000)</u>
Net cash used by operating activities	(928,529)	(506,302)
Cash flows from investing activities:		
Investment income collected	257,449	207,783
Cash flows from capital and related financing activities:		
Contributed capital	<u>-</u>	<u>4,606,767</u>
Net (decrease) increase in cash equivalents	(671,080)	4,308,248
Cash equivalents, beginning of year	<u>4,714,821</u>	<u>406,573</u>
Cash equivalents, end of year	<u>\$4,043,741</u>	<u>\$4,714,821</u>

See accompanying notes.

SMALL ENTERPRISE GROWTH FUND

NOTES TO FINANCIAL STATEMENTS

June 30, 1999 and 1998

1. Organization and Significant Accounting Policies

The accounting policies of the Small Enterprise Growth Fund "the Fund" conform to generally accepted accounting principles (GAAP). The Government Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant of the accounting principles are described below.

Authorizing Legislation

The Small Enterprise Growth Program was established in 1996 by the State of Maine legislature through the enactment of L.D. 1831 "An Act to Create the Small Enterprise Growth Program". The law created the Fund as a revolving fund. The Fund is an instrumentality of the State of Maine and is a tax-exempt entity.

Purpose of the Fund

The Fund provides capital to small Maine businesses that show potential for high growth and public benefit but are unable to obtain adequate conventional financing from financial institutions. The State of Maine capitalized the Fund by issuing general obligation bonds. The initial capitalization was \$5,000,000. Currently, financing is provided to qualifying business enterprises through lending arrangements and not direct equity investments. However, the financing agreements generally provide for the issuance of warrants to the Fund or the option of converting its investment from debt to equity through use of convertible debentures.

Fund Administration

The Fund is overseen by the Small Enterprise Growth Board which establishes rules for operations, approves and denies loan applications and monitors investment agreements on an ongoing basis. The Governor of the State of Maine appoints the Board members.

The Fund is administered and maintained by the Finance Authority of Maine "the Authority". The Board of the Fund has engaged the Authority to provide administration and legal services including: promotion; application processing; record keeping; accounting; legal advice; and investment monitoring.

Accounting Method and Presentation

The Fund is a proprietary fund and its operations are accounted for in a manner similar to a private business enterprise. Proprietary funds are accounted for on the flow of economic resources measurement focus and use the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

SMALL ENTERPRISE GROWTH FUND

NOTES TO FINANCIAL STATEMENTS

June 30, 1999 and 1998

1. Organization and Significant Accounting Policies (Continued)

The Government Accounting Standards Board (GASB) Statement No. 20, *Accounting and Financial Reporting for Proprietary Funds and Other Governmental Activities that Use Proprietary Fund Accounting*, states that governmental organizations using proprietary fund accounting must follow all applicable GASB pronouncements and Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989 unless they contradict GASB pronouncements. A governmental organization using proprietary fund accounting may elect to follow FASB Statements and Interpretations issued after November 30, 1989. The Fund has elected not to apply FASB Statements and Interpretations issued after November 30, 1989.

Management Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management of the Fund to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The most significant estimate utilized in the preparation of the financial statements of the Fund relates to the allowance for losses on notes receivable.

Cash Equivalents

For purposes of preparing the statement of cash flows, the Fund considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. At June 30, 1999 and 1998, the Fund's cash equivalents consisted of amounts held in the State of Maine Treasurer's cash pool.

Notes Receivable

Notes receivable are carried at the principal amounts outstanding. Interest income on notes receivable is recorded only when collectibility of principal and interest are probable.

Allowance for Losses on Notes Receivable

The Fund has established an allowance for losses on notes receivable. The allowance for losses account is established through a provision for losses charged to operations. The amount of the allowance is determined by management's evaluation of the notes receivable portfolio. The evaluation takes into consideration such factors as the volume of the portfolio, overall portfolio quality, specific problem borrowers and current and anticipated economic conditions that may affect the borrowers' ability to repay. Management believes that the allowance for losses is adequate. While management uses available information to recognize losses, changing economic conditions and the economic prospects of the borrowers might necessitate future additions to the allowance. It is the Fund's policy to review each note receivable for potential loss and set up specific reserves if necessary and to provide for a general reserve on all notes receivable without specific reserves.

