DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 10 of the Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982), hereby gives notice of the adoption of the following amendment to Title 26 of the District of Columbia Municipal Regulations, "Insurance", to add a new chapter, "Chapter 56, Certified Capital Companies". Final action to adopt these rules was taken on July 23, 2004. Only two typographical changes were made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on June 18, 2004, at 51 DCR 6237. These final rules will be effective upon publication in the Register.

TITLE 26 DCMR, IS AMENDED TO READ AS FOLLOWS:

A new chapter is added to read as follows:

CHAPTER 56 – CERTIFIED CAPITAL COMPANIES

5600 APPLICABILITY

5600.1 This chapter shall apply to all certified capital companies formed, certified, or authorized under the Act.

5600.2 This chapter shall apply to any investment in a certified capital company for which a premium tax credit is allocated to a certified investor for making the investment in the certified capital company.

5600.3 This chapter shall apply to the allocation of premium tax credits authorized under the Act.

5601 FILING APPLICATION FOR CERTIFICATION

5601.1 An applicant seeking certification as a certified capital company shall file an Application for Certification with the Commissioner on or after the application date.

5601.2 An Application for Certification filed prior to the application date shall be treated as having been filed on the application date.

5601.3 An applicant, within five (5) business days after the applicant has or should have knowledge that any material information that the applicant supplied in its Application for Certification filed pursuant to § 5601.1 is found to be inaccurate or obsolete, shall file an amended Application for Certification correcting or updating the information provided in the Application for Certification.

5601.4 The submission of new or corrected material information under § 5601.3 shall not cause a change in the date on which the application was deemed originally received by the Department.

5601.5 The Commissioner shall make a copy of the Application for Certification form available directly from the Commissioner in paper copy format, by electronic mail with an attached Word file, or by accessing the Commissioner's website at:www.disb.dc.gov.

5602 REQUIREMENTS OF AN APPLICATION FOR CERTIFICATION

5602.1 The Application for Certification shall contain the following:

(a) A completed Application for Certification;

(b) A nonrefundable application fee in the amount of fifteen thousand dollars ($15,000) in the form of a cashier's check, certified check, or company check made payable to the D.C. Treasurer;

(c) An audited balance sheet, with an unqualified opinion from an independent certified public accountant, as of a date not more than thirty-five (35) days prior to the date that the Application for Certification is filed with the Commissioner;

(d) Evidence (which may be the audited balance sheet described in §5602.1(c)) of an equity capitalization of at least five hundred thousand dollars ($500,000) in the form of unencumbered cash, marketable securities or other liquid assets;

(e) An affidavit from the applicant affirming that the applicant, if certified under the Act, will maintain an equity capitalization of at least five hundred thousand dollars ($500,000), except for reductions due to qualified distributions, until the allocation date;

(f) An affidavit from the applicant affirming that the applicant, within sixty (60) days of receiving certification, will maintain its principal office within the District and will maintain a set of its books, records, files, and any other information required by the Commissioner as a condition of certification or as required by this chapter;

(g) An affidavit from the applicant affirming that at least two (2) of the principals of the applicant or persons employed or engaged to manage the funds of the applicant have:

(1) At least three (3) years of experience in the venture capital business, which may include investments made in connection with a state or federally sponsored venture capital program; and

(2) Not violated any federal or state insurance, securities or banking law or been convicted of any crime involving fraud;

(h) A detailed description, and supporting documentation, that demonstrates how each of the persons providing affidavits pursuant to § 5602.1(g) qualify as having at least three (3) years of experience in the venture capital business, which shall include, but not be limited to:

(1) A detailed resume with a listing of references including reference telephone numbers; and

(2) A listing of all applicable licenses that each individual holds (or has held within the last ten (10) years). Such listing shall indicate whether the license is active and in good standing, the date on which it will expire or did expire, whether any license has been revoked, the date of revocation and an explanation surrounding the revocation, whether any disciplinary action has ever been imposed with regard to the license, the date of the disciplinary action and a description surrounding the disciplinary action;

(i) A list, if any, of any fines, penalties, or other sanctions or actions by any state, federal, or local regulatory entity relating to violations of any type;

(j) The applicant's overall investment strategy and the applicant's three (3) year business plan including an organizational chart;

(k) The name, address, and phone number for each principal, manager, officer, or director, and each person owning fifteen percent (15%) or more of the voting equity interest or other voting ownership interest of the applicant.

