



## Ohio Administrative Code

### Rule 150-1-01 Ohio venture capital program investment policy.

Effective: January 22, 2016

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#### (A) Purpose of the investment policy.

The Ohio venture capital program investment policy (the "investment policy") outlines the policies and procedures to be followed by the program administrator selected by the Ohio venture capital authority (the "authority") to manage the Ohio venture capital program (the "program") established under Chapter 150. of the Revised Code. Specifically, this investment policy:

- (1) Identifies the program's expected investment objectives;
- (2) Establishes the program's investment focus, standards and limitations;
- (3) Describes the mechanisms for securing any "loss" (as defined in division (A)(4) of section 150.01 of the Revised Code) incurred by lenders to the program fund created under section 150.03 of the Revised Code (the "program fund"), including restoring monies used to pay losses from reserves established and maintained by a "trustee" (as defined in division (A)(9) of section 150.01 of the Revised Code) as described in division (B)(2) of section 150.04 of the Revised Code.
- (4) Specifies certain components of the criteria and process to be used by the program administrator to identify investments that best achieve the program's purpose.

#### (B) Program purpose and investment objectives

Chapter 150. of the Revised Code authorizes the creation and management of the program fund as a fund of private equity funds for the expressed purpose of making investments in venture capital funds in support of "Ohio-based business enterprises" thereby increasing the amount of private investment capital available in Ohio for and in support of "Ohio-based business enterprises" and promoting "research and development purposes" (as defined in division (A)(8) of section 150.01 of the Revised Code). For purposes of this investment policy, an "Ohio-based business enterprise" is a



business entity that employs at least one individual on a full-time or part-time basis, or a self-employed individual, that in either case satisfies the following additional conditions:

(1) The principal place of business and operations of the business entity or the self-employed individual is located in Ohio;

(2) The business entity, or the business of the individual, is in the seed or early stages of business development and requires initial or early stage funding for costs of or in support of or related to the implementation of "research and development purposes" including, without limitation, capital formation, direct operating costs, costs of research and facilities, including interests in real property therefor, and other support.

(C) Investment focus, standards and limitations

(1) Limit on loans to the program fund.

The program administrator shall have the authority to secure loans to the program fund; provided, however, the program administrator shall structure the loans to ensure that payments of principal, interest or interest equivalent due in any fiscal year do not exceed twenty million dollars.

(2) Ohio-based venture capital funds.

The program administrator shall invest not less than seventy-five per cent of program fund monies under its investment authority in "Ohio-based venture capital funds" as defined in division (A)(6) of section 150.01 of the Revised Code.

(3) Eligible venture capital funds.

The program administrator may invest monies from the program fund in private, for-profit venture capital funds that invest or commit to invest in enterprises in the seed or early stage of business development and that demonstrate potential to generate high levels of successful investment performance. To determine whether a venture capital fund possesses an appropriate commitment to invest in seed or early stage businesses so as to qualify for program investment (an "eligible venture



capital fund"), the program administrator may rely on factors including, but not limited to the following:

- (a) A venture capital fund's prospectus or other similar documents that describe the fund's investment focus;
  - (b) A venture capital fund's investment history; and
  - (c) Contractual commitments by a venture capital fund to the program administrator.
- (4) Limits on program fund investment in venture capital funds.

- (a) Maximum commitment.

The maximum aggregate commitment of program fund monies by the program administrator to any single venture capital fund shall not exceed ten million dollars; subject, however, to the following additional limitations:

- (i) In the case of an Ohio-based venture capital fund, the commitment shall not exceed fifty per cent of the total amount of capital committed to that venture capital fund from all sources;
- (ii) In the case of other venture capital funds that are not Ohio-based, the commitment shall not exceed twenty per cent of the total amount of capital committed to that venture capital fund from all sources.

- (b) Aggregated commitments.

In calculating the aggregate commitment of program fund monies, the program administrator shall include commitments to a venture capital fund and to any other venture capital fund under the same management as that venture capital fund. The program administrator shall consider a venture capital fund to be under the "same management" as another fund if:

- (i) The two venture capital funds are managed by the same individual managers;



- (ii) The two venture capital funds are managed by the same management entity; or
  - (iii) The manager of one venture capital fund can, directly or indirectly, control the investment decisions of the second venture capital fund.
- (5) Matching commitments to venture capital funds.

(a) Match ratio and draws.

