

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

**SECURITIES DIVISION**

<b>In the Matter of:</b>	)	
	)	<b>Docket No. 12-037-S</b>
<b>Registration Exemption for Investment</b>	)	
<b>Advisers to Private Funds</b>	)	

**ORDER**

WHEREAS, pursuant to the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “Dodd-Frank Act”), certain advisers to private funds (“private fund advisers”) are now subject to regulation by the Securities and Exchange Commission (the “SEC”) as investment advisers; and

WHEREAS, prior to the passage of the Dodd-Frank Act, many of those private fund advisers were subject to regulation as investment advisers under the Vermont Uniform Securities Act, 9 V.S.A. chapter 150, § 5101, *et seq.*, as amended (the “Act”); and

WHEREAS, on December 16, 2011, the North American Securities Administrators Association, Inc. (“NASAA”) adopted a model rule providing a Registration Exemption for Investment Advisers to Private Funds (the “NASAA Model Rule”) to address the treatment under the Uniform Securities Act of certain private fund advisers; and

WHEREAS, 9 V.S.A. § 5608 provides that the Commissioner of the Department of Financial Regulation (the “Commissioner”) may cooperate with the securities regulators of other states and the SEC to achieve maximum uniformity in federal and state regulatory standards; and

WHEREAS, the Commissioner is charged with the administration of the Act under 9 V.S.A. § 5601; and

WHEREAS, 9 V.S.A. § 5605(a)(1) provides that the Commissioner may issue orders necessary or appropriate to carry out the Act; and

WHEREAS, 9 V.S.A. § 5403(a), provides that “[i]t is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser. . . .” and

WHEREAS, 9 V.S.A. § 5403(b)(3) permits the Commissioner to exempt by rule adopted or order issued any person from the investment adviser registration requirement of 9 V.S.A. § 5403(a) if the Commissioner determines that compliance with that section is not necessary or appropriate for the protection of investors and that the exemption is consistent with the public interest and within the purposes intended by the Act; and

WHEREAS, the Commissioner finds that it is necessary and appropriate in the public interest and for the protection of investors and is consistent with the purposes intended by the policy and provisions of the Act to adopt the provisions of the NASAA Model Rule in connection with the treatment of certain private fund advisers; and

**NOW, THEREFORE, IT IS ORDERED**, under the authority granted by Sections 9 V.S.A. §§ 5403 and 5605 of the Act, that for purposes of compliance with the investment adviser provisions of the Act, a

private fund adviser acting in compliance with the conditions set forth in this Order shall be exempt from the investment adviser registration provision of the Act and shall be considered an exempt adviser for purposes of compliance with the Act;

### **Registration exemption for investment advisers to private funds**

1. **Definitions.** For purposes of this Order, the following definitions shall apply:
  - A. "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.
  - B. "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.
  - C. "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).
  - D. "3(c)(7) fund" means a private fund that qualifies for an exclusion from the definition of an investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(7).
  - E. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.
  - F. "Qualified client" means a qualified client as defined in SEC Rule 205-3, 17 C.F.R. § 275.205-3.
  
2. **Exemption for private fund advisers.** Subject to the additional requirements of paragraph 3 below, a private fund adviser shall be exempt from the registration requirements of 9 V.S.A. § 5403 if the private fund adviser satisfies each of the following conditions:
  - A. neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;
  - B. the private fund adviser files with the Commissioner through the Investment Adviser Registration Depository ("IARD") each report and amendment thereto that an exempt reporting adviser is required to file in accordance with instructions in Form ADV; and
  - C. the private fund adviser pays the fees specified in 9 V.S.A. § 5410(c).
  
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 neither a venture capital fund nor a (3)(c)(7) fund shall, in addition to satisfying each of the conditions specified in paragraphs (2)(A) - (C), comply with the following requirements:
  - A. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds or 3(c)(7) funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who meet the definition of a qualified client at the time the securities are purchased from the issuer;
  - B. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is neither a venture capital fund nor a (3)(c)(7) 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; and
    - iii. any other material information affecting the rights or responsibilities of the beneficial owners.
  - C. With respect to each such (3)(c)(1) fund's fiscal year end after the effective date of this Order, the private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is neither a venture capital fund nor a (3)(c)(7) fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund within 180 days of the fund's fiscal year end or such longer period as the Commissioner may permit upon a showing of good cause. For the first fiscal year ending after the effective date of this Order, the private fund adviser shall obtain financial statements of each 3(c)(1) fund that is neither a venture capital fund nor a (3)(c)(7) fund and shall deliver a copy of such financial statements to each beneficial owner of the fund (together with a certification from a general partner, officer, manager or other authorized agent of the fund that such copy is a true and correct copy of the fund's internally-prepared financial statements) within 90 days of the fund's fiscal year end or such longer period as the Commissioner may permit upon a showing of good cause.
4. **Federal covered investment advisers.** If a private fund adviser is registered with the SEC, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in 9 V.S.A. § 5405.
5. **Investment adviser representatives.** A person is exempt from the registration requirements of 9 V.S.A. § 5404 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 report filings described in paragraph (2)(B) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by 9 V.S.A. § 5410 are filed and accepted by the IARD on the state's behalf.
7. **Transition.** An investment adviser who becomes ineligible for the exemption provided by this Order 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.** A private fund adviser to one or more 3(c)(1) funds that is neither a venture capital fund nor a (3)(c)(7) fund and that has one or more beneficial owners who are not qualified clients may nonetheless qualify for this exemption if:
  - A. the subject fund(s) existed prior to the effective date of this Order;
  - 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 are owned by persons or entities who received such securities from a person or entity that was a beneficial owner of 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, shall 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; and
- D. beginning with each fund's first full fiscal year commencing after the effective date of this Order, the investment adviser delivers audited financial statements as required by paragraph 3(C); provided that, for the first fiscal year ending after the effective date of this Order, the private fund adviser delivers financial statements (together with a certification from a general partner, officer, manager or other authorized agent of the fund that such copy is a true and correct copy of the fund's internally-prepared financial statements) as required by paragraph 3(C).

9. **Effective date.** This Order shall become effective on November 12, 2012. The Commissioner reserves the authority under 9 V.S.A. § 5605(a) of the Act to amend or repeal this Order.

Dated at Montpelier, Vermont this second (2<sup>nd</sup>) day of November, 2012.



Stephen W. Kimbell, Commissioner  
Vermont Department of Financial Regulation