(l) A copy of any offering materials involving the sale of securities of the applicant or the proposed certified capital company;

(m) A copy of the applicant's organizational documents and a description of the applicant's business history, if any; and

(n) Any other information requested by the Commissioner or required by the Act.

5602.2 For purposes of section 3(d) of the Act, the term "principal office" shall mean the location in the District that is the primary place where the investment functions of a certified capital company are performed and the principal location for books and records of the certified capital company.

5603 REVIEW OF APPLICATION FOR CERTIFICATION

5603.1 The Commissioner shall review an Application for Certification and all required documents to determine whether the applicant satisfies the requirements for certification as a certified capital company set forth in section 3 of the Act and §5602.

5603.2 Except as provided in §5603.6 or § 5603.7, the Commissioner shall approve or disapprove the certification of an applicant as a certified capital company within thirty (30) days of the date of receipt of a complete Application for Certification filed by the Applicant.

5603.3 If the Commissioner determines that an Application for Certification is incomplete or the Commissioner requests supplemental information, the Commissioner, within ten (10) days of the date of receipt of an Application for Certification, shall notify the applicant, in writing, that the Application is incomplete or that the Commissioner requires the applicant to submit additional information to supplement the Application for Certification.

5603.4 The notice required pursuant to §5603.3 shall provide a list of the documentation or information required to complete or supplement the Application for Certification.

5603.5 In the event an Application for Certification filed with the Department is incomplete or if the Commissioner requests additional information in connection with a filed Application for Certification, the Application for Certification shall be deemed received on the date it was originally submitted only if the applicant submits the additional information within fifteen (15) days after the date of the Commissioner's written request.

5603.6 Upon receiving all missing or requested information set forth in a notice provided pursuant to §5603.3, the Commissioner shall have fifteen (15) days from the day that the missing or requested information is submitted, to approve or reject the Application for Certification.

5603.7 Upon receiving an amended Application for Certification correcting or updating the information provided in the Application for Certification pursuant to § 5601.3, the Commissioner shall have fifteen (15) days from the day that the missing or requested information is submitted, in addition to the thirty (30) day period provided in § 5603.2, to approve or reject the Application for Certification.

5603.8 An Application for Certification shall be deemed withdrawn, and the Commissioner shall have no obligation to provide additional notices to the

applicant or take further action on the Application for Certification if the applicant fails to provide to the Department missing or requested information for an Application for Certification within fifteen (15) days after the notice provided pursuant to §5603.3.

5603.9 Upon the Commissioner's disapproval of an Application for Certification, the Commissioner shall provide written notice to the applicant of the disapproval and the requirements of section 3 of the Act or §5603 that the applicant failed to satisfy.

5603.10 An applicant that receives a notice of disapproval pursuant to §5603.9 may file an amended Application for Certification within fifteen (15) days of receipt of a notice of disapproval issued by the Commissioner pursuant to §5603.9.

5603.11 Within fifteen (15) days of receipt of an amended Application for Certification filed pursuant to §5603.10, the Commissioner shall review the Application for Certification and certify, or refuse to certify, the applicant as a certified capital company.

5604 ALLOCATION OF PREMIUM TAX CREDITS

5604.1 A Premium Tax Credit Allocation Request shall be made pursuant to a Premium Tax Credit Allocation Request Form delivered to the Commissioner.

5604.2 The Premium Tax Credit Allocation Request Form shall include the following two affidavits of each prospective certified investor:

(a) An affidavit of the certified investor attesting that it is legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount of allocated premium tax credits, even if the amount of allocated premium tax credits is less than the amount of the request, subject only to the receipt of an allocation pursuant to Section 5 of the Act; and

(b) An second affidavit of the certified investor attesting that it complies with its requirements under Sections 3(h) and 5(b) of the Act.

5604.3 The Commissioner shall accept Premium Tax Credit Allocation Requests filed pursuant to § 5604.1 on or before the premium tax credit allocation request filing date.

