STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

PRIVATE FUND ADVISERS ORDER

WHEREAS, the Louisiana Commissioner of Securities ("Commissioner") has authority to administer and provide for the enforcement of the Louisiana Securities Law ("LSL") set forth in LSA-R.S. 51:701, et seq. along with the rules and regulations promulgated thereunder;

WHEREAS, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") certain advisers to private funds ("private fund advisers") are now subject to regulation by the Securities and Exchange Commission as investment advisers effective July 21, 2011;

WHEREAS, Dodd-Frank repealed the exemption in Section 203(b)(3) of the Advisers Act for any investment adviser who during the course of the preceding twelve months had fewer than fifteen clients and who neither held itself out generally to the public as an investment adviser nor acted as an investment adviser to a federally registered investment company or a business development company;

WHEREAS, Dodd-Frank also amended Section 203 of the Advisers Act to add an exemption in Section 203(m) of the Advisers Act for investment advisers rendering advice solely to private funds having less than $150 million in assets under management in the United States, subject to such reporting and record keeping requirements as the SEC may prescribe;

WHEREAS, in Release No. IA-3222 (Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers; June 22, 2011) and Release No. IA-3221 (Rules Implementing Amendments to the Investment Advisers Act of 1940; June 22, 2011), the SEC announced that it had promulgated final rules and rule amendments under the Advisers Act affecting certain investment advisers exempt from federal registration under Section 203 of the Advisers Act following enactment of Dodd-Frank;

WHEREAS, such final rules included Rule 204-4 requiring investment advisers relying on the exemption under Section 203(m) of the Advisers Act to file reports on Form ADV;

WHEREAS, the SEC has indicated that, at the request of state securities authorities, it expected to add to Form ADV a check box and instructions permitting exempt reporting advisers to direct the filing of reports filed with the SEC to the state securities authorities [Release No. IA-3110; Rules Implementing Amendments to the Investment Advisers Act of 1940, November 19, 2010, at n. 127];

WHEREAS, as a result of Dodd-Frank's addition of new exemptive provisions to Section 203 of the Advisers Act, investment advisers relying on those exemptions would generally have to register as investment advisers under the Act;

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 LSL;

WHEREAS, the North American Securities Administrators Association, Inc. ("NASAA") adopted a model rule providing a Registration Exemption for Investment Advisers to Private funds ("NASAA Model Rule") to address the treatment under the Uniform Securities Act of certain private fund advisers adopted December 16, 2011 as amended October 8, 2013.

WHEREAS, unless exempt, LSA-R.S. 51:703(A)(2) provides that no person may engage in business in Louisiana as an investment adviser unless he has been duly registered under the LSL;

WHEREAS, the LSL defines an "investment adviser" in LSA-R.S. 51:702(7) as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities";

WHEREAS, the LSL provides examples of persons excluded from the definition of an "investment adviser" including "persons not within the intent of this Paragraph as the commissioner may by rule or order designate" in LSA-R.S. 51:702(7)(g);

WHEREAS, the Commissioner finds that it is consistent with the purposes fairly intended by the policy and provisions of the LSL to adopt the provisions of the NASAA Model Rule in connection with the treatment of certain private fund advisers;

WHEREAS, after due deliberation, the Commissioner finds that the entry of this Order 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 LSL;

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the authority established in LSA-R.S. 51:702(7)(g), that for purposes of compliance with the investment adviser provisions of LSL, a private fund adviser acting in accord with the conditions set forth in this Order below shall not be a person within the intent of LSA-R.S. 51:702(7) that defines an "investment adviser" under LSL;

CONDITIONS

(a) Definitions. For purposes of the exemption set forth in this Order, the following definitions 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 LSA-R.S. 51:703(A)(2) and LSA-R.S.51:703(D) 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

(3) the private fund adviser pays the fees specified in LSA-R.S. 51:703(G)(3).

(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 LSA-R.S. 51:703(D)(2).

(e) Investment adviser representatives. A person is exempt from the registration requirements LSA-R.S. 51:703(A)(2) and LSA-R.S. 51:703(D) 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 Investment Adviser Registration Depository ("IARD"). A report shall be deemed filed when such report and the fee required by LSA-R.S. 51:703(G)(3) are 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.

This Order shall remain effective until modified, superseded, withdrawn, rescinded or vacated by the Commissioner or other lawful authority.

WITNESS MY HAND AND SEAL THIS 25th DAY OF SEPTEMBER, 2020.

John Ducrest, Commissioner of Securities