

63M-1-1201. Title.

This part is known as the "Utah Venture Capital Enhancement Act."

63M-1-1202. Findings -- Purpose.

- 1) The Legislature finds that:
 - a) fundamental changes have occurred in national and international financial markets and in the state's financial markets;
 - b) a critical shortage of seed and venture capital resources exists in the state, and that shortage is impairing the growth of commerce in the state;
 - c) a need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Utah, including enterprises in the life sciences, advanced manufacturing, and information technology;
 - d) increased venture equity capital investments in emerging, expanding, and restructuring enterprises in Utah will:
 - i) create new jobs in the state; and
 - ii) help to diversify the state's economic base; and
 - iii) a well-trained work force is critical for the maintenance and development of Utah's economy.
- 2) This part is enacted to:
 - a) mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales;
 - b) retain the private-sector culture of focusing on rate of return in the investing process;
 - c) secure the services of the best managers in the venture capital industry, regardless of location;
 - d) facilitate the organization of the Utah fund of funds to seek private investments and to serve as a catalyst in those investments by offering state incentives for private persons to

make investments in the Utah fund of funds;

- e) enhance the venture capital culture and infrastructure in the state so as to increase venture capital investment within the state and to promote venture capital investing within the state;
- f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner that would maximize the direct economic impact for the state; and
- g) authorize the issuance and use of contingent tax credits to accomplish the purposes referred to in Subsections (2)(a) through (e) while protecting the interests of the state by limiting the manner in which contingent tax credits are issued, registered, transferred, claimed as an offset to the payment of state income tax, and redeemed.

63M-1-1203. Definitions.

As used in this part:

- 1) "Board" means the Utah Capital Investment Board.
- 2) "Certificate" means a contract between the board and a designated investor under which a contingent tax credit is available and issued to the designated investor.
- 3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
(b) "Claimant" does not include an estate or trust.
- 4) "Commitment" means a written commitment by a designated purchaser to purchase from the board certificates presented to the board for redemption by a designated investor. Each commitment shall state the dollar amount of contingent tax credits that the designated purchaser has committed to purchase from the board.
- 5) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient funds in the redemption reserve and the board has not exercised other options for redemption under

Subsection 63M-1-1220(3)(b).

- 6) "Corporation" means the Utah Capital Investment Corporation created under Section 63M-1-1207.
- 7) "Designated investor" means:
 - a) a person who makes a private investment; or
 - b) a transferee of a certificate or contingent tax credit.
- 8) "Designated purchaser" means:
 - a) a person who enters into a written undertaking with the board to purchase a commitment;
or
 - b) a transferee who assumes the obligations to make the purchase described in the commitment.
- 9) "Estate" means a nonresident estate or a resident estate.
- 10) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.
- 11) "Private investment" means:
 - a) an equity interest in the Utah fund of funds; or
 - b) a loan to or other debt obligation from the Utah fund of funds.
- 12) "Redemption reserve" means the reserve established by the corporation to facilitate the cash redemption of certificates.
- 13) "Taxpayer" means a taxpayer:
 - a) of an investor; and
 - b) if that taxpayer is a:
 - i) claimant;
 - ii) estate; or
 - iii) trust.

- 14) "Trust" means a nonresident trust or a resident trust.
- 15) "Utah fund of funds" means a limited partnership or limited liability company established under Section 63M-1-1213 in which a designated investor purchases an equity interest.

63M-1-1204. Utah Capital Investment Board.

- 1) There is created within the office the Utah Capital Investment Board to exercise the powers conferred by this part.
- 2) The purpose of the board is to mobilize venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
- 3) In the exercise of its powers and duties, the board is considered to be performing an essential public purpose.

63M-1-1205. Board members -- Meetings -- Expenses.