5604.4 Not later than six (6) business days after receiving notice from the Commissioner allocating premium tax credits to its certified investors, a certified capital company shall file a report with the Department that provides, for each certified investor that was allocated premium tax credits that failed to provide its required certified capital within five (5) business days after the certified capital company received notice from the Commissioner allocating premium tax credits to its certified investors, the name of the certified investor and the amount of certified

capital the certified investor failed to invest in the certified capital company pursuant to its obligation as established by its affidavit filed pursuant to §5604.2(a).

5605 QUALIFIED INVESTMENTS

5605.1 Prior to making a proposed investment in a specific business, a certified capital company may, at its option, request from the Commissioner a written opinion that such business will be considered a qualified business.

5605.2 Within fifteen (15) business days from the receipt of a request for an opinion filed pursuant to §5605.1, the Commissioner shall provide notice to the certified capital company requesting the opinion of the Department's determination whether the business meets the definition of a qualified business and the basis for the Department's determination.

5605.3 If the Commissioner fails to notify the certified capital company of its determination within the fifteen (15) business-day period required by §5605.2, the business upon which the request for determination under §5605.1 was based, shall be deemed to be a qualified business.

5605.4 A business that meets the requirements of a qualified business at the time of the initial investment in the business by a certified capital company shall remain classified as a qualified business for purposes of the initial investment by the certified capital company.

5605.5 For purposes of section 2(12)(A)(i) of the Act, the term "principal business operations" shall mean the location where the chief or principal affairs and business of a business are transacted.

5606 WAIVER OF QUALIFIED BUSINESS REQUIREMENTS

5606.1 A certified capital company may request the Commissioner to waive one or more of the requirements for qualification of a qualified business for a business that was classified as a qualified business at the time that the certified capital company first made an investment in the business by filing a letter requesting the waiver of a qualification.

5606.2 A letter requesting the Commissioner to waive one or more of the requirements for qualification of a qualified business shall contain the following information:

(a) The name of the certified capital company requesting the waiver;

(b) The name of the business for which the certified capital company is requesting the waiver;

(c) The qualification(s) of a qualified business for which the certified capital company is requesting the waiver;

(d) The amount of capital that the certified capital company proposes to invest in the business for which the certified capital company is requesting the waiver; and

(e) A statement that demonstrates how the proposed investment by certified capital company in the business for which the certified capital company is requesting the waiver will further economic development in the District, and why the same investment in a qualified business cannot achieve the same economic development purposes as the investment in the business for which the certified capital company is requesting the waiver.

5607 FEES

5607.1 In addition to the ten thousand dollar ($10,000) annual, non-refundable certification fee due on or before January 31 required by section 6(g)(4) of the Act, a certified capital company shall pay to the Commissioner a late fee in the amount of five thousand dollars ($5,000) if the certified capital company submits its certification fee required by section 6(g)(4) of the Act after January 31.

5607.2 If a certified capital company fails to file a report required by section 6(g) of the Act on a timely basis, the certified capital company shall pay to the Department a daily late fee in the amount of fifty dollars ($50) per day for each report filed after the due date established by section 6(g) of the Act, unless the late fee is waived by the Commissioner.

5607.3 In connection with the annual review conducted by the Commissioner of a certified capital company pursuant to section 8(a) of the Act, the certified capital company shall pay an annual review fee in the amount of three thousand dollars ($3,000), for the cost of the annual review.

5608 WAIVER OF RECAPTURE OR FORFEITURE UPON DECERTIFICATION

5608.1 A certified capital company may request the Commissioner to waive the recapture or forfeiture of premium tax credits upon the decertification of the certified capital company pursuant to section 8(c) of the Act by filing a Request for Waiver of Recapture or Forfeiture Form within ten (10) business days of receiving notice from the Commissioner of the decertification of the certified capital company.

5608.2 A request for a waiver filed pursuant to §5608.1 shall provide all the facts, circumstances, and other information that demonstrate that the waiver of the recapture or forfeiture of premium tax credits will further economic development in the District.

5608.3 The Commissioner shall review a request for a waiver filed pursuant to §5608.1 and, in his or her sole discretion, may approve or disapprove the request for a waiver within thirty (30) days of receipt of the request.