As indicated in paragraph (C)(4) of this rule, the program administrator shall not commit capital from the program fund to a venture capital fund until the venture capital fund receives a commitment from other investors in the venture capital fund (the "matching commitment") of at least the same amount (in the case of an Ohio-based venture capital fund) or at least four times that amount (in the case of a venture capital fund that is not Ohio-based). Further, the program administrator will require that any draws against program fund commitments shall not exceed the program fund's pro rata share of the aggregate commitments to the venture capital fund from all investors.

(b) Matching requirements and definitions.

(i) The following commitments from other investors in a venture capital fund shall satisfy the matching commitment described in the preceding paragraph (C)(5)(a) of this rule:

(a) In the case of an existing venture capital fund, commitments from other investors that remain unfunded (not subject to a prior or current draw or funding request by the venture capital fund) as of the date of the execution of the commitment of program fund monies by the program administrator (the "program fund commitment") may be used to satisfy up to fifty per cent of the matching commitment. The remainder of the matching commitment must be satisfied with new commitments; provided, however, the only permissible contingency to the enforceability of the new commitments is the execution of the program fund commitment. For the purposes of this requirement, a venture capital fund shall be deemed to be an "existing venture capital fund" if, as of the date of the program fund commitment,



- (i) The venture capital fund has broken escrow in accordance with the terms of its organizational documents, and
  - (ii) The investors' obligations to fund their commitments are subject only to the receipt of a draw request from the venture capital fund that meets the requirement of the venture capital fund's organizational documents.
- (b) In the case of a new venture capital fund, commitments from other investors if the only remaining contingency to the enforceability of such commitments is the aggregation of sufficient commitments to "break escrow" and initiate investment activities in accordance with the fund's organizational documents. In no case will the program fund's commitment become binding or enforceable prior to the date the matching commitments become binding and enforceable.
- (ii) The following funding shall not satisfy the matching commitment:
- (a) Any funding that, as of the date of the program fund commitment, has been paid by investors to a venture capital fund pursuant to draws on commitments, whether invested in a portfolio company or currently held by the venture capital fund in an account pending investment or payment of operating expenses (including management fees); or
  - (b) Any funding provided by the state of Ohio, including, but not limited to the "Third Frontier Action Fund" (formerly the "technology action fund").
- (6) Ohio-based business enterprise/seed and early stage investments/research and development purposes.
- (a) Minimum investment by each venture capital fund.

The program administrator will require that not less than an amount equal to fifty per cent of program fund money invested in any venture capital fund be invested by the venture capital fund in an "Ohio-based business enterprise". To determine whether a business entity, or the business of the individual, is in the seed or early stages of business development and requires initial or early stage funding (as specified in the definition of "Ohio-based business enterprise"), the venture capital fund shall consider



a variety of factors, including, but not limited to the maturity of the business, the stage of development of the business' products or services and the business' capitalization history and structure; provided, however, if a business is not clearly in the seed or early stages of business development, the venture capital fund may request a determination by the program administrator who shall use the same factors and whose determination shall be final.

(b) Aggregate investment by all venture capital funds.

The program administrator will require that, commencing with the first program fund commitment to each venture capital fund, the aggregate amount funded into "Ohio-based business enterprises" by all venture capital funds to which the program fund has made commitments will be not less than the aggregate amount of all program fund monies funded into those venture capital funds.

In making any program fund commitments, the program administrator will require that each venture capital fund provide it with information that is consistent with the standards established in paragraph (C)(6)(a) of this rule and any agreement entered into by the authority and an "issuer" (as defined in division (A)(2) of section 150.01 of the Revised Code) pursuant to division (E) of section 150.02 of the Revised Code (an "issuer agreement"), and that is sufficient, in the reasonable judgment of the program administrator, to establish compliance with paragraph (C)(6)(b) of this rule. The program administrator shall report to the authority on such compliance, and on any additional information required pursuant to any issuer agreement, at the same time each year that it is required to report the annual audit to the authority under section 150.05 of the Revised Code.

(7) Certification of losses.

In accordance with the terms of the agreement between the program administrator and the authority and any issuer agreement, the program administrator shall immediately certify any lender's loss incurred in connection with the lender's loan to the program fund or with the utilization of any reserves established and maintained by a trustee on behalf of an issuer to pay losses consistent with the issuer agreement. The authority, in conjunction with the tax commissioner, shall develop a system for issuing tax credit certificates and for the purpose of verifying that any credit claimed is a credit issued under section 150.07 of the Revised Code and is properly taken in the year specified in the certificate and in compliance with divisions (B) and (D) in section 150.07 of the Revised Code.