- 1) a) The board shall consist of five members.
 - b) Of the five members:
 - i. one shall be the state treasurer;
 - ii. one shall be the director or the director's designee; and
 - iii. three shall be appointed by the governor and confirmed by the Senate.
 - iv. The three members appointed by the governor shall serve four-year staggered terms with the initial terms of the first three members to be four years for one member, three years for one member, and two years for one member.
 - c) When a vacancy occurs in the membership of the board for any reason, the vacancy shall be:

- a. filled in the same manner as the appointment of the original member; and
 - b. for the unexpired term of the board member being replaced.
- d) Appointed members of the board may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.
- e) Three members of the board constitute a quorum for conducting business and exercising board power, provided that a minimum of three affirmative votes is required for board action and at least one of the affirmative votes is cast by either the director or the director's designee or the state treasurer.
- f) a) Members of the board may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the members' official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- b) Members of the board may decline to receive per diem and expenses for their services.
- g) Members of the board shall be selected on the basis of demonstrated expertise and competence in:
- a. the supervision of investment managers;
 - b. the fiduciary management of investment funds; or
 - c. the management and administration of tax credit allocation programs.
- h) The board and its members are considered to be a governmental entity with all of the rights, privileges, and immunities of a governmental entity of the state, including all of

the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

- i) Meetings of the board, except to the extent necessary to protect the information identified in Subsection 63M-1-1224(3), are subject to Title 52, Chapter 4, Open and Public Meetings Act.

63M-1-1206. Board duties and powers.

- 1) The board shall:
 - a) establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors by means of certificates issued by the board, provided that a contingent tax credit may not be issued unless the Utah fund of funds:
 - i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from the state to the Utah fund of funds; and
 - ii) agrees to repay the loan upon terms and conditions established by the board;
 - b) establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors, including:
 - i) criteria and procedures for evaluating the value of investments made by the Utah fund of funds; and
 - ii) the returns from the Utah fund of funds;
 - c) establish criteria and procedures for registering and redeeming contingent tax credits by designated investors holding certificates issued by the board;

- d) establish a target rate of return or range of returns on venture capital investments of the Utah fund of funds;
 - e) establish criteria and procedures governing commitments obtained by the board from designated purchasers including:
 - i) entering into commitments with designated purchasers; and
 - ii) drawing on commitments to redeem certificates from designated investors;
 - f) have power to:
 - i) expend funds;
 - ii) invest funds;
 - iii) issue debt and borrow funds;
 - iv) enter into contracts;
 - v) insure against loss; and
 - vi) perform any other act necessary to carry out its purpose; and
 - g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the Legislative Management Committee:
- i) whenever made, modified, or repealed; and
 - ii) in each even-numbered year.
- (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review

Committee from reviewing and taking appropriate action on any rule made, amended, or repealed by the board.

- 3) (a) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall:
 - i) include the contingencies that must be met for a certificate and its related tax credits to be:
 - (A) issued by the board;
 - (B) transferred by a designated investor; and
 - (C) redeemed by a designated investor in order to receive a contingent tax credit; and
 - ii) tie the contingencies for redemption of certificates to:
 - (1) the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds; and
 - (2) the scheduled principal and interest payments payable to designated investors that have made loans or other debt obligations to the Utah fund of funds.
- (b) The board may not issue contingent tax credits under this part prior to July 1, 2004.
- 4) (a) The board may charge a placement fee to the Utah fund of funds for the issuance of a certificate and related contingent tax credit to a designated investor.
 - (b) The fee shall:
 - (i) be charged only to pay for reasonable and necessary costs of the board; and
 - (ii) not exceed .5% of the private investment of the designated investor.

- 5) The board's criteria and procedures for redeeming certificates:
 - a) shall give priority to the redemption amount from the available funds in the redemption reserve; and
 - b) to the extent there are insufficient funds in the redemption reserve to redeem certificates, shall grant the board the option to redeem certificates:
 - i) by certifying a contingent tax credit to the designated investor; or
 - ii) by making demand on designated purchasers consistent with the requirements of Section 63M-1-1221.
- 6) (a) The board shall, in consultation with the corporation, publish an annual report of the activities conducted by the Utah fund of funds, and present the report to the governor and the Executive Appropriations Committee of the Legislature.
 - (b) The annual report shall:
 - i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of the Utah fund of funds;
 - ii) review the progress of the investment fund allocation manager in implementing its investment plan; and
 - iii) describe any redemption or transfer of a certificate issued under this part.
 - (c) The annual report may not identify any specific designated investor who has redeemed or transferred a certificate.
 - (d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish a progress report which shall evaluate the progress of the state in accomplishing the purposes

stated in Section 63M-1-1202.