5608.4 The Commissioner shall notify the decertified certified capital company of the Commissioner's determination made pursuant to §5608.3.

5608.5 The following violations of section 6 of the Act, unless waived by the Commissioner, are material and shall be grounds for decertification of a certified capital company:

(a) A violation of section 6(a), (c), (d), (f), (g)(1), or (g)(4) of the Act; and

(b) More than two (2) violations of the requirements established by section 6(g)(2) and (3) of the Act.

5609 DISTRIBUTIONS

5609.1 Any proposed distribution by a certified capital company pursuant to section 7(b) of the Act shall be audited by a nationally recognized certified public accounting firm acceptable to the Commissioner, if the Commissioner directs that an audit be conducted.

5609.2 An audit conducted pursuant to § 5609.1 shall be conducted at the expense of the certified capital company.

5610 TRANSFER OF PREMIUM TAX CREDITS

5610.1 Within fifteen (15) days after the transfer or sale of premium tax credits, the transferring certified investor shall notify the Commissioner in writing of the:

(a) Name of the new holder of the transferred premium tax credits;

(b) Amount of premium tax credits transferred;

(c) Date the transfer occurred;

(d) NAIC Number of the transferring certified investor;

(e) NAIC Number of the new holder of the transferred premium tax credits; and

(f) Remaining balance of premium tax credits held by the transferring certified investor.

5610.2 A certified investor that transfers or sells premium tax credits and fails to file the notice required by §5610.1 within fifteen (15) days after the transfer or sale of the premium tax credits, shall be subject to a fine in the amount of five hundred dollars ($500).

5611 FILINGS, NOTICES AND WRITTEN COMMUNICATIONS

5611.1 All filings, notices and other communications required or permitted under the Act or this chapter shall be in writing and shall delivered by hand, courier, or registered or certified U.S. Mail, postage prepaid, addressed to:

(a) If to the Commissioner of the Department of Insurance, Securities and Banking, at 810 First Street, NE, Suite 701, Washington, DC 20002;

(b) If to a certified investor, at the certified investor's address set forth on the certified investor's last premium tax filing; or

(c) If to an applicant or certified capital company, at the applicant's or certified capital company's address set forth on the applicant's or certified capital company's Application for Certification, as may be updated by written notice to the Commissioner.

5611.2 For all purposes of the Act and this chapter, each notice provided pursuant to §5611.1 shall be treated as effective or having been given when delivered by hand or by courier, or, if mailed, at the earlier of its receipt or seventy-two (72) hours after the notice has been deposited in a regularly maintained receptacle for the deposit of the United States mail.

5612 FULL INVESTMENT

5612.1 Except as provided in § 5612.2, a certified capital company that has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments shall not be subject to the regulation of the Commissioner provided that the certified capital company provides the Commissioner with audited financial statements, or an agreed upon procedures letter, that demonstrate that the certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments, and the Commissioner certifies that the certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments.

5612.2 Notwithstanding § 5612.1, the requirements to apportion distributions to the District under subsection 7(b)(2) of the Act shall continue after a certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital.

5613 **FORMS**

5613.1 The forms set forth below, as well as any instructions accompanying them, are hereby adopted and incorporated by reference into these rules:

(a) Form CAP-1, Application for Certification;

(b) Form CAP-2, Premium Tax Credit Allocation Request Form; and

(c) Form CAP-3, Request for Waiver of Recapture or Forfeiture Form.

5699 **DEFINITIONS**

As used in this chapter, the following terms shall have the meanings indicated:

Act - the Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982).

Applicant - a person who files an Application for Certification to be certified as a certified capital company under the Act.

Application date – August 9, 2004.

Application for Certification - the application form adopted by the Commissioner pursuant to which an applicant can apply for certification as a certified capital company, including, but not limited to, any additional information required by the Department.

Department - the Department of Insurance, Securities and Banking.

NAIC Number – the identification number assigned to an insurance company by the National Association of Insurance Commissioners.

Rules - these rules promulgated pursuant to the Act.

Premium tax credit allocation request filing date – November 1, 2004.

Premium Tax Credit Allocation Request Form - the form adopted by the Commissioner pursuant to which a certified capital company on behalf of its respective certified investors makes a request for allocation of premium tax credits.