

**RULES
OF THE
TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
STRATEGY**

**CHAPTER 0500-08-01
TNINVESTCO PROGRAM**

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0500-08-01-.01 DEFINITIONS.

- (1) As used in these rules, the following terms are defined as follows:
- (a) "Day" means a calendar day.
 - (b) "Dissolution" means the winding down of a company, whether voluntary or compulsory; approval or execution of a plan of dissolution; filing of a certificate of dissolution; liquidation or redistribution of substantially all of its assets; or its ceasing to carry on its business or operations, or to provide substantial employment.
 - (c) "ECD" means the State of Tennessee Department of Economic and Community Development.
 - (d) "Investment Confirmation Letter" means a letter certified by the Principal Officer of a Qualified Business noticing ECD of the date and dollar amount of a Qualified Investment by a specific TNInvestco.
 - (e) "Investment Request" means a request made by a TNInvestco pursuant to T.C.A. § 4-28-106(b) for a written determination by ECD that a proposed investment qualifies as a Qualified Investment.
 - (f) "Liquidity Event" means the merger, sale, or spinoff or other transaction of a Qualified Business, by which some or all of the investment held by a TNInvestco is monetized or otherwise converted to cash, securities, assets, distributions, or other proceeds.
 - (g) "Material Adverse Change" means any change, effect, event, occurrence, or state of facts that, individually or in the aggregate is, or is reasonably expected to be, materially adverse to the business, results of operations, condition (financial or otherwise), or prospects of a Qualified Business and its consolidated subsidiaries, if any taken as a whole. The term "Material Adverse Change" includes the following:
 - 1. The Dissolution of the Qualified Business;
 - 2. The initiation of bankruptcy, insolvency, reorganization, or similar proceedings or actions by, on behalf of, or against the Qualified Business;
 - 3. A felony conviction or plea of "nolo contendere" resulting in a prison sentence to be served by an executive, member, or managing partner of the Qualified

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Business; or a conviction or plea of “nolo contendere” for an act that reflects adversely on his or her honesty, trustworthiness, or fitness as an executive, member, or managing partner of the Qualified Business, including conduct involving dishonesty, fraud, deceit, misrepresentation, or the improper influence of a government agency or official on behalf of, or for the benefit of, the Qualified Business; or

4. A period of ninety (90) Days in which regular communications have ceased between the Qualified Business and a TNInvestco with an ownership interest.
- (h) “Principal Officer” means the top officer of a company, including such positions as president, chief executive officer, or managing partner.
- (i) “Qualified Business” shall have the meaning assigned to it at T.C.A. § 4-28-102(11).
- (j) “Qualified Investment” shall have the meaning assigned to it at T.C.A. § 4-28-102(13).
- (k) “Qualified Investment Funds” shall mean all funds received by a TNInvestco pursuant to an Investment Request approved by ECD or deemed approved under T.C.A. § 4-28-106(b) for purposes of making a Qualified Investment in a specific Qualified Business.
- (l) “TNInvestco” shall have the meaning assigned to it at T.C.A. § 4-28-102(17).

Authority: T.C.A. §§ 4-28-102(11), 4-28-102(13), 4-28-102(17), 4-28-106, and 4-28-111(d).

Administrative History: New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.02 TIMELY FUNDING OF INVESTMENTS.

- (1) After an Investment Request is approved by ECD or the proposed investment is otherwise deemed a Qualified Investment, one hundred percent (100%) of the Qualified Investment Funds shall be disbursed to the Qualified Business within sixty (60) Days after the date of delivery of the Qualified Investment Funds to the TNInvestco. In the event the TNInvestco is unable to disburse the Qualified Investment Funds to the Qualified Business within sixty (60) Days, the TNInvestco shall return the Qualified Investment Funds. A TNInvestco is prohibited from holding any amount of Qualified Investment Funds for more than sixty (60) Days, including for purposes of making a Qualified Investment in tranches.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.03 DOCUMENTATION OF DELIVERY OF QUALIFIED INVESTMENT FUNDS.

- (1) The TNInvestco shall submit to ECD documentation of the delivery of Qualified Investment Funds to a Qualified Business within sixty (60) Days of delivery.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

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0500-08-01-.04 INVESTMENT CONFIRMATION LETTERS.

- (1) Within sixty (60) Days after the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD an Investment Certification Letter certified by the Principal Officer of the Qualified Business.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.05 CERTIFICATES OF OWNERSHIP.

- (1) After the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD each original certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Qualified Investment within thirty (30) Days after the date of delivery of the certificate of ownership to the TNInvestco. In the event no certificate of ownership is issued by the Qualified Business, within thirty (30) Days after the delivery of the Qualified Investment Funds to the Qualified Business the TNInvestco shall provide written notification to the State that no certificate of ownership is available.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.06 NOTICE FOLLOWING MATERIAL ADVERSE CHANGE.

