
Government of the District of Columbia



Department of Insurance, Securities and Banking

Testimony of
Thomas E. Hampton
Commissioner

Joint Public Oversight Roundtable

On

A Report by the District of Columbia Auditor on the Certified
Capital Companies Program

Committee on Public Services and Consumer Affairs
Muriel Bowser, Chairperson
Council of the District of Columbia

and

Committee on Economic Development
Kwame R. Brown, Chairman
Council of the District of Columbia

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Room 120
John A. Wilson Building
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Good Morning Chairperson Bowser, Chairperson Brown, Members of the Committees, and Committee Staff. I am Thomas Hampton, Commissioner for the Department of Insurance, Securities and Banking (“DISB” or “Department”) and I am pleased to be here today to testify on the Certified Capital Companies Program. Joining me today is Dana Sheppard, Associate Commissioner of Risk Finance.

DISB is responsible for regulating insurance companies, District banks, mortgage lenders and brokers, and securities firms operating in our jurisdiction. We perform licensing, analysis and examination functions, as well as product review on about 60,000 entities. Our mission is two fold: to attract and retain financial services companies, and to provide effective and efficient regulatory processes to protect the residents of the District of Columbia.

The services provided by the financial-services industry to consumers and businesses are critical to increasing economic growth and providing financial security to our residents. Without these important services, it is hard for businesses and therefore, state and local governments to survive. This issue could not be more important given the current economic crisis the United States is experiencing. Although the genesis of the crisis may have occurred within the credit markets, the restrictions banks and other financial-service companies have placed on the extension of credit and other financial products have exacerbated the economic problems.

As the financial-services regulator for the District of Columbia, our agency attempts to bridge the gap between the products and services our licensees provide, and the financial

service needs of our businesses and residents. Similarly, we believe the CAPCO program provides critical capital and loans to businesses and serves as an economic development tool in the District of Columbia.

The CAPCO law was enacted to provide a tax incentive for insurance companies to invest in new and small businesses through the use of certified capital companies – CAPCOs. The CAPCOs, in turn, make investments in existing and start-up businesses in the District. Job creation was not the sole focus of the program. In addition to new employment opportunities in the District, businesses funded through the program would pay taxes, lease office space, and spur new business; all of which are beneficial to the City, and essential to the District economy, especially during these difficult economic times.

The District of Columbia has an estimated 50,000 small businesses, most of them in the construction, retail trade, business services, and personal services industries. Generally, these businesses need access to funding. DISB worked with the CAPCO companies to market the program to more businesses. The Department met with the Department of Small and Local Business Development to discuss the CAPCO program and how Certified Small Business Enterprises could apply for funding from the CAPCOs. DISB distributed information about the CAPCO program to the public on several occasions. The Department met with representatives from the Howard University Small Business Development Center to discuss the CAPCO program and explore ways they can work with local businesses so they could take advantage of the program. Recently, DISB met

with the Washington Economic Partnership to ensure that they included information about the CAPCO program with its information about funding opportunities for DC businesses.

The Commissioner's authority over the CAPCO Program is:

- a. Review CAPCO applications and license the CAPCOs enabling them to be eligible to receive Certified Capital from insurance company investors;
- b. Oversee the allocation of premium tax credits to the Certified Investors and ensure that the CAPCOs received the Certified Capital, and ensure that such credits are applied properly to the Certified Investors' tax obligations to the District;
- c. Monitor the CAPCOs' investments to ensure that the CAPCOs invest at least 20% its capital within 30 months of the allocation date (November 1, 2004), invest at least 40% its capital within 40 months of the allocation date, and invest at least 50% of its capital within 60 months of the allocation date.
- d. Ensure that no qualified investment exceeds 15% of total Certified Capital of a CAPCO, at the time of investment;

- e. Review requests for opinion letters submitted by the CAPCOs seeking DISB's approval determination of whether a business satisfies the definition of a "qualified business";
- f. Review the annual audits submitted by the CAPCOs;
- g. Collect the annual certification fee (\$10,000);
- h. Ensure that the CAPCOs do not receive any distributions, other than an annual management fee, until they have invested 100% of its Certified Capital;
- i. Perform an annual review of the CAPCOs to determine compliance of certification, to advise the CAPCO as to the eligibility of its Qualified Investments, and ensure that no investments were made in violation of the CAPCO Act;
- j. Address any material violations of the CAPCO Act, including "Decertification" if any material violations are not corrected by the CAPCOs; and
- k. Oversee the transfer of any premium tax credits.

As a Certified Public Accountant, who has performed financial and compliance audits of companies and programs, I believe the audit process can serve an important purpose if conducted fairly. For example, an audit can provide helpful insight into a program's operation and impact. The audit report of the CAPCO program, however, unfairly portrays the program as being grossly mismanaged by DISB inaccurately assesses the costs and benefits of the Program. While there were some discrepancies in the administration of the CAPCO program, I believe that the agency approved applications that complied with the intent, if not the letter, of the law. However, we can and will do better.

Additionally, I believe audit report contains some useful strategies to improve the operational efficiency and effectiveness of the CAPCO program. Based on that belief, DISB modified its operating procedures relative to the CAPCO program. Additionally, DISB has proposed several amendments to the CAPCO law to increase the economic development benefits of the Program, and to provide the Department with greater regulatory tools over the CAPCOs. The draft legislation is currently being reviewed by senior members of the Executive Branch and should be ready for transmittal to the Council shortly. The proposed amendments should provide access to capital from CAPCOs to a greater number of small District-based businesses. The legislative changes also will enable DISB to play a greater role in determining the types of businesses that receive CAPCO funding. All of these changes should enhance the original purpose of the CAPCO law and provide a better return on the District's investment in the CAPCO program.

The Department also has engaged a local consulting firm to conduct the 2008 annual reviews of each certified capital company to ensure that CAPCOs are complying with the requirements of certification, and to ensure that no investments have been made in violation of the CAPCO statute. The annual review process was initiated in late March 2009, and should be complete by the end of this month. A written report will be prepared for each CAPCO describing the findings of the annual review and once these reports are finalized they will be placed on the Department's website for public inspection.

In conclusion, DISB will continue to act as a conduit between our license entities and the businesses that are located in the District of Columbia. We will continue to monitor closely the activities of the business we regulate during the economic crisis, and protect and assist businesses who utilize those services. While I do not believe the audit report accurately portrays the CAPCO program, I did find some of its recommendations helpful to improve the CAPCO program and DISB has taken action to implement them.

Thank you again for providing the opportunity for me to testify on the performance of the Department. My staff and I will be happy to answer any questions you may have.