

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of
CERTAIN INVESTMENT ADVISERS
TO PRIVATE FUNDS

FINAL ORDER GRANTING EXEMPTION
FROM THE REGISTRATION REQUIREMENTS
FOR INVESTMENT ADVISERS TO PRIVATE
FUNDS AND THEIR INVESTMENT ADVISER
REPRESENTATIVES

File No. 617868-56

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) repeals section 203(b)(3) of the Investment Advisers Act of 1940, effective July 21, 2011, which was relied upon by advisers to private funds and other investment advisers because it granted an exemption from federal registration to advisers with fewer than fifteen clients.

Wisconsin Act 32 effective October 31, 2011, amended §551.403(2)(a)2, Wis. Stats., by removing the exemption from registration for an investment adviser whose only clients are certain entities defined in §§551.102(11)(k), (m) or (o), Wis. Stats., which was relied upon by advisers to private funds if they were exempt from federal registration under 203(b)(3).

The Securities and Exchange Commission has recently adopted Rule 203-1(e), which gives advisers who formerly relied on 203(b)(3) until March 30, 2012 to satisfy the new registration requirements or qualify for a different exemption.

The North American Securities Administrators Association (“NASAA”) has recently adopted a model state-level registration exemption for advisers to private funds. In addition to the registration exemptions, the model rule defines, among other things, the terms “private fund adviser” and “venture capital fund” as well as provides a notification and filing requirement.

On September 28, 2011, the Administrator issued an Order Granting Temporary Exemption From The Registration Requirements For Investment Advisers To Private Funds And Their Investment Adviser Representatives to delay the effectiveness of the registration requirement for certain advisers to private funds to coordinate with the SEC filing requirement on March 30, 2012 and in anticipation of adopting the NASAA model rule creating an exemption from the registration requirement for advisers to certain private funds and venture capital funds.

The Administrator has determined it is in the public interest to maintain an efficient system for monitoring advisers to private funds that is consistent with federal requirements and the recently adopted NASAA model rule.

Therefore, for purposes of this Order pursuant to §§ 551.403(2)(c), 551.404(2)(b) and 551.605(1), Wis. Stats., the Administrator orders that advisers to private funds as defined herein must comply with the following requirements and definitions to perfect an exemption from registration as an investment adviser in this state:

- (1) “Value of primary residence” means the fair market value of a person’s primary residence, minus the amount of debt secured by the property up to its fair market value.

- (2) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.
- (3) "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.
- (4) "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).
- (5) "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.
- (6) Subject to the additional requirements of paragraph (7) below, a private fund adviser shall be exempt from the registration requirements of §551.403, Wis. Stats., 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 Administrator, each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and
- (7) In order to qualify for the exemption described in paragraph (6) of this Order, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph (6), comply with the following requirements:
 - (a) The private fund adviser shall 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 an accredited investor in SEC Rule 501(a), 17 C.F.R. § 230.501(a), 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 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; and
 - iii. any other material information affecting the rights or responsibilities of the beneficial owners.

- (c) The private fund adviser shall obtain on an annual basis, audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.
- (8) If a private fund adviser is registered with the Securities and Exchange Commission, 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 §551.405, Wis. Stats.
- (9) A person is exempt from the registration requirements of §551.404, Wis. Stats., if he or she is employed by or associated with a private fund adviser or an exempt reporting adviser that is exempt from registration in this state pursuant to this Order and does not otherwise act as an investment adviser representative.
- (10) The report filings described in paragraph (6)(b) above shall be made electronically through the IARD. Private fund advisers in business on the date of this order shall make their initial filing no later than March 30, 2012. A report shall be deemed filed when the reports required by paragraph (6)(b) of this Order is filed and accepted by the IARD on the state's behalf.
- (11) An investment adviser that 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.
- (12) 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 accredited investors as described in subparagraph (7)(a) of this Order is eligible for the exemption contained in paragraph (6) of this Order if the following conditions are satisfied:
- (a) the subject fund existed prior to the effective date of this Order;
 - (b) as of the effective date of this Order, the subject fund ceases to accept beneficial owners who are not accredited investors, as described in subparagraph (7)(a) of this Order;
 - (c) the investment adviser discloses in writing the information described in paragraph (7)(b) to all beneficial owners of the fund; and
 - (d) as of the effective date of this Order, the investment adviser delivers audited financial statements as required by paragraph (7)(c).

[SEAL]

So ordered at Madison, Wisconsin this 17th day of February, 2012.



Patricia D. Struck
Administrator
Division of Securities