

# **APPLICATION FOR CERTIFICATION AS AN** ANGEL FUND

NORTH DAKOTA DEPARTMENT OF COMMERCE SFN 59140 (11-2021)

ND Department of Commerce	
Economic Development &	
Finance Division Use Only	
☐ Approved (initial below)	
☐ Denied	
☐ Original	
☐ Recertified	

▶Use only after June 30, 2017 for certification as an angel fund for the Angel Investor Tax Credit under N.D.C.C. §57-38-01.26.

	siness Information	J	J			
App	licant				Federal Employ	er Identification Number
Primary Contact			Title			
Address		City		State	Zip	
Web site Email Address		Email Address			Telephone	
An	gel Fund Certification					_
1.	Type of organization:  Partnership Limited Partnership Corporation Limited Liability Company Limited Liability Partnership Trust Estate	1a. □ Non-profi □ For-profit  1b. State in white business was organized: □ North Da	ch is	1c. Date on which business was organized:	OFFICE USE ONLY	
		☐ Other:				
2.	Location of Headquarters (State)					
3.	Is the entity or enterprise engaged in real estate or real estate activities?  ☐ Yes ☐ No ☐ See page 2 for definitions of items in bold text.					
4.	Does this fund consist of at least six accredited investors as defined by Securities and Exchange Commission Regulation D, rule 501?  Yes No  If yes, please complete attachment A. The information will remain confidential.					
5.						
0.	Does this fund have more than twenty-five percent of its capitalized investment assets owned by an individual investor?  ☐ Yes ☐ No					
6.	Does this fund have commitments totaling at lea ☐ Yes ☐ No  Please provide documented verification of in			investors? (See page	4 for definition o	of accredited investor.)
6a.	Is this capital subject to call to be invested over a $\Box$ Yes $\Box$ No	an unspecified numb	per of yea	ars to build a portfolio	of investments i	in enterprises?
7.	Is the fund member-managed or a manager-ma ☐ Yes ☐ No	naged limited liabilit	y compai	ny?		
7a.	<ul><li>7a. Do the investor members, or designated board of directors that includes investor members, make decisions as a group on which enterprises are worthy of investments?</li><li>☐ Yes</li><li>☐ No</li></ul>					
<ul> <li>8. Is the fund in compliance with the requirements for filings with the securities commissioner under federal and state securities laws?</li> <li>☐ Yes</li> <li>☐ No</li> </ul>						
8a. Will the fund invest in only <b>in-state</b> and <b>out-of-state qualified businesses</b> that issue securities in compliance with state and federal securities laws?  ☐ Yes ☐ No See page 2 for definitions of items in bold text.						
	undersigned certifies that the information provided in the licant (Please print)	nis document is true ar	nd accurate	е.	Title	
App	nicant (Frease piliti)				Title	
Sigi	nature				Date	

Consistent with North Dakota law, information contained in the shaded areas will be kept confidential within the North Dakota Department of Commerce, the North Dakota Securities Department and the North Dakota Office of State Tax Commissioner.

#### Certification criteria

## The Angel Fund must:

- a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit entity under the laws of this state, and have its headquarters in this state.
- Not have invested, or intend on investing during its certification period, in real estate or real estate activities as described under N.D.C.C. §57-38-01.26, subdivision e of subsection 2.
- c. Consist of at least six accredited investors as defined in regulation D, rule 501 of the federal Securities Act of 1933. Not have more than twenty-five percent of its capitalized investment assets owned by any one investor.
- d. Have at least five hundred thousand dollars in commitments from accredited investors which are subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
- e. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
- Be certified as an angel fund that meets the requirements of this subsection by the department of commerce.
- g. Be in, and remain in, compliance with state and federal securities laws, and invest only in in-state qualified businesses or an out-of-state qualified business that are issuing securities in compliance with state and federal securities laws

#### **Definitions**

- "Real estate activities" includes real estate
  development, a real estate holding company, an entity
  that derives income from the selling or leasing of
  residential or commercial real estate, or carries on
  operations in the hotel, restaurant, convention, or
  hospitality industries, or makes any other similar use
  of real estate.
- "Domestic organization" means an organization created under the laws of this state.
- "In-state qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
  - (1) Is created, or its satellite operation is created, as a for-profit entity under the laws of this state.
  - (2) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in this state that has or is projected to have more than ten employees in this state.
  - (3) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (4) Is in compliance with state and federal securities laws.
  - (5) Is not an entity or enterprise which is engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.

