
Jobs Bill Breakfast Seminar

hosted by

Larkin Hoffman Daly & Lindgren Ltd.

Larkin Hoffman Daly & Lindgren Ltd.

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Firm Profile

Larkin Hoffman Daly & Lindgren Ltd. has proudly served the legal and business counseling needs of clients since 1958. The firm is committed to providing our clients practical solutions to business issues. We work to understand the business and legal challenges clients face in their industries and to manage a responsive, cost-effective client relationship.

Larkin Hoffman believes in providing our clients with a direct connection to their attorneys. Through this relationship, we believe it is possible to foster better understanding, manage client costs and help clients effectively deal with existing and emerging legal issues. Together we strive to provide excellent service and timely delivery of all our legal products.

Larkin Hoffman Service Areas

Corporate

- Banking and Finance
- Bankruptcy
- International
- Mergers and Acquisitions
- Securities

Labor and Employment

Franchise and Distribution

Government Relations

- Business and Nonprofits
- Energy
- Health Care
- Land Development

Health Law

Intellectual Property, Technology and Internet

- Patent Procurement
- Trademark Procurement
- Copyright Procurement
- Internet and E-Commerce
- Technology Transfer and Licensing
- Litigation

Litigation

- Bankruptcy
- Commercial
- Employment
- Franchise and Distribution
- Intellectual Property
- Product Liability
- Real Estate

Personal Legal Services

- Divorce and Family Law
- Residential Real Estate

Real Estate, Land Use and Resources

- Condemnation
- Construction Law
- Environmental Regulation
- Land Use
- Litigation
- Property Tax Appeals
- Renewable Energy
- Sustainable Development
- Transactions

Tax, Trusts and Estates

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Areas of Law

Government Agencies
 Land Use & Zoning
 Regulatory Compliance
 Legislative Practice
 Administrative Law
 Telecommunications Tower
 Siting

Bar Admissions

Wisconsin, 2004
 Minnesota, 1984

Education

Hamline University School
 of Law, St. Paul, MN, 1984
 J.D., *cum laude*

St. Cloud State University,
 St. Cloud, MN, 1979
 B.A., *magna cum laude*

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Peter J. Coyle

Peter Coyle is president of Larkin Hoffman Daly & Lindgren Ltd. and chair of the Government Relations practice group. He is also a member of the firm's Real Estate and Land Use practice group.

Peter's practice focuses on representing private individuals and companies in their interactions with state and local government agencies. He represents private developers, builders and land owners seeking development entitlements before local units of government (townships, cities, counties), the Metropolitan Council and state agencies. His work encompasses comprehensive plan, zoning and subdivision approvals needed for a variety of commercial shopping centers, residential developments and freestanding retail and commercial uses.

Peter also represents private and public clients, including trade associations, at the state legislature and before state agencies. He is the firm's voting representative in the State Capital Global Law Firm Group, an international association of law firms with state capitol commercial and government relations practices. He was a co-author of *Lobbying, PACs and Campaign Finance*, a 50-state handbook on campaign finance regulations published by the State Capital Group. He was named a Super Lawyer[®] by *Minnesota Law and Politics* and was selected for inclusion in the 2009 and 2010 editions of *The Best Lawyers in America[®]* in the specialty of Real Estate & Land Use. In addition, Peter was recently elected to the Board of Directors for the Minnesota Chapter of the US Green Building Council.

Peter received his B.A. degree, *magna cum laude*, from St. Cloud State University in 1979, majoring in Public Administration. He received his J.D., *cum laude*, from Hamline University School of Law in 1984. While at Hamline, Peter received an award for Best Advocate at the Jessup Regional Moot Court Competition and was the editor-in-chief of the *Hamline Law Review*.

William C. Griffith



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Areas of Law

Real Estate
 Green Development
 State Administrative
 Permitting
 Land Use & Zoning
 Liquor Licensing/Liability
 Municipal Law
 Senior Housing
 Special Assessments
 Tax Increment Financing
 Tax Abatement Financing

Bar Admissions

Wisconsin, 2002
 Minnesota, 1988

Education

William Mitchell College of
 Law, St. Paul, MN, 1988
 J.D.

University of Wisconsin,
 Eau Claire, WI, 1982
 B.A.



Bill Griffith is a shareholder with Larkin Hoffman Daly & Lindgren Ltd. and a member of the firm’s Board of Directors. He practices extensively in land use, zoning, real estate, environmental permitting and municipal law. Bill counsels developers and property owners in all matters involving governmental approvals; state environmental review; special assessments; zoning amendments; conditional use permits; planned developments; accessibility issues and state and local licensing.

Bill has served as counsel to Mall of America for over 15 years and also serves as City Attorney for the City of Columbus. In this capacity, he provides advice regarding ordinance interpretation, licensing, municipal contracts, and public finance. Bill has also served as special counsel to a number of governmental clients on regulatory and development matters.

In addition to practicing law, Bill is an adjunct professor at the University of St. Thomas School of Law teaching Land Use Law and has served as an instructor with the “Annual Planning Institute” sponsored by the Government Training Service for local government officials. He has published articles in *Urban Land*, *Minnesota Business*, *Star Tribune*, *Pioneer Press* and the *Minnesota Real Estate Journal*, and speaks at seminars on land use, municipal and environmental law.

Bill received a B.A. degree from the University of Wisconsin - Eau Claire, and a J.D. degree from William Mitchell College of Law.

JOBS BILL

Economic Development Tools

Presented by
Larkin Hoffman Daly & Lindgren Ltd.

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Economic Development Tools

Overview

- The State's construction industry was among the hardest hit by the deep nationwide recession.
- Legislative leaders and the Governor responded by swiftly enacting a comprehensive jobs bill in late March at the urging of a coalition of construction workers, contractors, architects and others in the construction industry.
- The provisions range from investment tax credits to expanded use of tax increment financing to spur job creation and development efforts in the state.

Economic Development Tools

Transportation

- Cities may find transportation improvements easier to finance.
- Authority for transportation infrastructure loans through the Public Finance Authority was clarified to include loans to cities to be paid from proceeds of special assessments, tax increments, or other local taxes, such as sales taxes, lodging taxes, liquor taxes, admissions and recreation taxes and food and beverage taxes.
- The Authority may fund the loans by issuing Build America Bonds authorized as part of the Federal Stimulus Act.

Economic Development Tools

TIF

- A new TIF District was added to TIF law that provides funding for compact development defined as:
 - Parcels 70 percent occupied by buildings or similar structures; and*
 - Planned redevelopment or development which is three (3) times the square footage of buildings occupying the District when the District Resolution was approved.*
- Like Housing and Redevelopment Districts, the Compact Development District has a maximum duration of 25 years, the longest under TIF law.

Economic Development Tools

- While the District can pay for infrastructure, the cost of streets, roads, highways, parking or other public improvements primarily designed to serve private passenger motor vehicles is excluded.

Economic Development Tools

Temporary authority for stimulus projects that begin before July 1, 2011.

- The restriction on direct loans, subsidies, grants, interest rate subsidies or assistance to development is lifted for projects that would create jobs and begin before next July.
- In addition, excess TIF can be used to provide improvements, loans, interest rate subsidies or assistance in any form to private development consisting of construction or substantial rehabilitation of buildings if it will create jobs and begin prior to July 1, 2011.

Economic Development Tools

- If necessary, excess TIF can be used to make an equity or similar investment in a corporation, partnership or limited liability company to make a stimulus development project financially feasible.
- JOBZ tax benefits are provided in an Automotive Recovery Zone (CARZ).
- This allows business incentives for the Ford Motor Company to continue automobile manufacturing and operation on its property in St. Paul.