(ii) The board shall give a copy of the report to the Legislature.

63M-1-1207. Utah Capital Investment Corporation -- Powers and purposes.

- 1) a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.
 - b) The corporation:
 - i) may exercise all powers conferred on independent corporations under Section 63E-2-106;
 - ii) is subject to the prohibited participation provisions of Section 63E-2-107; and
 - iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.
 - c) The corporation shall file with the Division of Corporations and Commercial Code:
 - i) articles of incorporation; and
 - ii) any amendment to its articles of incorporation.
 - d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.
 - e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.
- 2) The purposes of the corporation are to:
 - a) organize the Utah fund of funds;
 - b) select a venture capital investment fund allocation manager to make venture capital fund

- investments by the Utah fund of funds;
- c) negotiate the terms of a contract with the venture capital investment fund allocation manager;
 - d) execute the contract with the selected venture capital investment fund manager on behalf of the Utah fund of funds;
 - e) receive funds paid by designated investors for the issuance of certificates by the board for private investment in the Utah fund of funds;
 - f) receive investment returns from the Utah fund of funds; and
 - g) establish the redemption reserve to be used by the corporation to redeem certificates.
- 3) The corporation may not:
- a) exercise governmental functions;
 - b) have members;
 - c) pledge the credit or taxing power of the state or any political subdivision of the state; or
 - d) make its debts payable out of any moneys except those of the corporation.
- 4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.
- 5) The corporation may:
- a) engage consultants and legal counsel;
 - b) expend funds;
 - c) invest funds;
 - d) issue debt and borrow funds;
 - e) enter into contracts;

- f) insure against loss;
- g) hire employees; and
- h) perform any other act necessary to carry out its purposes.

63M-1-1208. Incorporator -- Appointment committee.

- 1) To facilitate the organization of the corporation, the director or the director's designee shall serve as the incorporator as provided in Section 16-6a-201.
- 2) To assist in the organization of the corporation, the Utah Board of Business and Economic Development shall appoint three individuals to serve on an appointment committee.
- 3) The appointment committee shall:
 - a) elect the initial board of directors of the corporation;
 - b) exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this part, including in areas related to:
 - i) venture capital investment;
 - ii) investment management; and
 - iii) supervision of investment managers and investment funds; and
 - c) terminate its existence upon the election of the initial board of directors of the corporation.
- 4) The office shall assist the incorporator and the appointment committee in any manner determined necessary and appropriate by the incorporator and appointment committee in order to administer this section.

63M-1-1209. Board of directors.

- 1) The initial board of directors of the corporation shall consist of five members.
- 2) The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise, as considered appropriate by the appointment committee, in the areas of:
 - a) the selection and supervision of investment managers;
 - b) fiduciary management of investment funds; and
 - c) other areas of expertise as considered appropriate by the appointment committee.
- 3) After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be filled by election by the remaining directors of the corporation.
- 4) a) Board members shall serve four-year terms, except that of the five initial members:
 - i) two shall serve four-year terms;
 - ii) two shall serve three-year terms; and
 - iii) one shall serve a two-year term.b) Board members shall serve until their successors are elected and qualified and may serve successive terms.
 - c) A majority of the board members may remove a board member for cause.
 - d) i) The board shall select a chair by majority vote.
 - ii) The chair's term is for one year.
- 5) Three members of the board are a quorum for the transaction of business.
- 6) Members of the board of directors:
 - a) are subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation; and

- b) may have no interest in any:
 - i) venture capital investment fund allocation manager selected by the corporation under this part; or
 - ii) investments made by the Utah fund of funds.

7) Directors of the corporation:

- a) shall be compensated for direct expenses and mileage; and
- b) may not receive a director's fee or salary for service as directors.