SMALL ENTERPRISE GROWTH FUND

NOTES TO FINANCIAL STATEMENTS

June 30, 1999 and 1998

2. Cash Equivalents

The Fund invests monies that are not needed for immediate use with the State of Maine. The Treasurer of the State of Maine sponsors an external investment pool. The Fund's participation is voluntary. The State of Maine's external investment pool is primarily comprised of investment vehicles with short maturities and management of the Fund characterizes the investments within the pool as low risk. The Fund is able to make withdrawals from the State of Maine external investment pool at par with little advance notice and without penalty. The Fund's management considers this investment vehicle a money market instrument and carries the amounts in the pool at cost, which approximates market.

3. Notes Receivable

The following is a summary of notes receivable at June 30, 1999 and 1998:

	<u>1999</u>	<u>1998</u>
Note dated December 2, 1997, interest at Wall Street Journal prime rate plus 0.5% (8.25% at June 30, 1999) subject to change quarterly, principal and interest payments deferred for six months, principal and interest payments of \$3,590 over a fifty-four month period, the note is unsecured	\$ 116,644	\$ 147,866
Note dated January 22, 1998, interest at Wall Street Journal prime rate plus 0.5% (8.25% at June 30, 1999) subject to change quarterly, principal and interest payments deferred for three years, principal and interest payments of \$3,590 over a fifty-four month period, the note is unsecured	150,000	150,000
Note dated November 3, 1997, interest at Wall Street Journal prime rate plus 0.5% (9.0% at June 30, 1998) subject to change quarterly, principal and interest payments deferred for a one-year period, principal and interest payments of \$4,142 over a forty-eight month period, the note was unsecured and was charged-off in fiscal 1999	-	150,000
Six notes dated between August 28, 1998 through March 8, 1999, interest at Wall Street Journal prime rate plus 1.25% (9.0% at June 30, 1999) subject to change quarterly, principal and interest payments deferred for three years, principal and interest payments commence three years after the note is signed payable over a thirty-six month period, the notes are unsecured	<u>900,000</u>	<u>-</u>
	\$1,166,644	\$ 447,866
Allowance for losses	<u>(387,223)</u>	<u>(180,345)</u>
Notes receivable, net	<u>\$ 779,421</u>	<u>\$ 267,521</u>

SMALL ENTERPRISE GROWTH FUND

NOTES TO FINANCIAL STATEMENTS

June 30, 1999 and 1998

3. Notes Receivable (Continued)

The following is the activity in the allowance for losses on notes receivable during the years ended June 30, 1999 and 1998:

	<u>1999</u>	<u>1998</u>
<u>Allowance for losses</u>		
Beginning balance	\$ 180,345	\$ -
Provision for losses	356,878	180,345
Charge offs	<u>(150,000)</u>	<u>-</u>
Ending balance	<u>\$ 387,223</u>	<u>\$180,345</u>

The Fund's lending activities are conducted in the State of Maine. The ability and willingness of the borrowers to honor their repayment commitment is generally dependent on the health of the economic sector in the borrower's geographical area and the general economy.

At June 30, 1999, there were two borrowers with total principal balances of \$300,000 that were not performing under the terms of the lending agreements. The Fund has established a specific reserve for these borrowers and did not recognize any interest income on these notes during fiscal 1999. At June 30, 1998, there was one borrower with a principal balance of \$150,000 that was not performing under the terms of the lending agreement. The Fund has established a specific reserve for this borrower and did not recognize any interest income on this note during fiscal 1998.

At June 30, 1999, the Fund had commitments to extend credit of \$300,000. Commitments to extend credit are agreements to lend to a borrower as long as there is no violation of any condition established in the commitment agreement. The Fund uses the same process in making commitments as it does for lending activities.

4. Warrants

The financing agreements entered into with each business enterprise in 1998 contained a provision enabling the Fund to acquire an equity interest in the business through a warrant to purchase common stock of the enterprise at a set price in the future. The warrants are generally not exercisable for a four-year period after the issuance date and contain put and call provisions. The warrants are considered a separate investment; however, the Fund has not assigned any value to the warrants at June 30, 1999 or 1998 because there is no market for the warrants and the business enterprises are in the start-up and development phase, and as a result, the value of their common stock is impractical to determine.

SMALL ENTERPRISE GROWTH FUND

NOTES TO FINANCIAL STATEMENTS

June 30, 1999 and 1998

5. Convertible Debentures

The financing agreements entered into with each business enterprise in 1999 contain a provision enabling the Fund to acquire an equity interest in the business through a convertible debenture that gives the Fund future options to convert its investments from debt to equity. Payments by the borrower on the notes are deferred for the first three years. During that time, the debenture may be converted under certain events such as prepayment by the borrower or default. After the three year period, the borrower must pay principal and interest to amortize the loan over the next three year period. The Fund may request conversion at any time during this three year period.