Economic Development Tools

- Additional flexibility granted to the City of Bloomington to commence Phase II of Mall of America.
- Phase II is modified to provide authority for “any phase”.
- A TIF limitation in 1996 special law is removed to allow the City to provide all TIF benefits to the development.
- The new law is already stimulating discussion about how to finance and build the South Pad Hotel.

Economic Development Tools

- Additional TIF authority granted to:
 - Oakdale
 - North Mankato
 - Cohasset
 - East Grand Forks
 - St. Paul

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Areas of Law

Administrative Law
 Government Agencies &
 Programs
 Land Use & Zoning
 Legislative Practice
 Regulatory Compliance

Bar Admissions

Minnesota, 2005

Education

William Mitchell College of
 Law, St. Paul, MN, 2005
 J.D., *cum laude*

Winona State University,
 Winona, MN, 1998
 B.S., *cum laude*

Julie Perrus is an associate with the law firm of Larkin Hoffman Daly & Lindgren Ltd. She is a member of the firm’s Government Relations and Land Use & Real Estate practice groups and focuses primarily on administrative law, development and land use issues.

Ms. Perrus has experience working with legislators, lobbyists and clients to resolve statutory issues and manage legislation and public policy. She helps clients navigate the often complicated permitting and regulatory process at both a local and national level.

In addition to her experience with Larkin Hoffman, Ms. Perrus served as general counsel and policy director for a national nonprofit. She was the committee administrator for the State and Local Government Operations Committee at the Minnesota State Senate, as well as a legislative assistant to State Senator Linda Higgins and staff assistant to U.S. Senator Paul Wellstone.

Ms. Perrus received her J.D. from William Mitchell College of Law in 2005. She graduated with her B.S. from Winona State University in 1998. She is a member of the Urban Land Institute Young Leaders, Sensible Land Use Coalition, U.S. Green Building Council, Emerging Green Builders, Minnesota Government Relations Council and Minnesota State Bar Association. Ms. Perrus was selected as a Rising Star® by *Minnesota Law & Politics* in 2008, 2009 and 2010.

PACE Finance

Utilizing existing state authority to provide
innovative funding to accelerate
energy retrofits

Presented by
Larkin Hoffman Daly & Lindgren Ltd.

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In the United States, buildings account for:

- 72% of electricity consumption;
- 39% of energy use;
- 38% of all carbon dioxide (CO₂) emissions;
- 40% of raw materials use;
- 30% of waste output (136 million tons annually); and
- 14% of potable water consumption

Why does it matter?

Nationally, approximately 75% of the existing commercial building stock is over 20 years old.

Median age of housing units nationally is 30 years.

Between 2001 and 2006, US nominal electricity rates rose by 4% per year, and US gas rates rose by 8.4% per year.



What is PACE finance?

- PACE = **P**roperty **A**ssessed **C**lean **E**nergy Finance
- How it works: property owners borrow money from a local government to finance energy retrofits (defined by the local government) and repay over a period of time (up to 20 years) through a property tax assessment.
- In Minnesota, sections 3 & 4 of HF 2695, signed on April 1, 2010.

<https://www.revisor.mn.gov/laws/?id=216&year=2010&type=0>

How PACE will work in MN

1. Local government decides to establish a program;
2. Ensures the program meets state requirements;
3. Accepts applications;
4. Issues revenue bonds;
5. Pays for energy improvements for property owners;
and
6. Gets paid back under Ch. 429 as a special assessment.

Benefits of PACE

Property Owner

PACE Lender

Existing Mortgage Lenders

PACE Tax Lien Seniority

- HF 2695 creates a senior lien. However, upon foreclosure, only the delinquent tax lien gets paid (not the whole PACE loan) while the new homeowner assumes the remaining balance.



Next Step

Educating local governments and implementing PACE.





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Areas of Law

Securities Law
Business Organizations
Mergers and Acquisitions
Contracts

Bar Admissions

Illinois, 1981
Minnesota, 1980
U.S. District Court, Northern
District of Illinois, 1981
U.S. District Court, District
of Minnesota, 1984

Education

University of Chicago Law
School, Chicago, IL, 1980
J.D.

St. John's University,
Collegeville, MN, 1976
B.A.

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Michael W. Schley

Michael Schley has been with Larkin Hoffman Daly & Lindgren Ltd. for 18 years and has practiced in the Securities law/corporate finance area for over 25 years with a practice ranging widely as capital markets and clients' needs have evolved and changed. His clients include issuers, underwriters and placement agents in both equity and debt financing transactions. His clients' fundraising needs and activities have varied widely by stage of development, by size, and by industry, and their financing transactions have included initial and secondary public offerings, private placements, and venture capital investments.

Besides financing transactions, he represents clients (both publicly-held and private) in merger and acquisition transactions and assists clients in connection with increasingly complex SEC, Nasdaq and exchange matters. These include public-company reporting and proxy matters, Sarbanes-Oxley issues, corporate governance matters, and advising special board of directors committees.

In addition to corporate finance matters, he also advises and represents companies and entrepreneurs regarding organization, governance, equity compensation plans and general business matters. He assists clients in connection with SEC and SRO investigations and disciplinary proceedings and counsels holders of equity awards in connection with divorce proceedings allocations.

Michael is the chair of our Securities Practice Group and served on the Minnesota State Bar Association Task Force related to Minnesota's adoption of the Uniform Securities Act. He chaired the Small Corporate Offering Registration (SCOR) committee, co-chaired the "finders" exemption group, and was on the working group related to exempt transactions. Michael has been the leading Minnesota advocate of the SCOR registration program as a tool for entrepreneurs to raise equity for early stage businesses. As to Minnesota's recently enacted "Angel Tax Credit," Michael played a significant role in broadening issuer eligibility to include early stage companies.

Michael received his Bachelor's degree from St. John's University in 1976, majoring in accounting. Michael practiced as a CPA in the Twin Cities before returning to law school. He received his doctor of law degree from the University of Chicago in 1980. Michael spent three years with the Chicago Office of the Securities and Exchange Commission, engaged in enforcement activities, and has been in the private practice of law in Minneapolis since 1983. Michael is an arbitrator for the NYSE and FINRA and a frequent lecturer and author for bar committees, businesses and others. He has served on, and chaired, various legal, accounting, church and school committees and task forces.

2010 Minnesota Jobs Bill Angel Investor Tax Credit

Presented by
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Angel Investor Tax Credit

- *The credit*
- *“Qualified Small Business Issuers”*
- *“Qualified Investors” (“Angels”)*
- *“Qualified Funds”*
- *“Qualified Investments”*
- *Can you use the credit?*
- *Maybe next year*

The Credit

- 25% of cash invested
- Equity only
- Credit in year of investment
- Recapture unless hold 3 years
 - Exceptions (e.g. bankruptcy or sale of business)

The Credit, *continued*

- Max \$1 million (lifetime) by company
 - (equals \$4 million invested)
- Annual max by taxpayer
 - \$125,000 (equals \$500, 000 invested)
 - \$250,000 joint (equals \$1 million invested)
 - All issuers combined
- No lifetime maximum by taxpayer

The Credit, *continued*

Amount of credit available:	
• 2010	\$11 million \$44 million investment
• 2011-2014	\$12 million per year \$48 million investment
• Combined	\$59 million total \$236 million investment
• Unallocated credits carry forward and are available next year.	

