

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
INTERPRETIVE ORDER

WHEREAS, the New Hampshire Bureau of Securities Regulation (the "Bureau") is charged with the administration of the New Hampshire Uniform Securities Act (the "Act");

WHEREAS, RSA §421-B:1-102(26) defines an investment adviser, in pertinent part, as "a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities,"

WHEREAS RSA §421-B:4-403 requires investment advisers transacting business in New Hampshire to register with the Bureau in accordance with the Act;

WHEREAS, RSA §421-B:1-102(26)(M) excludes from the definition of "investment adviser" (and thus from the registration requirements of RSA §421-B:4-403) any other person excluded by order issued pursuant to the Act;

WHEREAS, on July 21, 2011, the United States Securities and Exchange Commission ("SEC"), pursuant to Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("the Dodd-Frank Act"), adopted rules (SEC Release No. IA-3222; File No. S7-37-10) implementing a new exemption from the investment adviser registration requirements under the Investment Advisers Act of 1940 for "private fund advisers" with less than \$150 million in assets under management;

WHEREAS, the Dodd-Frank Act delegated to the states oversight of investment advisers with up to \$100 million in assets under management;

WHEREAS, an exemption for private funds with less than \$100 million in assets under management similar to the rules adopted by the SEC has not heretofore been adopted in New Hampshire for New Hampshire-based advisers;

WHEREAS, RSA §421-B:6-608(b) states, "This [Act] shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it and to coordinate the interpretation of this [Act] with the related federal regulation."

WHEREAS, finding that the promotion of capital formation through the use of private funds is important to the economic development of the state of New Hampshire, that an exemption with sufficient limitations will provide a reasonable accommodation between the need to encourage investment and the interest of the Bureau in protecting investors, and that the absence of an exemption for private funds located in New Hampshire with less than \$100 million in assets under management puts such funds at a disadvantage in comparison with those regulated by other states and the SEC;

NOW, THEREFORE, it is Ordered that an exemption from investment adviser registration under RSA §421-B:4-403 is adopted subject to following standards and conditions:

(a) **Definitions**. For purposes of this exemption, the following definitions shall apply:

(1) "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.

(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.

(b) **Exemption for private fund advisers.** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of RSA §421-B:4-403 if the private fund adviser satisfies each of the following conditions:

(1) 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);

(2) the private fund adviser files with the state 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

(c) **Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in paragraph (b) of this regulation, 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 paragraphs (b)(1) through (b)(3), comply with the following requirements:

(1) 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 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;

(2) 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:

(A) all services, if any, to be provided to individual beneficial owners;

(B) all duties, if any, the investment adviser owes to the beneficial owners; and

(C) any other material information affecting the rights or responsibilities of the beneficial owners.

(3) 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.

(d) **Federal covered investment advisers.** 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 §421-B:4-405.

(e) **Investment adviser representatives.** A person is exempt from the registration requirements of §421-B:4-404 if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

(f) **Electronic filing.** The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

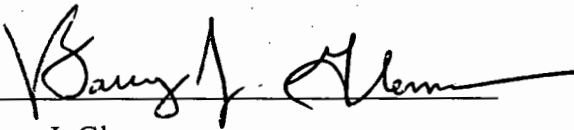
(g) **Transition.** An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

(h) **Waiver Authority with Respect to Statutory Disqualification.** Paragraph (b)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the secretary of state, if the secretary of state determines that it is not necessary under the circumstances that an exemption be denied.

(i) **Grandfathering for investment advisers to 3(c)(1) funds 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 (c)(1) is eligible for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:

- (1) the subject fund existed prior to the effective date of this regulation;
- (2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation;
- (3) the investment adviser discloses in writing the information described in paragraph (c)(2) to all beneficial owners of the fund; and
- (4) as of the effective date of this regulation, the investment adviser delivers audited financial statements as required by paragraph (c)(3).

WILLIAM GARDNER
SECRETARY OF STATE
By His Designee



Barry J. Glennon

Director of the New Hampshire Bureau of Securities Regulation

Dated: March 22, 2018
Concord, New Hampshire