(8) Payment of principal and interest on loans/security against lender losses/issuance of tax credits.

(a) Payment of principal and interest on loans.

The program administrator shall apply program fund revenue first to the payment of principal borrowed by the program fund for investment under the program and then to interest related to that principal, including any prepayments of such principal and related interest and any deposits to establish, fund, maintain, restore or otherwise provide for funds for the payment of principal and interest (including, without limitation, debt service payment and prepayment funds, debt service reserve or sinking funds, and reserves to fund principal, interest and other commitments or obligations of the program fund), all as required under the applicable lending documents, any applicable "issuer agreement" or a related trust agreement or indenture ("reserves"), and then to amounts necessary to cover the principal and interest on the program administrator's loan to the program fund (which loan must be equal to, but may not exceed, one per cent of the amount of outstanding loans by other lenders to the program fund). The program administrator shall then pay to the authority for deposit in the Ohio venture capital fund, as described in section 150.08 of the Revised Code, not less than ninety per cent of the amount by which program fund revenue attributable to investments of program fund monies exceeds amounts applied in accordance with the preceding sentence. The determination regarding the existence and amount of excess funds in the program fund shall be made in accordance with the provisions of the agreement between the program administrator and the authority and any "issuer agreement".

(b) Security against lender losses and issuance of tax credits.

In addition to the program fund revenues, the lenders to the program fund, with the exception of the program administrator, may be entitled to the following additional security against losses:

(i) First, to the extent monies in the program fund are insufficient to pay when due principal and interest on loans to the program fund, any applicable "reserves";

(ii) Second, to the extent monies in the program fund and any applicable "reserves" are insufficient to pay when due principal and interest on loans to the program fund and to restore money used to



pay any such amounts from reserves established and maintained by a trustee on behalf of an issuer consistent with an "issuer agreement", with the exception of the loan by the program administrator, the authority may apply monies from the Ohio venture capital fund if the authority first determines that such funds may be expended without adversely affecting the ability of the authority to continue fulfilling the purpose set forth in section 150.01 of the Revised Code; and

(iii) Third, to the extent monies are insufficient in the program fund, from any applicable "reserves" and from amounts authorized pursuant to paragraph (C)(8)(b)(ii) of this rule to be expended from the Ohio venture capital fund, to pay in full when due principal and interest on loans to the program fund (with the exception of the loan by the program administrator) and to restore money used to pay any such amounts from reserves established and maintained by a trustee on behalf of an issuer consistent with an "issuer agreement," the authority shall issue a tax credit certificate to the lender under section 5707.031, 5725.19, 5726.53, 5727.241, 5729.08, 5733.49 or 5747.80 of the Revised Code, as applicable in accordance with the provisions of section 150.07 of the Revised Code.

(c) Payment of program administrator management fees.

Management fees payable to the program administrator in accordance with the contract between the program administrator and the authority, and any issuer fees payable to the issuer in accordance with an "issuer agreement," shall be payable from monies in the program fund, whether such funds constitute loan proceeds or revenues generated from program fund investments, or from other available monies. Any such payment from monies in the program fund shall not be deemed to be an "investment of money from the program fund" as described under division (J) of section 150.03 of the Revised Code.

(d) Investment standards and limitations.

In making the investments from the program fund, the program administrator will:

(i) Comply with all applicable state and federal laws, rules and regulations;

(ii) Comply with the terms of this investment policy;



(iii) Comply with the terms of any issuer agreement; and

(iv) Comply with the terms of the agreement between the program administrator and the authority.

(D) Portfolio fund investment selection process

(1) As a condition to the execution of an agreement with the authority, the program administrator shall submit to the authority for approval a written description of the investment process the program administrator will follow in identifying, analyzing and making investments in venture capital funds (the "investment process"). At a minimum, the investment process will address the following:

(a) Deal sourcing;

(b) Deal flow evaluation;

(c) Preliminary due diligence;

(d) Comprehensive due diligence;

(e) Investment execution;

(f) Investment monitoring; and

(g) Reporting.

(2) Following approval of the investment process by the authority, the program administrator shall at all times act in accordance with the investment process. If the program administrator wishes to effect a material alteration of the investment process, the program administrator shall submit a written description of the alteration, including the rationale therefore, to the authority for approval.