The Credit, *continued*

Driven by other states credits/incentives

- Clients left Minnesota
- Will it be a positive influence?
 - At a minimum will stop a negative influence
- History and reasoning
 - Representative Downey

Must Be “Qualified Small Business Issuer”

- Nature of primary business
 - “Engaged in Innovation” or
 - “Committed to Engage in Innovation”
- Not disqualifying field
- Prior existence, funding, credits, “bad boy”
- Employees
- Location
- Certified

Must Be “Qualified Small Business Issuer” - Certified

Apply in advance (w/ fee)

- Forms still in process

Must Be “Qualified Small Business Issuer” – Nature of Primary Business

3 categories

- Using technology to add value to product, process or service
- Researching and developing product, process or service
- Researching, developing or producing new technology

Must Be “Qualified Small Business Issuer” – Nature of Primary Business, *continued*

- If “using technology to add value” or “researching and developing” product, process or service” (first two alternatives)
 - Must be “High Tech Field”
 - 18 named categories; examples:
 - Agricultural processing
 - Energy efficiency and conservation
 - Medical device products
 - “Catch-all”

Must Be “Qualified Small Business Issuer” – Nature of Primary Business, *continued*

- If “researching, developing or producing new technology” (third alternative) must be in one of only 6 fields
 - Agriculture
 - Tourism
 - Forestry
 - Mining
 - Manufacturing
 - Transportation

Must Be “Qualified Small Business Issuer” – Nature of Primary Business, *continued*

- “Unique” or “new”
- Technology must be owned or licensed
 - Patents, trade secrets, etc.

Must Be “Qualified Small Business Issuer” – Not Disqualifying Fields of Business

- Insurance
- IT consulting
- Banking
- Ethanol
- (total of 14)

Must Be “Qualified Small Business Issuer” – Prior Existence, Funding, Credits, “Bad Boy”

- In operation less than 10 years
- Prior private equity \$2 million or less
- Not subject to “bad boy” limitations

Must Be “Qualified Small Business Issuer” – Employees

- Fewer than 25 employees
- Wages as percentage of poverty guidelines

Must Be “Qualified Small Business Issuer” – Location

- Headquarters in Minnesota
- 51% of employees in Minnesota
- 51% of payroll in Minnesota

“Qualified Investors” (Angels”)

- Limit on income (& family income) from issuer
- Not required to be resident
- If “pass-through” entity, cannot be Angel but may be Qualified Fund
- Certified
 - Apply in advance (w/ fee)
 - Forms still in process

“Qualified Fund”

- “Pass-through” entity (S Corp, LLC, others)
- At least 3 investors
- Ineligible in issuer = ineligible in fund
- Certified
 - Apply in advance (w/ fee)
 - Forms still in process

“Qualified Investment”

- Investment in issuer must be cash
- Must be equity
 - Classes/series are OK
 - Debt is OK if mandatory conversion to equity
- Status of transaction under securities laws
 - Some exemptions (accredited, private placement)
 - SCOR registration

How To Determine If You Can Use The Credit

- Plan early – limited funding
- Test whether “Qualified Small Business”
- Test eligibility of investor
 - Angel
 - Fund
- Test nature of investment
- Test amount of investment
- Certifications

Forms To Be Adopted

- Department of Economic Development plans a public comment session
 - Date: uncertain, but soon
- Are you interested?
 - I will alert you

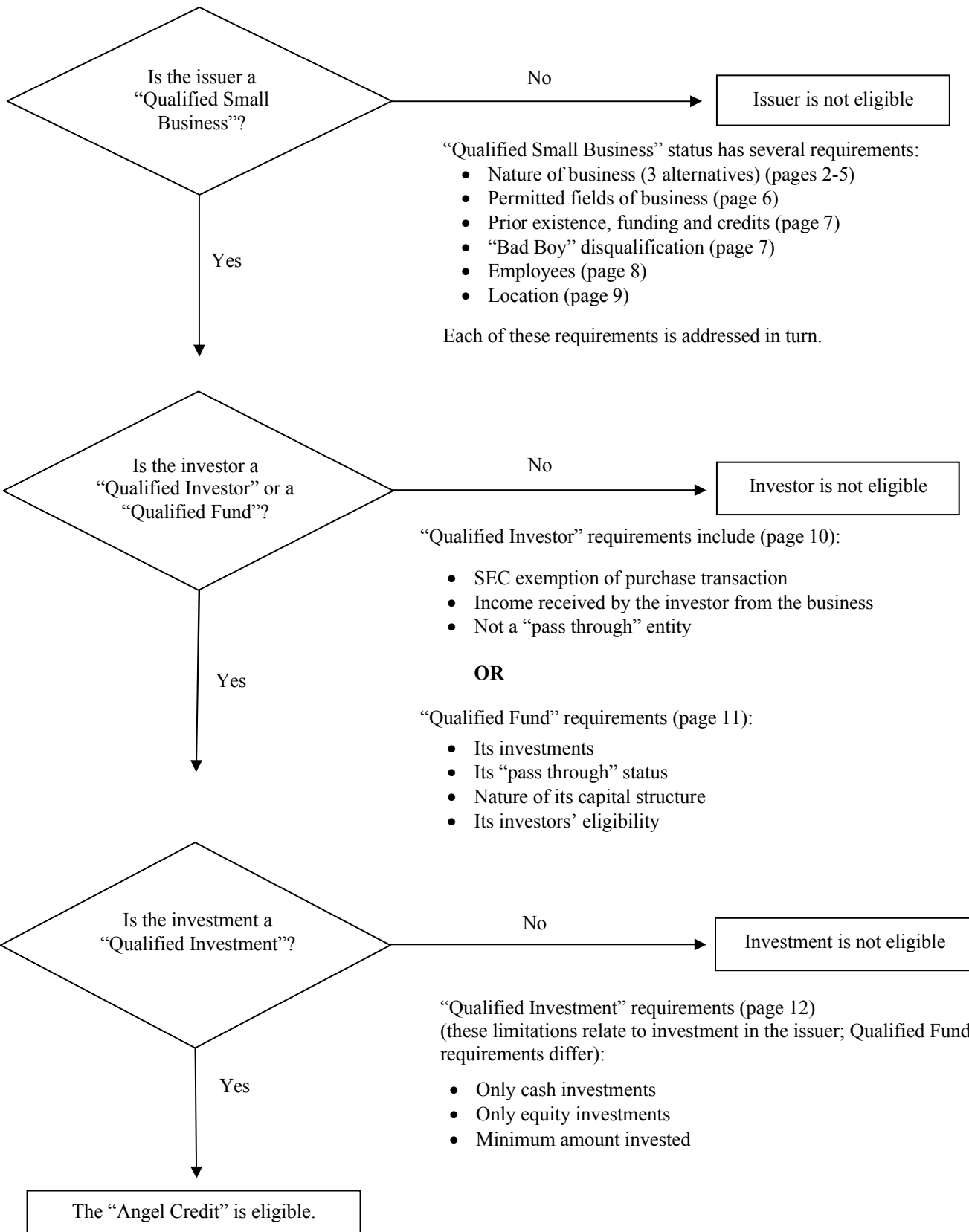
Maybe Next Year

- Funding was increased at last moment
- May be amended to simplify
 - Numerous points to say “no”
 - See flowchart
- Its complexity may cause:
 - Less use by entrepreneurs
 - Less use by earlier stage businesses
 - More use by VC-backed companies

ELIGIBILITY FOR MINNESOTA SMALL BUSINESS (“ANGEL”) TAX CREDIT

(As signed into law on April 1, 2010).

