

**BY ORDER OF THE
ALABAMA SECURITIES COMMISSION**

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

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

WHEREAS, the SEC provides an exemption from the registration requirements under the Investment Advisers Act of 1940 for an investment adviser that acts solely as an adviser to private funds and has assets under management of less than \$150 million. These exempt reporting advisers (“ERA”) must still file reports with the SEC despite the exemption; and

WHEREAS, the North American Securities Administrators Association (“NASAA”) has adopted a model state-level registration exemption for advisers to private funds; and

WHEREAS, any investment adviser domiciled in Alabama, including private fund advisers, with assets under management up to \$100 million are currently required to register with the Alabama Securities Commission (“the Commission”) and are subject to regulation as investment advisers under the Alabama Securities Act (“the Act”) and Chapter 830-X-3-.01 et seq. of the Regulations promulgated pursuant to the Act; and

WHEREAS, Section 8-6-3(b)(2) Code of Alabama (1975) provides that the Commission may by Order designate advisers to certain clients exempt from registration requirements under the Act; and

WHEREAS, Section 8-6-23, Code of Alabama (1975) provides that the Commission “may make, amend and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions” of the Act, where the Commission finds that the action is “necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions” of the Act. In prescribing such rules the Commission may cooperate with the securities administrators of the other states and the SEC “with a view to effectuating the policy of [the Act] to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable”; and

WHEREAS, the Commission has determined that this action is desirable to carry out the provisions of the Act and to enhance capital formation in Alabama; and

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the authority granted the Commission, a private fund adviser acting in compliance with the conditions set forth in this Order shall be exempt from the investment adviser registration provisions of the Act as follows:

Registration exemption for investment advisers to qualifying private funds.

- (1) Definitions. For purposes of this Order, the following definitions shall 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 venture capital and private funds.
 - (C) “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.
 - (D) “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.
 - (E) “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).
 - (F) “3(c)(7) fund” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(7).
 - (G) “Beneficial owner” means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise enjoys the benefits of ownership even though the title to the private fund is in another name.
 - (H) “Qualified client” means a client that either has at least \$1.1 million in assets under management with the investment adviser immediately after entering into the advisory contract; or the investment adviser reasonably believes, immediately prior to entering into the contract, the client has a net worth of more than \$2.2 million.
- (2) Exemption for private fund advisers. Subject to the additional requirements of paragraph (3) of this Order, a private fund adviser shall be exempt from the registration requirements of Section 8-6-3, Code of Alabama (1975) 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 disqualifying event as described in Section 8-6-3(j), Code of Alabama (1975) and/or SEC Rule 506 (d)(1), 17 C.F.R. § 230.506(d)(1);
 - (B) the private fund adviser files electronically with the Commission each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4, 17 C.F.R. §

275.204-4 through the Investment Adviser Registration Depository (IARD); and

(C) the private fund adviser pays the filing fees prescribed for investment advisers in Section 8-6-3(h), Code of Alabama (1975).

(3) Additional requirements for private fund advisers. 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) or (7) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (2)(A) through (2)(C), 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 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 shall disclose the following in writing to each beneficial owner of a 3(c)(1) and (7) 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 and at liquidation, 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 the Commission and each beneficial owner of the fund. The audited financial statements provided to the commission shall have an oath or affirmation that such statement is true and correct to the best knowledge, information, and belief, after a diligent inquiry, of the person making such oath or affirmation. The oath or affirmation shall be made before a person authorized to administer such oath or affirmation. If the investment adviser is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if an LLC, by the owner/managing member; if a partnership, by a general partner; if a corporation, by a duly authorized officer.

(D) The private fund adviser shall obtain on an annual basis and at liquidation, unaudited financial statements of each 3(c)(7) fund that is not a venture capital fund and shall deliver a copy of such unaudited financial statements to the Commission and each beneficial owner of the fund. The unaudited financial statements provided to the commission shall have an oath or

affirmation that such statement is true and correct to the best knowledge, information, and belief, after a diligent inquiry, of the person making such oath or affirmation. The oath or affirmation shall be made before a person authorized to administer such oath or affirmation. If the investment adviser is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if an LLC, by the owner/managing member; if a partnership, by a general partner; if a corporation, by a duly authorized officer.

- (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.
- (5) Investment adviser representatives. A person is exempt from the registration requirements of Section 8-6-3, Code of Alabama (1975) 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 Section 8-6-3(h), Code of Alabama (1975) 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) Waiver Authority with Respect to Statutory Disqualification. Paragraph (2)(A) may be waived in the Director's discretion on a case-by-case basis after a determination is made that the waiver would be in the public interest.
- (9) Grandfathering provisions.
 - (A) Non-qualified clients in 3(c)(1) fund. A private fund 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) is eligible for the exemption contained in paragraph (2) of this Order if the following conditions are satisfied:
 - (i) the subject fund existed prior to the effective date of this Order;
 - (ii) as of the effective date of this Order, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in definition (1)(H) and subparagraph (3)(A) of this Order;
 - (iii) the investment adviser discloses in writing the information described in paragraph (3)(B) to all beneficial owners of the fund;and

(iv) as of the effective date of this Order, the investment adviser delivers audited financial statements as required by paragraph (3)(C).

(B) Investment advisers to qualified private funds shall have 120 days from the effective date of this Order to establish compliance with the provisions herein. The Commission shall take no administrative action relating to registration failures during such grace period ; however, the anti-fraud provisions of (11) below would remain in effect.

(10) Requests for records.

(A) Upon a written request from the Commission, an investment adviser relying on an exemption provided by this Order shall make available to the Commission all records subject to the custody or control of the investment adviser related to any private fund to which the investment adviser provides investment advice.

(B) The Commission shall retain investigative and subpoena authority pursuant to Section 8-6-15, Code of Alabama (1975) over any person claiming exemption as a private fund adviser.

(C) Failure to comply with this subsection will result in the loss of the exemption provided by this Order.

(11) Nothing in this Order shall be construed to provide an exemption from the operation of the anti-fraud provisions of Section 8-6-17, Code of Alabama (1975).

(12) Effective Date. This Order shall become effective on July 8, 2024, and shall remain in effect unless and until amended or rescinded by a subsequent Order or superseded by a subsequent rule or statute.

SO ORDERED THIS 8th day of July, 2024.

ALABAMA SECURITIES COMMISSION
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Amanda L. Senn
Director