

**STATE OF NEW MEXICO
SECURITIES DIVISION
SANTA FE, NEW MEXICO**

IN THE MATTER OF:

Registration Exemption for Investment)
Advisers to Private Funds)

**ORDER EXEMPTING PRIVATE FUND
ADVISERS FROM STATE IA REGISTRATION**

WHEREAS, § 58-13C-403(A) NMSA 1978 of the New Mexico Uniform Securities Act (the “Act”), requires an investment adviser to be registered or exempt from registration as an investment adviser in order to transact business in this state;

WHEREAS, § 58-13C-403(B)(3) authorizes the Director of the New Mexico Securities (the “Director”) to exempt by rule or order any person from the investment adviser registration requirement of § 58-13C-403(A);

WHEREAS, §§ 58-13C-601(A) and 605(A)(1) authorize the Director to administer the Act, including issuing orders necessary to carry out the Act;

WHEREAS, § 58-13C-608(A) authorizes the Director to coordinate with other state securities regulators, among others, to effectuate greater uniformity in securities matters;

WHEREAS, on December 16, 2011, *amended* October 8, 2013, the North American Securities Administrators Association, Inc. (“NASAA”) adopted a model state-level registration exemption for advisers to private fund advisers;

NOW, THEREFORE, IT IS ORDERED, the Director finds that it is necessary and in the public interest that a private fund adviser acting in compliance with the conditions set forth in this Order is exempt from the investment adviser registration provision of § 58-13C-403(A) of the Act as follows:

Registration exemption for investment advisers to qualifying private funds.

1. **Definitions.** For purposes of this Order, the following definitions will apply:
 - A. “Value of primary residence” means the fair market value of a person’s primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

- B. "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.
 - C. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.
 - D. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).
 - E. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(1)-1, 17 C.F.R. § 275.203(1)-1.
 - F. "Qualified client" is defined at 17 C.F.R § 275.205-3(d).
2. **Exemption for private fund advisers.** Subject to the additional requirements of paragraph 3 below, a private fund adviser is exempt from the registration requirements of § 58-13C-403(A) if the private fund adviser satisfies the following four conditions:
- A. neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);
 - B. the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the U.S. Securities and Commission pursuant to SEC Rule 204-4, 17 C.F.R. §275.204-4.
3. **Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in paragraph 2 of this Order, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund will, in addition to satisfying the condition specified in paragraph (2), also comply with the following requirements:
- A. The private fund adviser will advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;
 - B. At the time of purchase, the private fund adviser will disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
 - i. all services, if any, to be provided to individual beneficial owners;
 - ii. all duties, if any, the investment adviser owes to the beneficial owners;

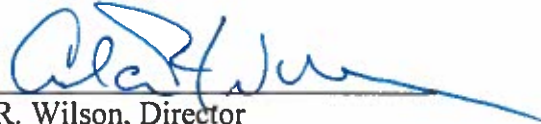
- iii any other material information affecting the rights or responsibilities of the beneficial owners.

C. The private fund adviser will obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and deliver a copy of such audited financial statements to each beneficial owner of the fund.

4. **Federal covered investment advisers.** If a private fund adviser is registered with the SEC, the adviser is not eligible for this exemption and must comply with the state notice filing requirements applicable to federal covered investment advisers in 58-13C-405 NMSA 1978 of the Act.
5. **Investment adviser representatives.** A person is exempt from the registration requirements of 58-13C-404 NMSA 1978 of the Act if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this Order and does not otherwise act as an investment adviser representative.
6. **Electronic filing.** The reports described in 2(B) must be filed electronically through the Investment Adviser Registration Depository ("IARD").
7. **Transition.** Any investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.
8. **Grandfathering for private fund advisers with non-qualified clients.** An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subparagraph 3 (A) of this Order is eligible for the exemption contained in paragraph 2 of this regulation if the following conditions are satisfied:
 - A. the subject fund existed prior to the effective date of this regulation;
 - B. as of the effective date of this Order, the fund(s) cease(s) to accept beneficial owners who are not qualified clients, other than beneficial owners of such fund(s) as of the effective date of this Order; provided, however, that securities of a fund that owned by persons or entities who received such securities from a person or entity that was a beneficial owner to such fund as of the effective date of this Order as a gift or bequest, or in a case in which such transfer or assignment was caused by legal separation, divorce, death or other involuntary event or effected for estate planning purposes, will be deemed to be owned by a beneficial owner of such fund as of the effective date of this Order.
 - C. within 90 days after the effective date of this Order, the investment adviser discloses in writing the information described in paragraph 3(B) to all beneficial owners of the fund;

- D. from and after the effective date of this Order, the investment adviser delivers audited financial statements as required by paragraph 3(C).
9. **Effective date.** This Order remains in effect unless and until amended or rescinded by subsequent order, or superseded by subsequent rule or statute.

SIGNED ON THIS 2nd day of December, 2013, Santa Fe, New Mexico.



Alan R. Wilson, Director
New Mexico Securities Division