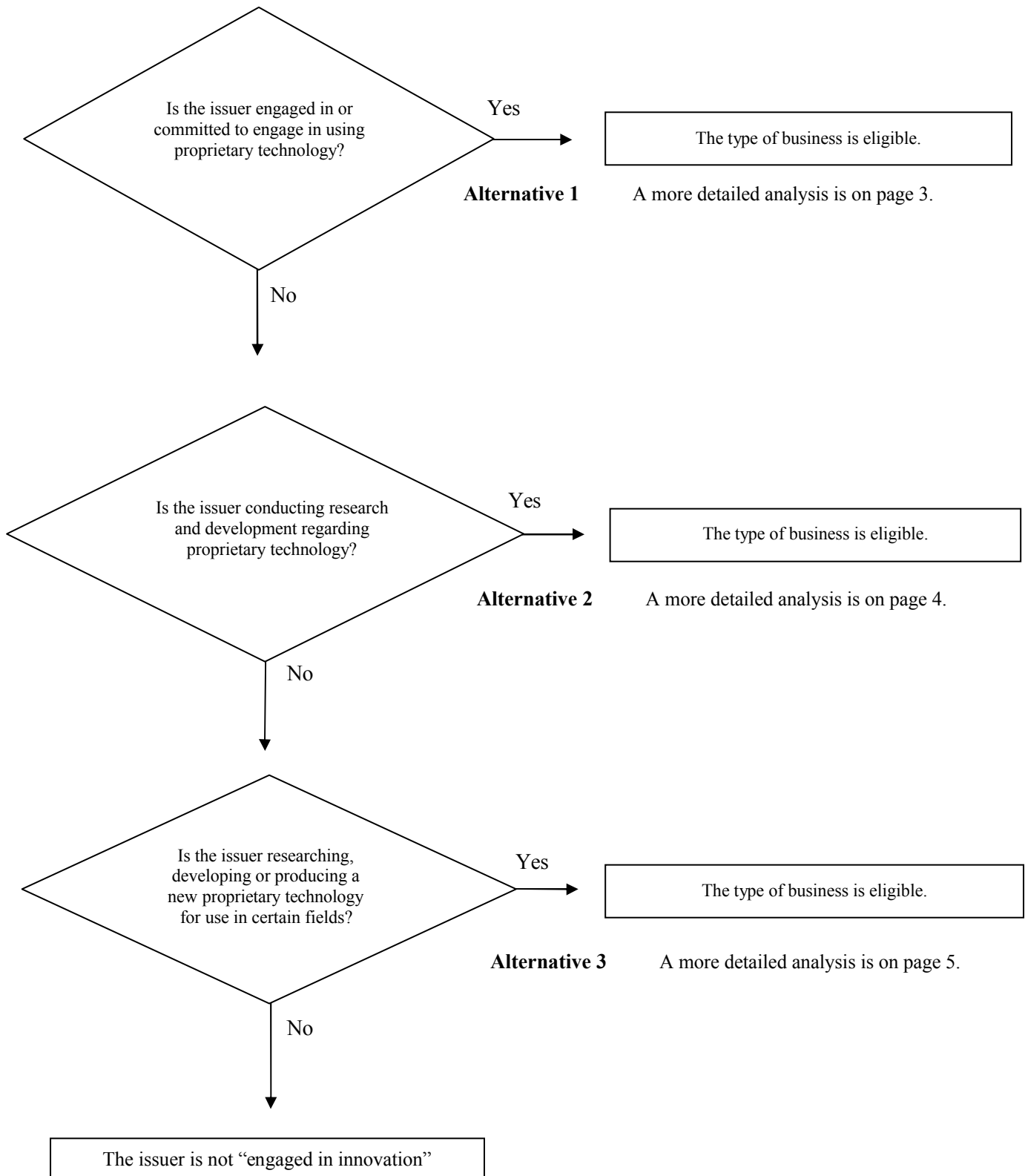
Will this credit be available for investors in your business? Answer these questions to find out.



NATURE OF BUSINESS (THREE ALTERNATIVES)

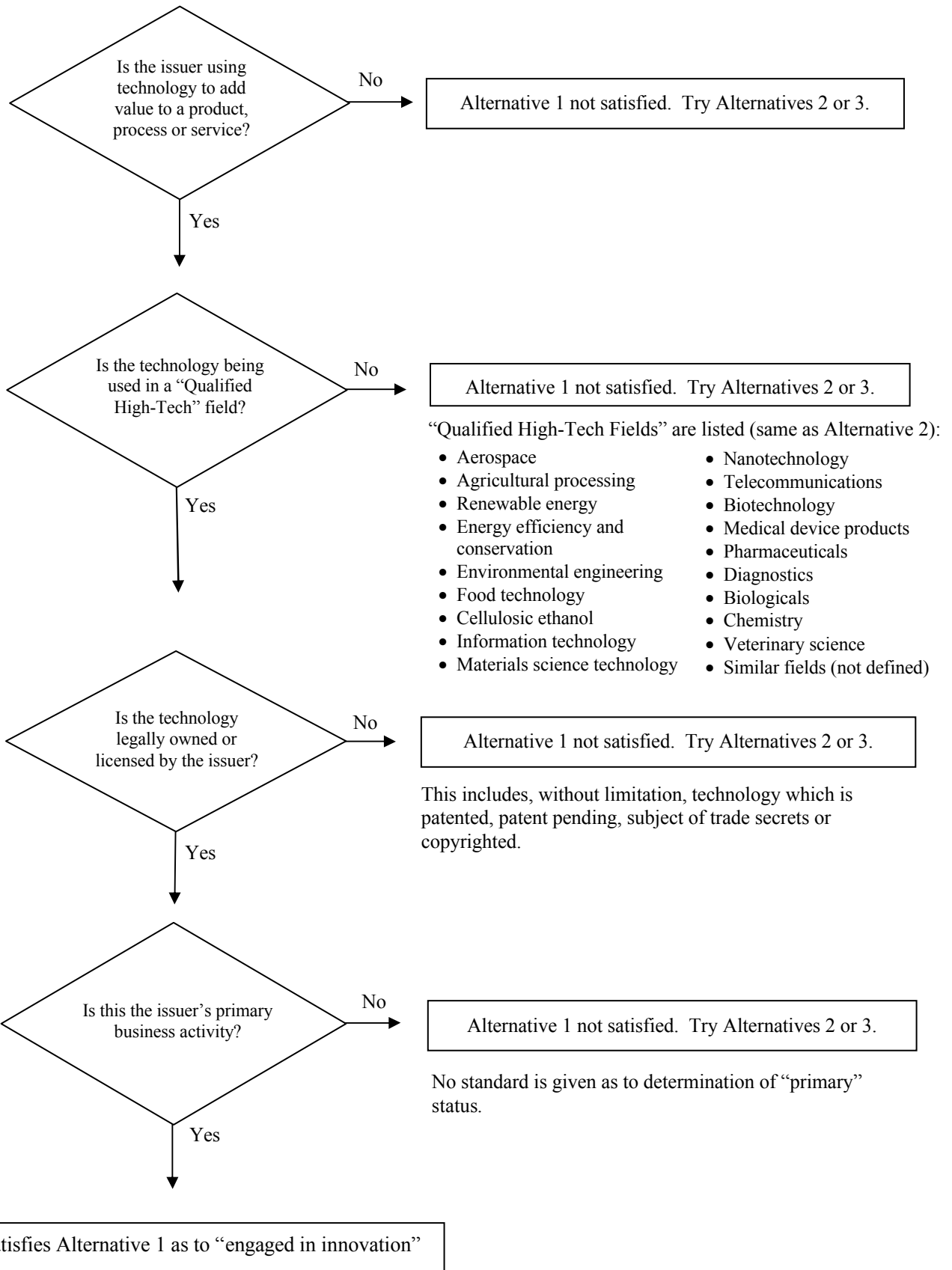
The issuer must be “engaged in, or committed to engage in, innovation in Minnesota.” There are three alternative types of business that qualify. Each is addressed on a separate page.

The issuer must satisfy **only one**.