63M-1-1210. Investment manager.

- 1) After incorporation, the corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Utah fund of funds in accordance with the requirements of this part.
- 2) Any proposed investment plan shall address the applicant's:
 - a) level of:
 - i) experience; and
 - ii) quality of management;
 - b) investment philosophy and process;
 - c) probability of success in fund-raising;
 - d) prior investment fund results; and
 - e) plan for achieving the purposes of this part.
- 3) The selected venture capital investment fund allocation manager shall have substantial, successful experience in the design, implementation, and management of seed and venture

capital investment programs and in capital formation.

- 4) The corporation shall only select a venture capital investment fund allocation manager:
 - a) with demonstrated expertise in the management and fund allocation of investments in venture capital funds; and
 - b) considered best qualified to:
 - i) invest the capital of the Utah fund of funds; and
 - ii) generate the amount of capital required by this part.

63M-1-1211. Management fee -- Additional financial assistance.

- 1) The corporation may charge a management fee on assets under management in the Utah fund of funds.
- 2) The fee shall:
 - a) be in addition to any fee charged to the Utah fund of funds by the venture capital investment fund allocation manager selected by the corporation; and
 - b) be charged only to pay for reasonable and necessary costs of the corporation.
- 3) The corporation may apply for and, when qualified, receive financial assistance from the Industrial Assistance Fund under Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, and under rules made by the Board of Business and Economic Development in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to help establish the program authorized under this part.

63M-1-1212. Dissolution.

- 1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated and dissolved.

- 2) Upon dissolution or privatization of the corporation, any assets owned by the corporation shall be distributed to one or more Utah nonprofit tax exempt organizations to be designated by the Legislature for the purposes listed in Section 63M-1-1202 as provided in Title 63E, Chapter 1, Independent Entities Act.

63M-1-1213. Organization of Utah fund of funds.

- 1) The corporation shall organize the Utah fund of funds.
- 2) The Utah fund of funds shall make investments in private seed and venture capital partnerships or entities in a manner and for the following purposes:
 - a) to encourage the availability of a wide variety of venture capital in the state;
 - b) to strengthen the economy of the state;
 - c) to help business in the state gain access to sources of capital;
 - d) to help build a significant, permanent source of capital available to serve the needs of businesses in the state; and
 - e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.
- 3) The Utah fund of funds shall be organized:
 - a) as a limited partnership or limited liability company under Utah law having the corporation as the general partner or manager;
 - b) to provide for equity interests for designated investors which provide for a designated scheduled rate of return and a scheduled redemption in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - c) to provide for loans by or the issuance of debt obligations to designated investors which provide for designated payments of principal, interest, or interest equivalent in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah

Administrative Rulemaking Act.

- 4) Public money may not be invested in the Utah fund of funds.

63M-1-1214. Compensation from the Utah fund of funds to the corporation -- Redemption reserve.

- 1) The corporation shall be compensated for its involvement in the Utah fund of funds through the payment of the management fee described in Section 63M-1-1211.
- 2) (a) Any returns in excess of those payable to designated investors shall be deposited in the redemption reserve and held by the corporation as a first priority reserve for the redemption of certificates.
b) Any returns received by the corporation from investment of amounts held in the redemption reserve shall be added to the redemption reserve until it has reached a total of \$300,000,000.
c) If at the end of a calendar year the redemption reserve exceeds the \$300,000,000 limitation referred to in Subsection (2)(b), the corporation shall reinvest the excess in the Utah fund of funds.
- 3) Funds held by the corporation in the redemption reserve shall be invested in accordance with Title 51, Chapter 7, State Money Management Act.

63M-1-1215. Investments by Utah fund of funds.

