§ 689n. Unlawful acts and omissions; breach of fiduciary duty

(a) Parties deemed to commit a violation

Whenever any New Markets Venture Capital company violates any provision of this chapter, of a regulation issued under this chapter, or of a participation agreement entered into under this chapter, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) Fiduciary duties

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) Unlawful acts

Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person[1] continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85–699, title III, § 365, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–663.)

REFERENCES IN TEXT

For definition of ''this chapter'', referred to in subsec. (a), see References in Text note set out under section 661 of this title.

[1] So in original. Probably should be followed by ''to''.

§ 689*o*. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

(Pub. L. 85–699, title III, § 366, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§ 689p. Regulations

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85–699, title III, § 367, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

§ 689q. Authorization of appropriations

(a) In general

There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee $150,000,000 of debentures under this part.

(2) $30,000,000 to make grants under this part.

(b) Funds collected for examinations

Funds deposited under section 689k(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 689k of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85–699, title III, § 368, as added Pub. L. 106–554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664.)

PART C—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM

§ 690. Definitions

In this part:

(1) Operational assistance

The term ''operational assistance'' means management, marketing, and other technical assistance that assists a small business concern with business development.

(2) Participation agreement

The term ''participation agreement'' means an agreement, between the Administrator and a company granted final approval under section 690c(e) of this title, that—

(A) details the operating plan and investment criteria of the company; and

(B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) Renewable energy

The term ''renewable energy'' means energy derived from resources that are regenerative

or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(4) Renewable Fuel Capital Investment company

The term ''Renewable Fuel Capital Investment company'' means a company—

(A) that—

(i) has been granted final approval by the Administrator under section 690c(e) of this title; and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 690c(c) of this title.

(5) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(6) Venture capital

The term ''venture capital'' means capital in the form of equity capital investments, as that term is defined in section 683(g)(4) of this title.

(Pub. L. 85–699, title III, § 381, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1774.)

EFFECTIVE DATE

Part effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§ 690a. Purposes

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged[1] such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85–699, title III, § 382, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1775.)

§ 690b. Establishment

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

(1) enter into participation agreements for the purposes described in section 690a of this title; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 690d of this title.

(Pub. L. 85–699, title III, § 383, as added Pub. L. 110–140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1776.)

§ 690c. Selection of Renewable Fuel Capital Investment companies

(a) Eligibility

A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company if the company—

(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) has a management team with experience in alternative energy financing or relevant venture capital financing; and

(3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(b) Application

A company desiring to be designated as a Renewable Fuel Capital Investment company shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

[1] So in original. Probably should be followed by ''in''.