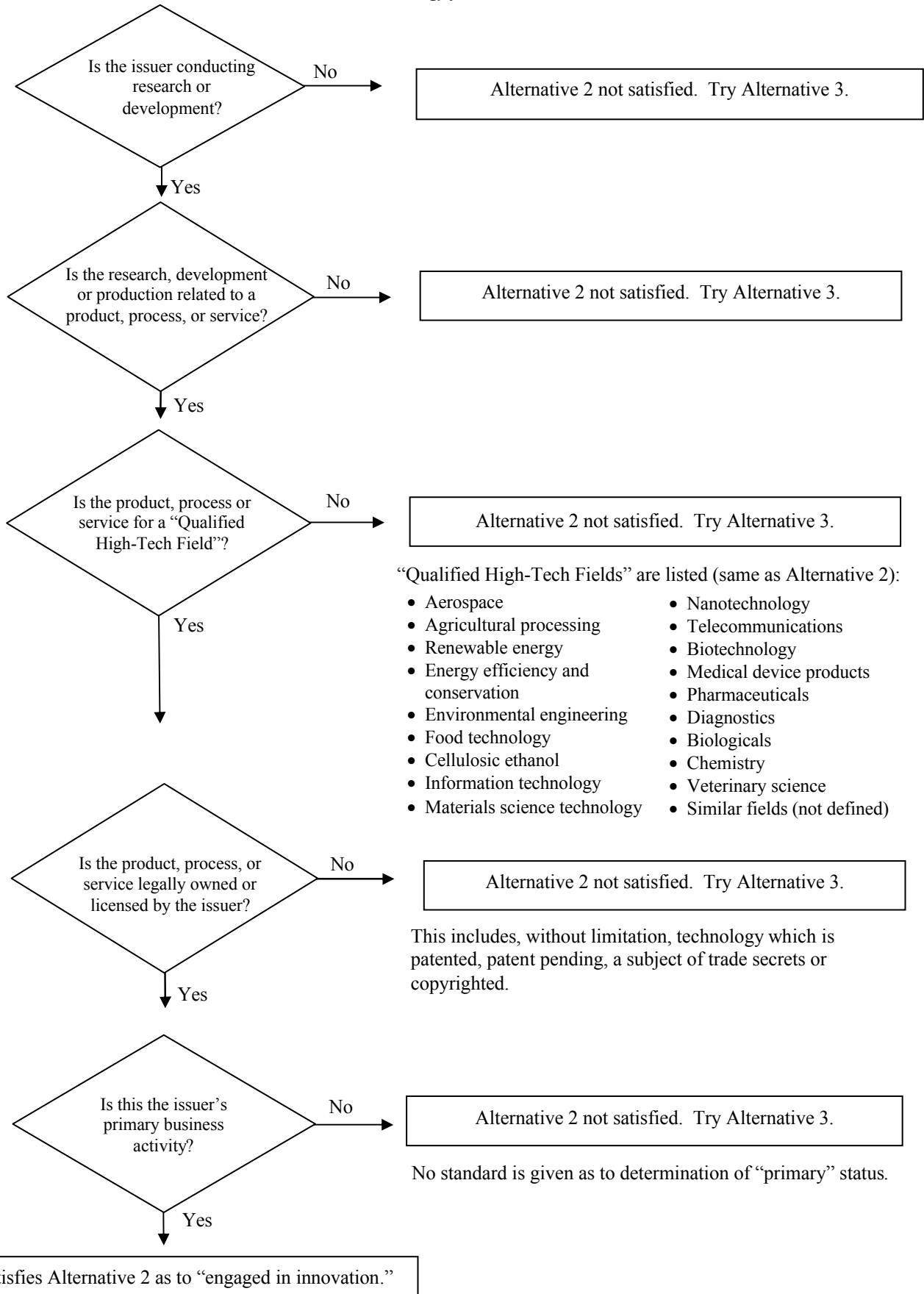
NATURE OF BUSINESS (ALTERNATIVE 1 OF 3)

The issuer is “engaged in innovation” by using proprietary technology to add value to a product, process, or service in a qualified high technology field.



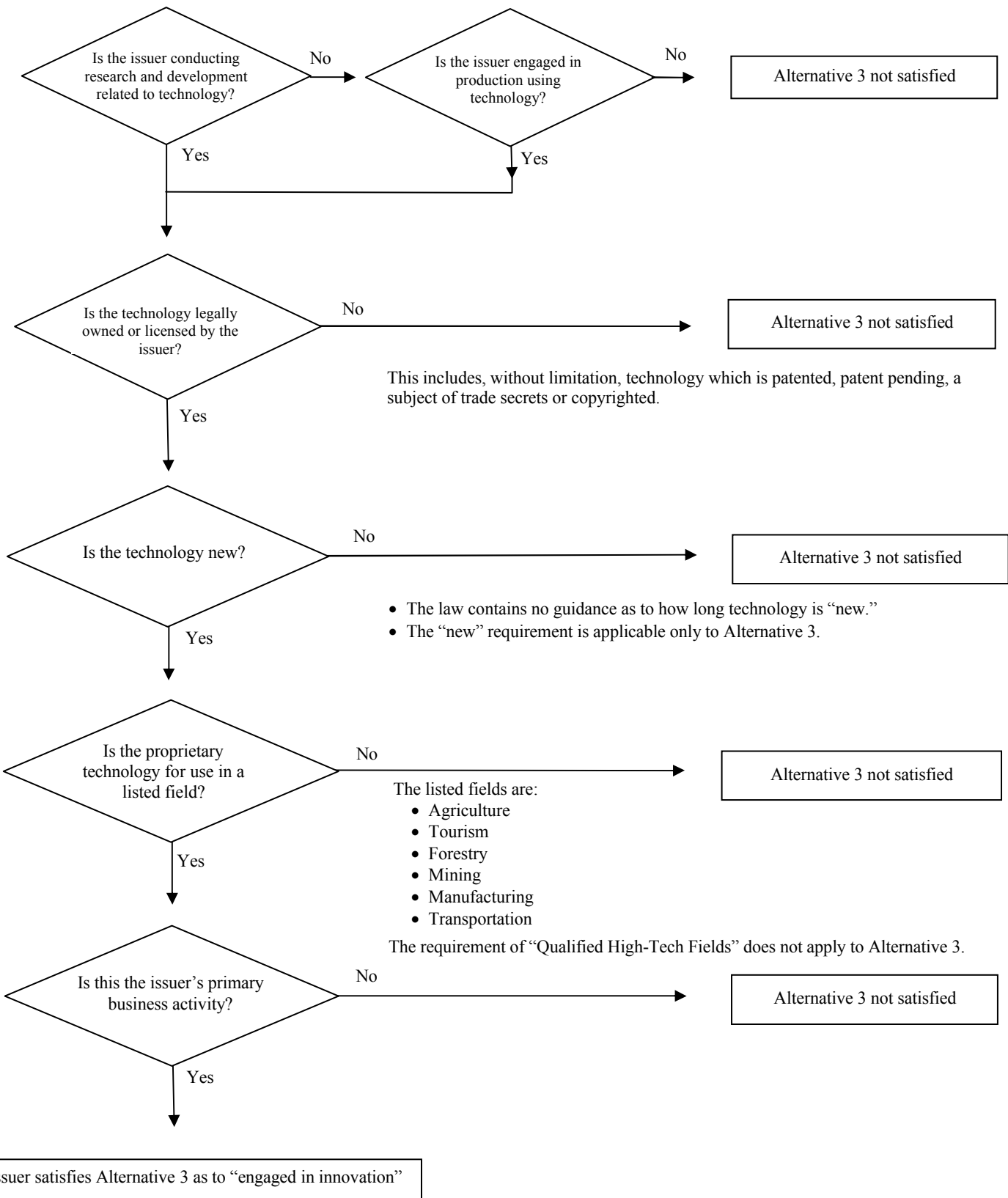
NATURE OF BUSINESS (ALTERNATIVE 2 OF 3)

The issuer is “engaged in innovation” by researching or developing a proprietary product, process or service in a qualified high-technology field.