- 1) The Utah fund of funds shall invest funds:
 - a) principally in high-quality venture capital funds managed by investment managers who have:

- i) made a commitment to equity investments in businesses located within the state; and
 - ii) have committed to maintain a physical presence within the state;
 - b) in private venture capital funds and not in direct investments in individual businesses; and
 - c) in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds.
- 2) (a) The Utah fund of funds shall give priority to investments in private seed and venture capital partnerships and entities that have demonstrated a commitment to the state as evidenced by:
 - i) the investments they have made in Utah-based entities;
 - ii) the correspondent relationships they have established with Utah-based venture capital funds; or
 - iii) the commitment they have made to expand the reach of expertise within the state by adding additional investment areas of expertise.
 - b) The manager of the Utah fund of funds may waive the priorities under Subsection (2)(a) only if necessary to achieve the targeted investment returns required to attract designated investors.
- 3) The Utah fund of funds may invest funds in a newly created venture capital fund only if the managers or management team of the fund have the experience, expertise, and a successful history in the investment of venture capital funds as described in Subsection (1)(c).
- 4) a) An investment or investments by the Utah fund of funds in any venture capital fund may comprise no more than 20% of the total committed capital in the venture capital fund.

b) (i) No more than 50% of the funds invested by the Utah fund of funds may be made with venture capital entities with offices in the state established prior to July 1, 2002.

ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional venture capital entities open new offices in the state.

63M-1-1216. Powers of Utah fund of funds.

- 1) The Utah fund of funds may:
 - a) engage consultants and legal counsel;
 - b) expend funds;
 - c) invest funds;
 - d) issue debt and borrow funds;
 - e) enter into contracts;
 - f) insure against loss;
 - g) hire employees;
 - h) issue equity interests to designated investors that have purchased equity interest certificates from the board; and
 - i) perform any other act necessary to carry out its purposes.
- 2) (a) The Utah fund of funds shall engage a venture capital investment fund allocation manager.
- 3) The compensation paid to the fund manager shall be in addition to the management fee paid to the corporation under Section 63M-1-1211.
- 4) The Utah fund of funds may:
 - a) open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager; and

- b) expend moneys to secure investment ratings for investments by designated investors in the Utah fund of funds.

63M-1-1217. Annual audits.

- 1) Each calendar year, an audit of the activities of the Utah fund of funds shall be made as described in this section.
- 2) a) The audit shall be conducted by:
 - i) the state auditor; or
 - ii) an independent auditor engaged by the state auditor.
- b) An independent auditor used under Subsection (2)(a)(ii) must have no business, contractual, or other connection to:
 - i) the corporation; or
 - ii) the Utah fund of funds.
- 3) The corporation shall pay the costs associated with the annual audit.
- 4) The annual audit report shall:
 - a) be delivered to:
 - i) the corporation; and
 - ii) the board; and
 - b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year.

63M-1-1218. Certificates and contingent tax credits.

- 1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the form, issuance,

transfer, and redemption of certificates.

- 2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:
 - a) the aggregate outstanding certificates may not exceed a total of \$300,000,000 of contingent tax credits;
 - b) the board shall issue a certificate contemporaneously with an investment in the Utah fund of funds by a designated investor;
 - c) the board shall issue contingent tax credits in a manner that not more than \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax credits may be redeemable in any fiscal year; and
 - d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63M-1-1220(3)(b).
- 3) In determining the \$300,000,000 maximum limit in Subsection (2)(a) and the \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection (2)(c):
 - a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;
 - b) certificates and related contingent tax credits which have expired may not be included; and
 - c) certificates and related contingent tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.
- 4) Contingent tax credits are subject to the following:
 - a) a contingent tax credit may not be redeemed except by a designated investor in

- accordance with the terms of a certificate from the board;
- b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate;
 - c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;
 - d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and
 - e) a contingent tax credit shall be claimed as a refundable credit.
- 5) In calculating the amount of a contingent tax credit:
- a) The board shall certify a contingent tax credit only if the actual return or payment of principal and interest to the designated investor is less than that targeted at the issuance of the certificate;
 - b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between:
 - i) the sum of:
 - A) the initial private investment of the designated investor in the Utah fund of funds;
and
 - B) the scheduled aggregate return to the designated investor at rates of return authorized by the board at the issuance of the certificate; and
 - ii) the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;
 - c) the rates, whether fixed rates or variable rates, shall be determined by a formula