6. Transactions with the State of Maine and the Finance Authority of Maine "the Authority"

State of Maine

During fiscal 1998, the Fund received \$4,600,000 of the initial \$5,000,000 to capitalize the Fund from the State of Maine. There were no funds received from the State of Maine in fiscal 1999.

Finance Authority of Maine

The Fund has engaged the Authority to provide administrative and record keeping services. The Authority charges the Fund for services rendered and the fees paid to the Authority are authorized by the Fund's Board. Included in professional fees and services in the 1999 and 1998 statement of revenues, expenses and changes in accumulated deficit, is approximately \$35,000 and \$32,400, respectively, paid to the Authority for such services.

The legislation creating the Fund required that any funds held by the Authority in the Pine Tree Partnership Fund be contributed as capital to the Fund. During fiscal 1998, the Fund received \$6,767 from the Authority which represented the remaining funds held in the Pine Tree Partnership Fund.

SMALL ENTERPRISE GROWTH FUND

SUPPLEMENTARY INFORMATION

June 30, 1999 and 1998

Year 2000 Issue (Unaudited)

Many existing computer programs and hardware configurations use only two digits to identify a year in the date field. Because computer programs and hardware configurations use only two digits to identify a year, they will not be able to distinguish between the year 2000 and the year 1900. This may cause the computer programs and equipment to process data inaccurately or to stop processing data altogether.

The Fund engages the Authority to provide all record keeping and electronic data processing functions. The Fund's management is aware of the year 2000 matter and will work with the Authority to ensure any Year 2000 issues will have a minimal impact on the operations of the Fund. The Authority is working with its business partners to determine its Year 2000 readiness.

The Authority has developed a plan to address the Y2K issue. This plan consists of four phases which are briefly described below.

Awareness Phase - Involves defining the Y2K issue and developing an overall strategy and the necessary resources to perform compliance work. This phase has been completed.

Assessment Phase - Consists of assessing the size and complexity of the problems and detailing the magnitude of the efforts necessary to address the Y2K issue. The Authority has prepared an inventory of all its significant hardware and software and an assessment has been made to determine the potential Y2K impact on each system. This phase has been completed.

Remediation Phase - Involves testing all significant systems (financial and communications) and modifying or replacing all necessary hardware and software to be Y2K compliant. This phase is complete at June 30, 1999.

Testing and Validation Phase - Involves testing all significant systems and modifying or replacing all necessary hardware and software to be Y2K compliant. This phase is complete at June 30, 1999.

The Fund anticipates that the Authority will absorb all costs associated with Year 2000 remediation efforts. Management of the Fund believes that in a worst case scenario the operations and record keeping functions of the Fund could be performed manually. This could minimize any disruption caused by Year 2000 system failures and allow the Fund to continue to operate and carry-on its activities.

SMALL ENTERPRISE GROWTH FUND

Stage I Fact Sheet and Application

The Small Enterprise Growth Fund (SEGF) can provide financing for small Maine companies that demonstrate a potential for high growth and public benefit. Typical candidates will be companies with a distinct competitive advantage in a strong marketplace. The program will seek adequate risk adjusted returns on investment. The Small Enterprise Growth Board (SEGB) will generally take an equity stake in the business.

Financing is limited to a maximum of \$500,000 per investment with an expectation of obtaining a return on its investment within five to seven years. The applicant must provide the Board satisfactory evidence that it has obtained other cash funds in an amount at least equal to the investment amount. Investment requests are reviewed and approved or denied by the Small Enterprise Growth Fund Board. The Board has significant flexibility in structuring investment terms. Terms are established by the Board based on the risks of the proposal and will often include equity positions. The SEGF may charge the borrower for its out-of-pocket expenses associated with closing and administering this loan.

The application process is multi-stage. After review of the Stage I application by the Board, the applicant will either be invited to move to Stage II for further due diligence by the Board or issued a written denial.

Eligibility Requirements

1. Business that at the time of application:
 - a) Employs 50 or fewer or;
 - b) Had gross sales of \$5,000,000 or less within the past 12 months.
2. Applicant must be engaged or involved in at least one of the following:
 - a) Marine Sciences
 - b) Biotechnology
 - c) Manufacturing
 - d) Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State.
 - e) Software development
 - f) Provision or development of environmental services to technologies
 - g) Provision or development of financial or insurance products or services
 - h) Production of value-added goods from natural resources
 - i) Other enterprises that the Board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism, and agricultural production.