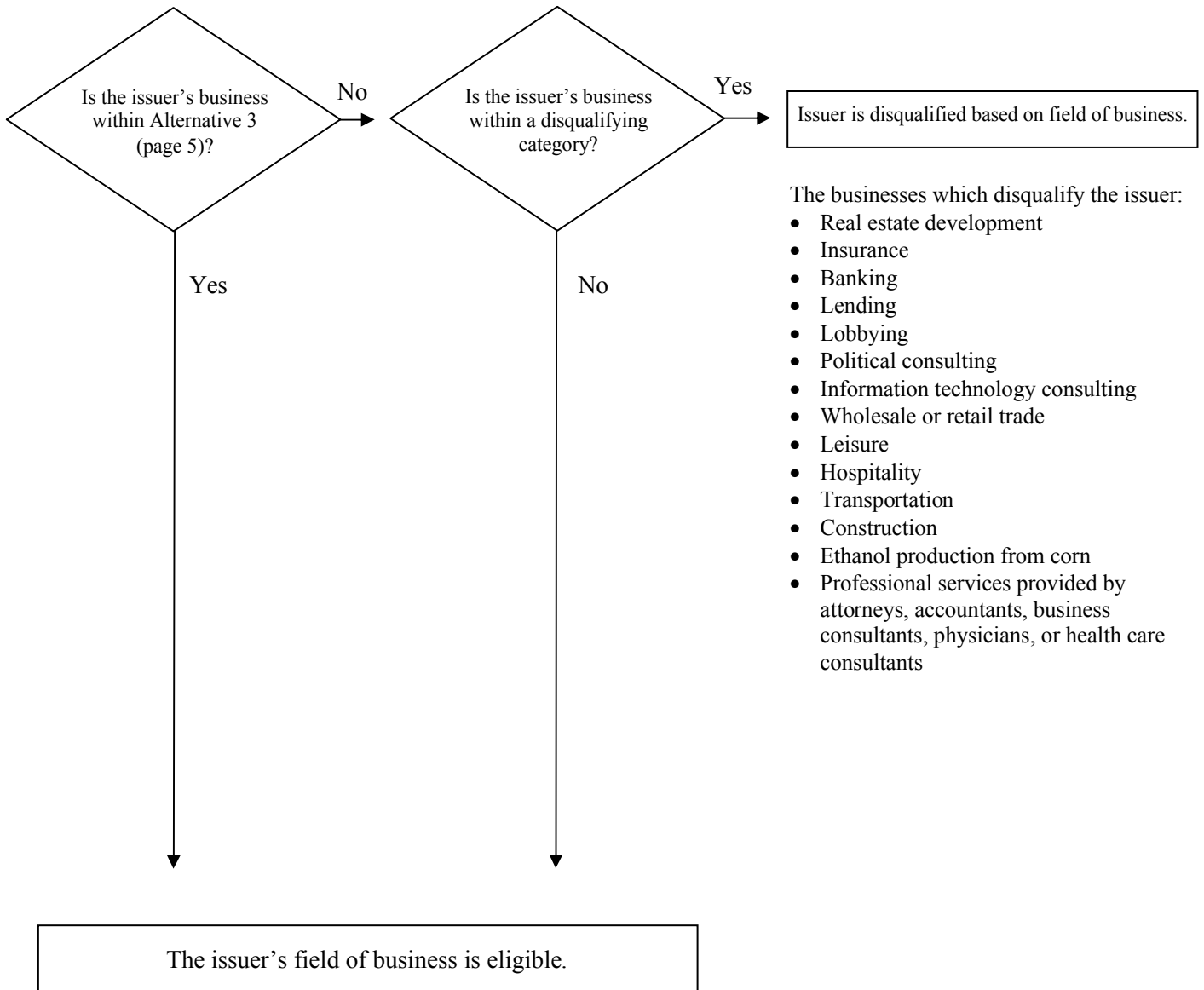
NATURE OF BUSINESS (ALTERNATIVE 3 OF 3)

The issuer is engaged in innovation by researching, developing or producing new proprietary technology for use in listed fields.



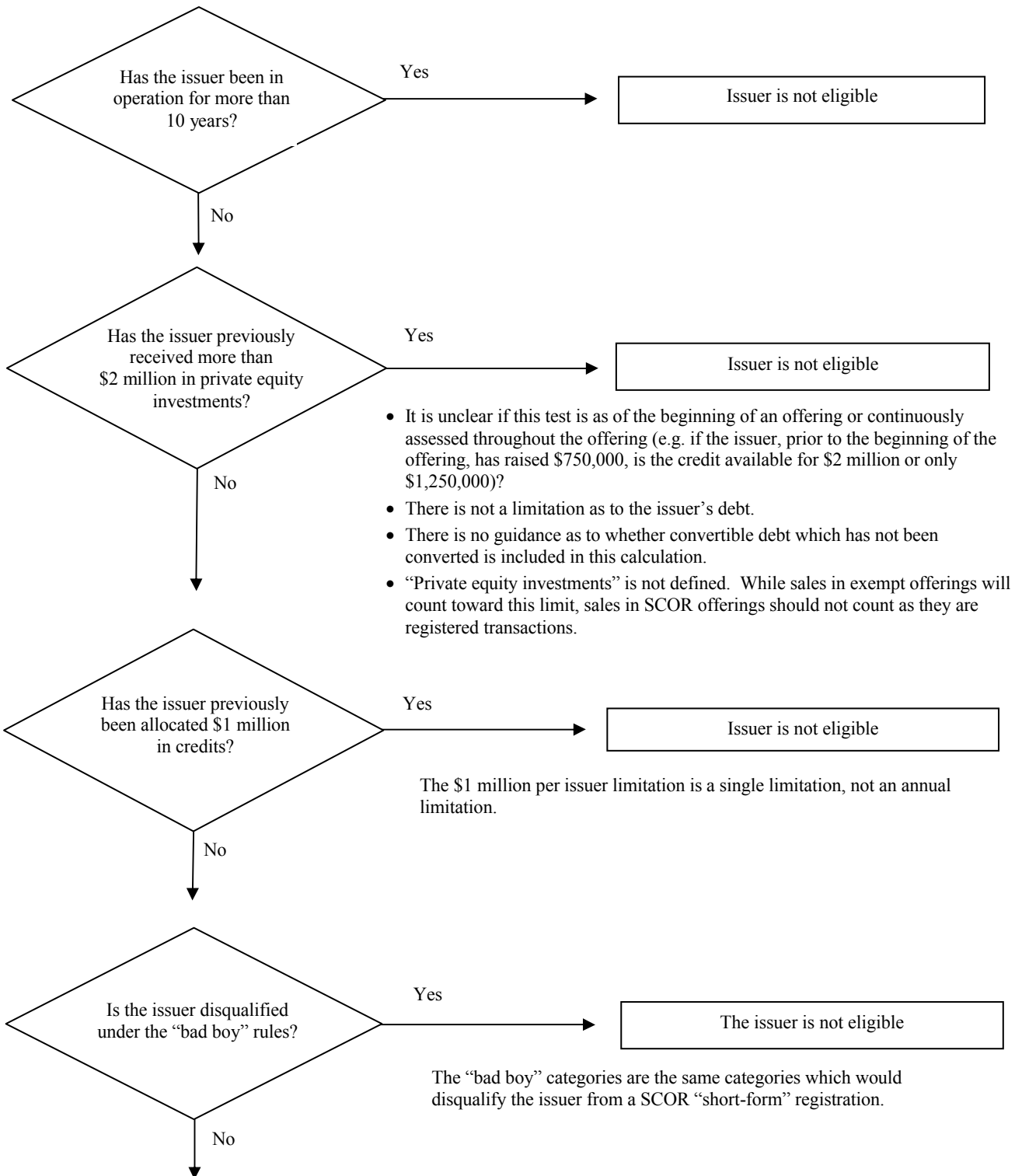
DISQUALIFYING FIELDS OF BUSINESS

Issuers engaged in certain types of business activities are not eligible.