- stipulated in the certificate; and
- d) the amount of the contingent tax credit for a designated investor with a loan or other debt obligation from the Utah fund of funds shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
- 6) The board shall clearly indicate on the certificate:
- a) the targeted return on the invested capital, if the private investment is an equity interest;
 - b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan or other debt obligation;
 - c) the amount of the initial private investment;
 - d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and
 - e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.
- 7) Once moneys are invested by a designated investor, the certificate:
- a) is binding on the board; and
 - b) may not be modified, terminated, or rescinded.
- 8) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.
- 9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

63M-1-1219. Transfer and registration of certificates.

- 1) A certificate and the related contingent tax credit may be transferred by the designated investor.
- 2) The board, in conjunction with the State Tax Commission, shall develop:
 - a) a system for registration of any certificate and related contingent tax credit issued or transferred under this part; and
 - b) a system that permits verification that:
- 3) any contingent tax credit claimed is valid; and
 - a) any transfers of the certificate and related contingent tax credit are made in accordance with the requirements of this part.
- 4) A certificate or contingent tax credit issued or transferred under this part may not be considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

63M-1-1220. Redemption of certificates.

- 1) If a designated investor elects to redeem a certificate, the certificate shall be presented to the board for redemption no later than June 30 of the calendar year maturity date stated on the certificate.
- 2) Upon presentment to the board, it shall determine and certify the amount of the contingent tax credit that may be claimed by the designated investor based on:
 - a) the limitations in Section 63M-1-1218; and
 - b) rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3) a) If there are sufficient funds in the redemption reserve, the board shall direct the corporation to make a cash redemption of the certificate.

- b) If there are insufficient funds in the redemption reserve, the board may elect to redeem the certificate:
 - i) by certifying a contingent tax credit to the designated investor; or
 - ii) by making demand on designated purchasers to purchase certificates in accordance with Section 63M-1-1221.
- 4) The board shall certify to the State Tax Commission the contingent tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.
- 5) The board shall cancel all redeemed certificates.

63M-1-1221. Use of commitments to redeem certificates.

- 1) The board may elect to draw on a commitment to redeem a certificate from a designated investor.
- 2) If the board makes an election under Subsection (1), it shall:
 - a) inform the designated purchaser of the amount of the contingent tax credit that must be purchased from the board;
 - b) specify the date on which the purchase must be consummated; and
 - c) use the funds delivered to the board by the designated purchaser to redeem the certificate from the designated investor.
- 3) The board has discretion in determining which commitment or commitments and what portion of those commitments to use to redeem certificates.
- 4) The contingent tax credits acquired by a designated purchaser under this section are subject to Section 63M-1-1218.

63M-1-1222. Powers and effectiveness.

- 1) This part may not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this part are cumulative to those powers.
- 2) This part shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers to those conferred by any other laws.
- 3) The provisions of any contract entered into by the board or the Utah fund of funds may not be compromised, diminished, invalidated, or affected by the:
 - a) level, timing, or degree of success of the Utah fund of funds or the investment funds in which the Utah fund of funds invests; or
 - b) extent to which the investment funds are:
 - i) invested in Utah venture capital projects; or
 - ii) successful in accomplishing any economic development objectives.

63M-1-1223. Permissible investments.

Investments by designated investors in the Utah fund of funds are permissible investments under applicable laws of the state for:

- (1) state-chartered banks;
- (2) state-chartered savings and loan associations;
- (3) state-chartered credit unions;
- (4) state-chartered industrial banks; and

(5) domestic insurance companies.

63M-1-1224. Exemption from certain statutes.

- 1) Except as otherwise provided in this part, the corporation is exempt from statutes governing state agencies, as provided in Section 63E-2-109.
- 2) The corporation is exempt from:
 - a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - b) Title 63G, Chapter 2, Government Records Access and Management Act.
- 3) The board is exempt from the requirement to report fund performance of venture firms and private equity firms set forth in Title 63G, Chapter 2, Government Records Access and Management Act.