- (1) In the event of a Material Adverse Change in a Qualified Business, each TNInvestco with an ownership interest shall provide written notice to ECD within ten (10) Days after the TNInvestco receives notice of, or its Principal Officer has actual knowledge of, the Material Adverse Change. The written notice required by this rule shall include documentation explaining the circumstances of the Material Adverse Change.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-102(11) and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.07 NOTICE FOLLOWING LIQUIDITY EVENT.

- (1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall:
 - (a) Provide written notice of the Liquidity Event to ECD within thirty (30) Days after the date of the Liquidity Event;
 - (b) Within thirty (30) Days after the date of the Liquidity Event, provide adequate documentation to ECD that details the transaction and any proceeds generated. Documentation is adequate if it provides all information necessary to determine the State's ownership interest in the proceeds of the Liquidity Event; and
 - (c) If the Liquidity Event results in ownership of a security, submit to ECD each original

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certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Liquidity Event within thirty (30) Days after the date of delivery of the certificate to the TNInvestco.

- (2) In the event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.08 RETURN OF PROCEEDS FOLLOWING LIQUIDITY EVENT.

- (1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall return to the State one hundred percent (100%) of the proceeds of the Liquidity Event within thirty (30) Days after the date of delivery of the proceeds to the TNInvestco.
- (2) In the event of noncompliance with this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d). **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.09 SUBMISSION OF DOCUMENTS AND FEES.

- (1) Each TNInvestco shall submit all required statutory and programmatic documents and fees on or before their assigned due dates. Mandatory documents and fees include the following:
 - (a) "Fiduciary Duty and Ethics, Waste, Fraud & Abuse Policy Acknowledgment for TNInvestco Program" form due January 31st each year;
 - (b) "Report on Remaining Designated Capital" due January 31st each year;
 - (c) Annual review fee due January 31st each year;
 - (d) Annual certification fee due April 1st each year;
 - (e) Scorecard due April 30th each year; and
 - (f) Annual Audit Report and Examination Review due April 30th each year.
- (2) In the event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day for each document or fee shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-110; 4-28-111(a); 4-28-111(d); and 4-28-113. **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.

0500-08-01-.10 ANNUAL AUDIT REPORT, EXAMINATION REVIEW, AND CURE PERIOD.

- (1) Each TNInvestco shall submit to ECD its annual audited financial statements (the "Annual Audit Report"), together with an examination review of follow-on capital, jobs data, and pacing requirement compliance (the "Examination Review"), prepared in accordance with all relevant statutory and programmatic requirements, including T.C.A. § 4-28-110(a)(4), the "Updated Program Policies" memorandum dated February 27, 2013, and the "2014 Guidelines for Preparing Schedules" memorandum dated November 13, 2014, as they may be revised from time to time, as well as any other applicable process memoranda issued by ECD or the Office

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of the Comptroller of the Treasury. A TNInvestco shall:

- (a) Cure any disclaimer, adverse or qualified opinion, finding, material weakness, significant deficiency, or other deficiency relating to the internal controls, accounting standards, and financial statements and notes of the TNInvestco (“Audit and Control Deficiencies”) identified in the Annual Audit Report within forty-five (45) Days after the date ECD notifies the TNInvestco;
 - (b) Cure any disclaimer, adverse or qualified opinion, material noncompliance, error, omission, deviation from relevant policies and procedures, or other deficiency relating to the pacing requirements schedule, jobs and follow-on capital schedule, and schedule of investments (“Schedule and Compliance Deficiencies”) identified in the Examination Review within forty-five (45) Days after the date ECD notifies the TNInvestco;
 - (c) Cure any additional Audit and Control Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco; and
 - (d) Cure any additional Schedule and Compliance Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco.
- (2) In each event of noncompliance with a subparagraph of this rule, a penalty of \$1,000 per Day shall be assessed until the noncompliance is cured. Penalties assessed pursuant to subparagraph (1)(b) of this rule shall not exceed a maximum of \$1,000 per Day per schedule. Penalties assessed pursuant to subparagraph (1)(d) of this rule shall not exceed a maximum of \$1,000 per Day per schedule. Notwithstanding the foregoing, if the noncompliance results in the assessment of a mandatory penalty of \$10,000 pursuant to T.C.A. § 4-28-111(b), an additional penalty shall not be assessed pursuant to this rule for the noncompliance.

Authority: T.C.A. §§ 4-28-110; 4-28-111; and 4-28-113. **Administrative History:** New rule filed September 4, 2015; effective December 3, 2015.