LIMITATIONS AS TO PRIOR EXISTENCE, PRIOR FUNDING, PRIOR CREDITS AND “BAD BOY” STATUS

The issuer may be disqualified based on its years in operation, its prior equity investments or its status under the “bad boy” rules under the Securities laws.



- It is unclear if this test is as of the beginning of an offering or continuously assessed throughout the offering (e.g. if the issuer, prior to the beginning of the offering, has raised \$750,000, is the credit available for \$2 million or only \$1,250,000)?
- There is not a limitation as to the issuer’s debt.
- There is no guidance as to whether convertible debt which has not been converted is included in this calculation.
- “Private equity investments” is not defined. While sales in exempt offerings will count toward this limit, sales in SCOR offerings should not count as they are registered transactions.

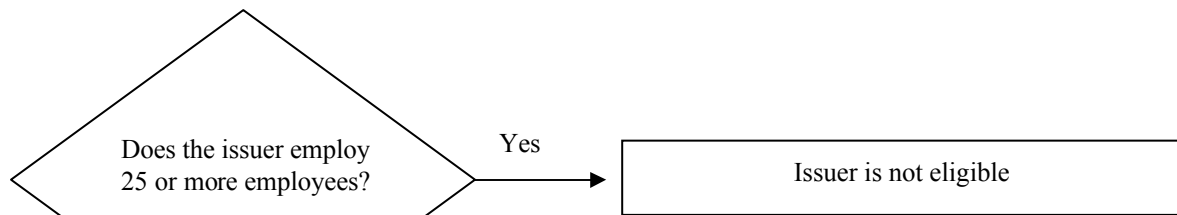
The \$1 million per issuer limitation is a single limitation, not an annual limitation.

The “bad boy” categories are the same categories which would disqualify the issuer from a SCOR “short-form” registration.

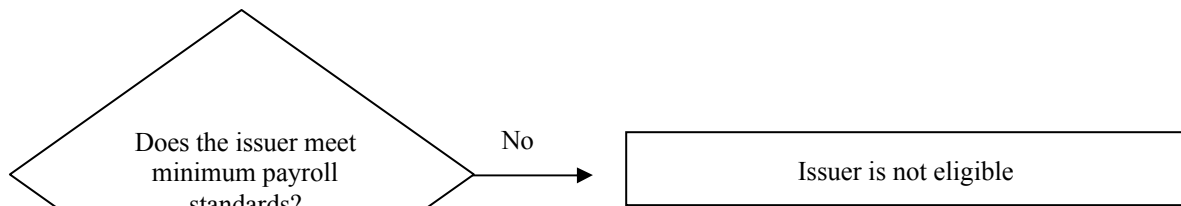
The limitations based on prior existence, prior funding, and “bad boy” status do not disqualify the issuer.

REQUIREMENTS AS TO EMPLOYEES

The issuer must meet requirements as to size based upon number of employees and must meet requirements as to rate of compensation of employees.



- This disqualification is determined based on the number of employees in a “unitary business” as defined for income tax purposes. This means that related companies will be considered as a single issuer for this purpose.
- This is a straight count of persons and is not stated to be on a full-time equivalent basis.

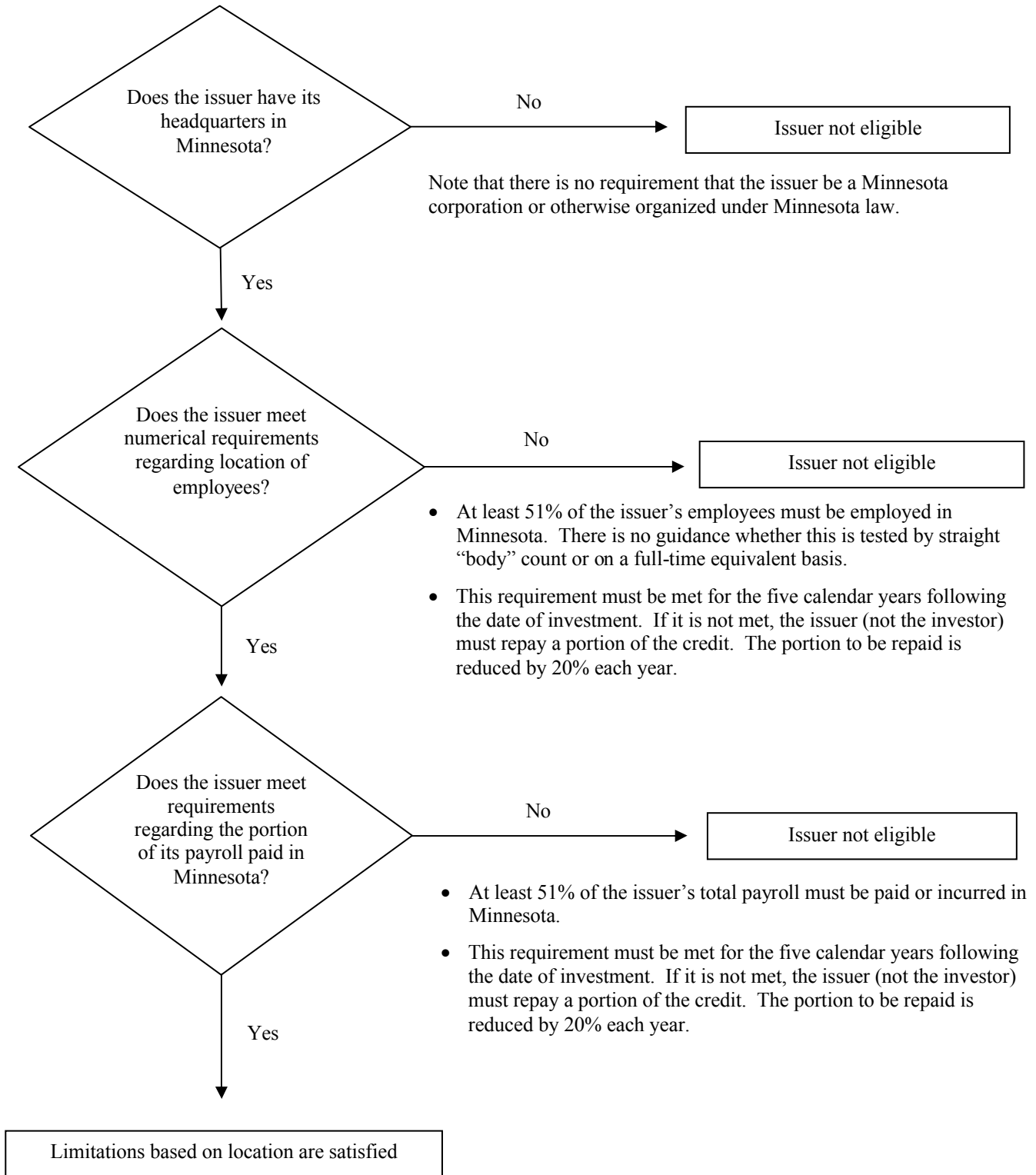


- Annual wages must be at least 175% of the federal poverty guideline for a family of four. As to part-time employees, this is adjusted proportionately.
- This appears to apply on an employee-by-employee basis, not an aggregate basis.
- This requirement does not apply to employees who are executive officers, directors or any employee who owns, controls, or has the power to vote more than 20% of the issuer’s outstanding securities. This exception relates only to the employee and does not provide an exception as to payroll paid to family members.

Limitations based on employees are satisfied

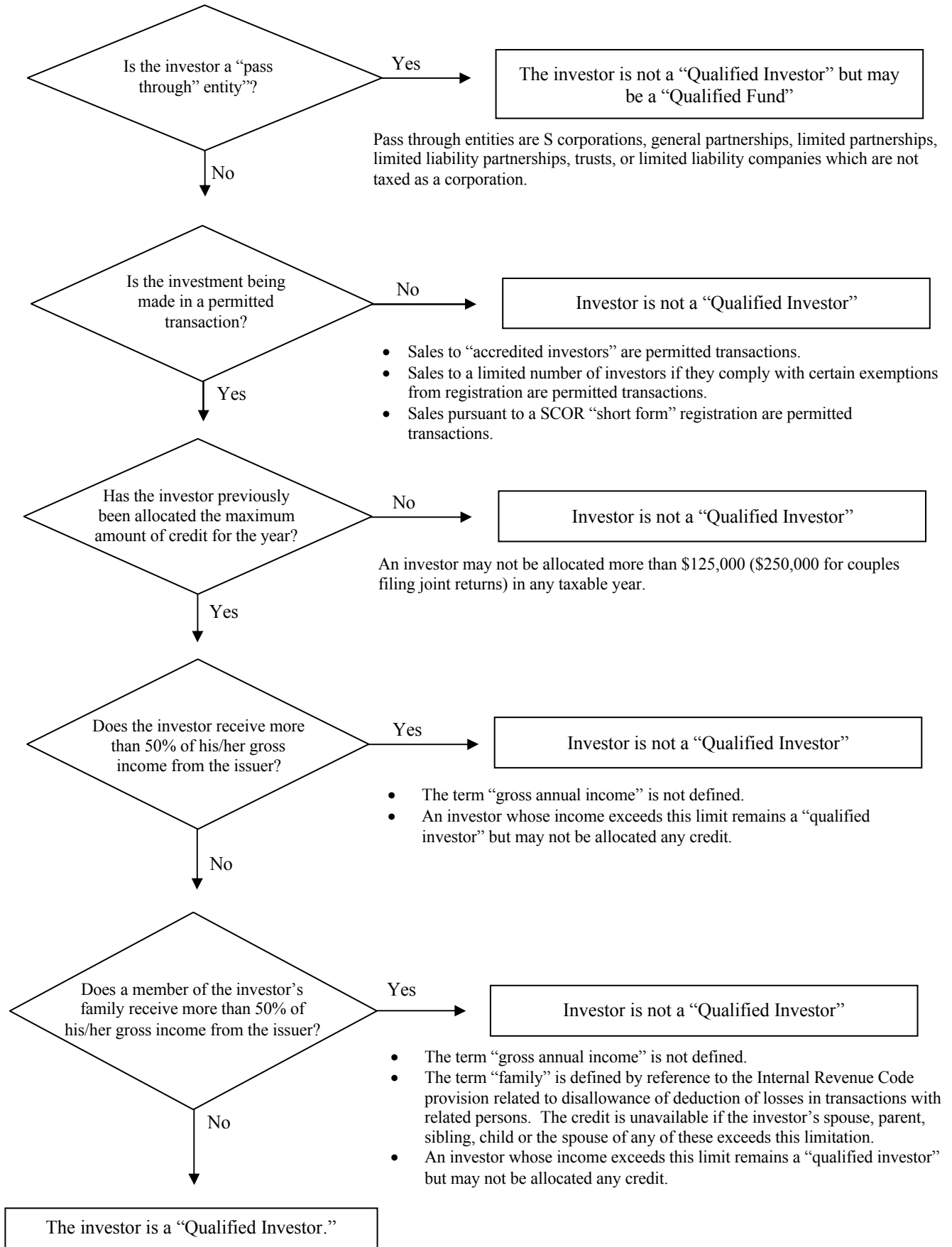
REQUIREMENTS AS TO LOCATION

The issuer must meet requirements as to location of its headquarters and its employees.



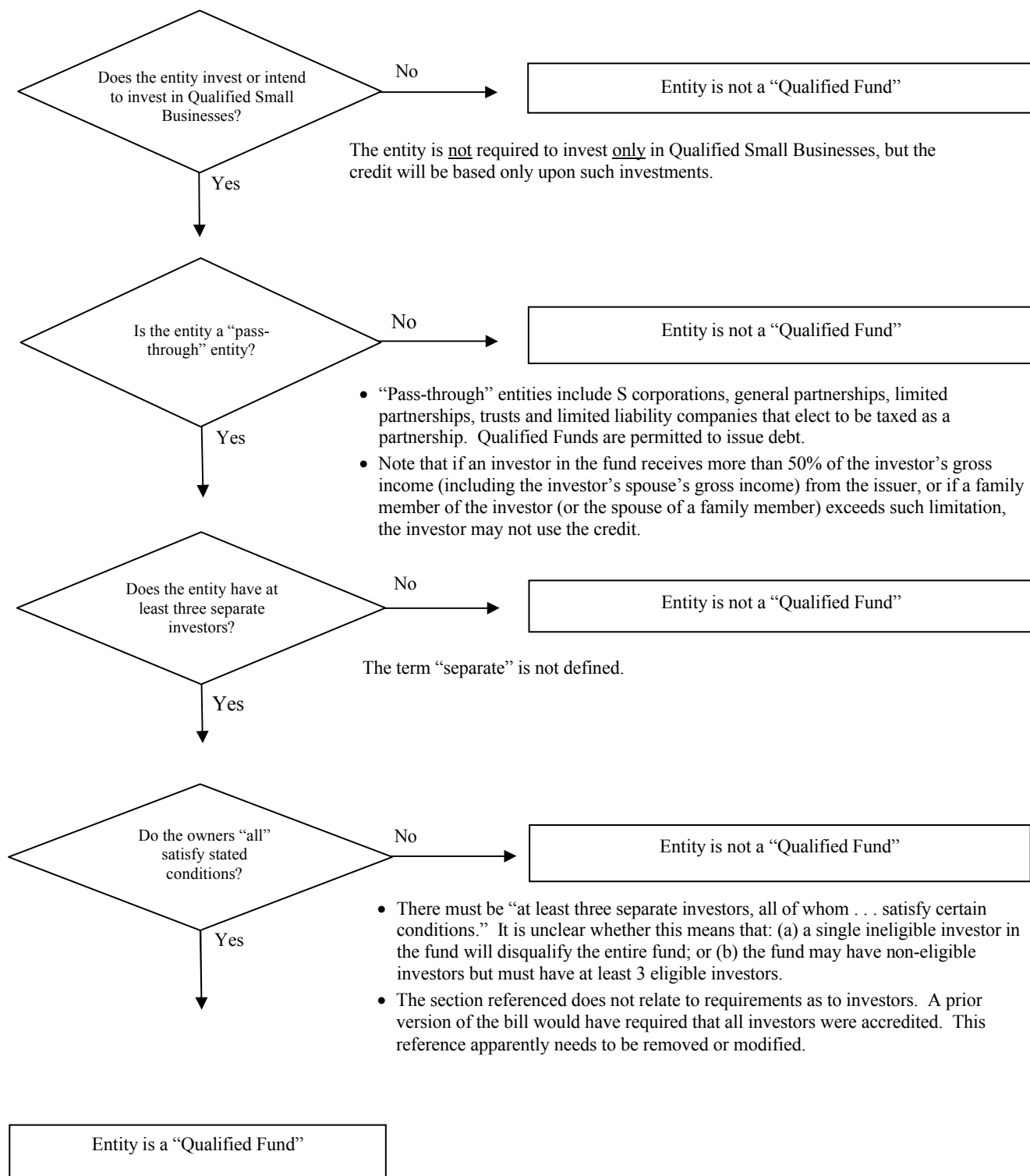
STATUS AS “QUALIFIED INVESTOR”

Investors must be certified either as a “Qualified Investor” (addressed on this page) or as a “Qualified Fund” (addressed on the next page). This flow chart does not address the process of certification.



STATUS AS “QUALIFIED FUND”

Investors must either be a “Qualified Fund” (addressed on this page) or must be a “Qualified Investor” (addressed on the previous page).



IS THE INVESTMENT A QUALIFIED INVESTMENT?

The investment must be in the nature of equity.