- (6) Is certified as an in-state qualified business that meets the requirements of this section by the department of commerce.
- "Out-of-state qualified business" means an early-stage or mid-stage private, nonpublicly traded enterprise that:
  - (1) Is created as a for-profit entity.
  - (2) Relies on research or the development of new products and processes in its plans for growth and profitability.
  - (3) Is in compliance with state and federal securities laws.
  - (4) Is not an entity or enterprise engaged in real estate development, is a real estate holding company, derives income from the selling or leasing of residential or commercial real estate, or carries on operations in the hotel, restaurant, convention, or hospitality industries, or makes any other similar use of real estate.
  - (5) Is certified as an out-of-state qualified business that meets the requirements of this section by the department of commerce.

#### Instructions for applicant

The applicant must verify the accredited investor membership of the business by either completing Attachment A or attaching a separate document listing the names, contact information and investment amounts of each accredited investor. Definition of accredited investors can be found at the bottom of Attachment A.

The applicant must submit verification of the investments meeting the five-hundred thousand dollar minimum commitment requirement.

Fund must meet all qualification criteria in the North Dakota Century Code § 57-38-01.26 to be considered for certification as an Angel Fund for the Angel Investor Tax Credit.

New applications must be approved prior to a fund investing in a qualified business for which investors intend to submit claims for the tax credit. Applications for re-certification must be submitted 30 days prior to the date on which the fund's current certification expires. Angel Fund certifications beginning in 2017 will expire December 31, 2020. Certifications beginning in 2018 or later will expire on December 31<sup>st</sup> of the third calendar year following the calendar year in which the certification start date falls.

#### **Required Documentation**

☐ Attachment A of this application

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Organizational documentation;
i.e. Articles of Organization or Incorporation
Membership Agreement
Subscription or Contribution Agreement
List with name, location and description of companies
in which your fund has already invested (if any)

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Submit the supporting documentation and the completed application to:

North Dakota Department of Commerce Economic Development & Finance Division PO Box 2057 Bismarck, ND 58502-2057

**IMPORTANT**: There are additional reporting requirements and other conditions contained in the governing statute that the angel fund must satisfy. To see them, please visit: <a href="http://www.legis.nd.gov/cencode/t57c38.pdf#nameddest=57-38-01p26">http://www.legis.nd.gov/cencode/t57c38.pdf#nameddest=57-38-01p26</a> (see § 57-38-01.26).

If you have any questions...

Call:

701-328-5300

Write to:

North Dakota Department of Commerce Economic Development & Finance Division PO Box 2057 Bismarck, ND 58502-2057

# CONFIDENTIAL

## Attachment A

Investor Name	Address	Telephone	Email	Investment Amount	Committed Amount	Accreditation explanation (1-8)

# Definition of Accredited Investor as Defined in Regulation D, Rule 501

As used in Regulation D (§§230.501–230.508), *Accredited investor* shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- (1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- (3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000:
- (4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- (5) Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds \$1,000,000.
- (6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in §230.506(b)(2)(ii); and
- (8) Any entity in which all of the equity owners are accredited investors.

For more detailed definitions see <a href="https://www.ecfr.gov/cgi-">https://www.ecfr.gov/cgi-</a>

<u>bin/retrieveECFR?gp=&SID=8edfd12967d69c024485029d968ee737&r=SECTION&n=17y3.0.1.1.12.0.46.176</u>. Several of these categories have additional bullet points. For instance, item #5 states that (A) The person's primary residence shall not be included as an asset.