3. Applicant demonstrates that it has obtained other cash at risk in the business in an amount at least equal to the investment amount.
4. Applicant must demonstrate that it has the potential for high growth and that it will provide public benefit.
5. Applicant must provide evidence of its need for financial assistance to realize its projected growth and achievement of public benefit.
6. Applicant demonstrates ability to provide a return on the investment.

General Information

Business's legal name: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Legal form (e.g., proprietorship, corporation, s-corporation, LLC, partnership): _____

Amount of investment requested: _____

Current number of employees: _____

Expectations of job creation:

Year One _____

Year Two _____

▪ **Stage 1 Application Package**

In addition to the General Information section, this phase requires a brief application package including the following (please limit items 1-11 to no more than 2 pages):

1. A description of the business including the operations to be financed.
2. A statement of how the investment will be used.
3. A description of the goal and/or opportunity which inspired the business.
4. A description of the current status of the business, including an assessment of the stage the business is at in its effort to achieve its goal or opportunity.
5. A description of past sources of funds received by the business.
6. An assessment of the current value of the business.
7. An estimate of the amount of capital needed to achieve the goal or opportunity of the business.
8. A description of the competition of the business.
9. A statement of how the business will obtain the required matching funds.
10. A description of the potential of the business for high growth and public benefit (include expectations for job creation).
11. A disclosure of any actions or proceedings pending or threatened against the business including litigation, administrative, or enforcement proceedings.
12. The background and experience of all individuals essential to the business. (Resumes may be attached to fulfill this requirement.)
13. The business' profit and loss statement and balance sheet for the most recent two years or such shorter time as the business has been in operation. Include summary financial projections for the next 3 to 5 years.

The Board will review all Stage I application packages and will ask the applicant to move on to Stage II in the approval process or issue a written denial of the request.

During Stage II, the business shall provide such additional information related to the business or the individuals managing the business as the Board may request.

▪ **Public Disclosure & Confidentiality Statement**

The Small Enterprise Growth Fund Board is sensitive to the proprietary nature of the information required on this application. Certain information in the Board's possession must be available for public inspection after an application for financial assistance is received. This information includes the names of applicants, including principals; the amounts, types, and general terms of financial assistance.

Certain records are designated confidential and will not be available to the public for inspection. This includes the disclosure of records which would constitute an invasion of an individual's privacy, such as personal tax return or financial statements, assessments of creditworthiness or financial condition, records obtained by the Board in connection with any monitoring or servicing of an existing project, and any records of information the release of which the Board had determined could cause a business or competitive detriment to the person to whom the information belongs or pertains.

If an applicant desires that certain information remain confidential, the applicant must clearly identify what information or documents it wishes to remain confidential. The applicant must also explain, in writing, the basis for such a request. Where the applicant asserts that the basis for the confidentiality request is that release of the information could cause a business or competitive disadvantage, or loss of a competitive advantage, the applicant must provide the Board with sufficient information to independently determine the likelihood of such a detriment. Applicants may wish to consult their attorney or the Board's legal counsel as to the scope of public disclosure and confidentiality as it relates to the Small Enterprise Growth Fund and the business seeking assistance.

I represent that I am the individual authorized to complete this application on behalf of the above and I also certify that the information provided and submitted in connection with the application is true and accurate and fairly presents the business and financial status of the applicant.

Signature of authorized individual of applicant

Title

Date

Please mail completed application to:
Small Enterprise Growth Fund Board
P.O. Box 670
Augusta, Maine 04332-0670

**SMALL ENTERPRISE GROWTH FUND
CONFIDENTIAL SERVICING MEMO**

REQUEST:	Site Visit- Stage II		Qtrly Status Update		Annual Review		Other (please explain):	
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L/O: _____ **Date:** _____
SEGF Board Members w/ Conflicts: none known

Company:
Address:

Principals:

Description:

Employment:
Legal Form:

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Type	Orig'l Date	Original Balance	Current Balance a/o	Int. Rate	Term	Payment Requirement
<u>Conversion Rights/Options:</u>						
<u>Conversion Rights/Options:</u>						

Initial Valuation:

Purpose of Investment:

Matched Funding Source:

SEGF HISTORY/CURRENT SITUATION

MANAGEMENT

MARKET

PROOF OF CONCEPT

COMPETITION

EXIT STRATEGY/INVESTMENT STRUCTURE

FINANCIAL SUMMARY

Most Recent FYE mm/dd/yy:

Projections mm/dd/yy:

Actual YTD Performance mm/dd/yy:

Payment Performance:

Current Reserve Requirement: \$

Former Reserve Requirement: n/a

Justification of Reserve:

Strengths:

Weaknesses: