

STATE OF NORTH DAKOTA
SECURITIES DEPARTMENT

In the Matter of:

Advisers to Private Venture
Capital Funds

**ORDER TO VACATE “TEMPORARY
ORDER EXCLUDING CERTAIN
EXEMPT REPORTING ADVISERS
FROM THE DEFINITION OF
INVESTMENT ADVISER”; and
ORDER FOR A REGISTRATION
EXEMPTION FOR VENTURE
CAPITAL FUND ADVISERS**

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WHEREAS, the North Dakota Securities Commissioner (“Commissioner”) is charged with the administration of the North Dakota Securities Act, Chapter 10-04 of the North Dakota Century Code, (the “Act”); and

WHEREAS, on March 1, 2022, the Commissioner issued the “Temporary Order Excluding Certain Exempt Reporting Advisers From the Definition of ‘Investment Adviser’”, and

WHEREAS, the Commissioner intends to vacate the March 1, 2022 Temporary Order superseding it with this Order; and

WHEREAS, Section 10-04-10(3)(a)(3) of the Act provides that the Commissioner may exempt investment advisers from registration by rule or by order; and

WHEREAS, Section 10-04-02(10) of the Act defines the term “investment adviser” to mean “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 regular business, issues or promulgates analyses or reports concerning securities. The term includes financial planners and

other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation”; and

WHEREAS, Section 10-04-10 of the Act provides that a person with a place of business in this state shall not transact business in this state as an investment adviser or investment adviser representative unless such person is registered, or exempt from registration, under the Act or, if the person has no place of business in the state and meets the *de minimus* exemption in Section 10-04-10(3)(a); and

WHEREAS, on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub L. No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank”) became law and eliminated the exemption from registration for investment advisers contained in Section 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. §§ 80b-1 - 80b-21) (“Advisers Act”) known as the “Private Adviser Exemption”; and

WHEREAS, effective July 21, 2011, Dodd-Frank amended Section 203 of the Advisers Act to add an exemption from registration in Section 203(l) of the Advisers Act for investment advisers rendering advice solely to one or more venture capital (“VC”) funds, subject to such reporting and record keeping requirements as the Securities and Exchange Commission (“SEC”) may prescribe; and

WHEREAS, Section 10-04-03(2) of the Act imposes on the Commissioner the duty to “cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation

of like provisions of the laws administered by them and in the forms which are required to be filed under such law”; and

WHEREAS, the Commissioner finds that a venture capital fund adviser meets the definition of an “investment adviser” under the Act; and

WHEREAS, the Commission finds that a venture capital fund adviser is exempt from registration, subject to the provisions of this order; and

WHEREAS, the Commissioner finds that the issuance of this Order is necessary and appropriate, in the public interest, for the protection of investors and clients and consistent with the purposes fairly intended by the policies and provisions of the Act.

IT IS HEREBY ORDERED that:

1. The Temporary Order Excluding Certain Exempt Reporting Advisers from the Definition of “Investment Adviser”, is hereby vacated.
2. Definitions. For purposes of this Order, the following definitions shall apply:
 - a) “Venture capital fund adviser” means a person acting as an investment adviser who provides advice solely to one or more qualifying venture capital funds, who is exempt from registration, and may not hold themselves out generally to the public as an investment adviser.
 - b) “Venture capital fund” means a private fund that meets the definition of a venture capital fund in SEC Rule 203(I)-1, 17 C.F.R. § 275.203(I)-1 and all of the investors in the venture capital funds being advised must be “accredited investors” as defined in 17 C.F.R. § 230.501(a).

3. Exemption for venture capital fund advisers. A venture capital fund adviser shall be exempt from the registration requirements of Section 10-04-02(10) if the venture capital fund adviser satisfies each of the following conditions:
 - a. Neither the venture capital 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);
 - b. The venture capital 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. The venture capital fund adviser pays the fee specified in Section 10-04-10(8)(c).
4. Federal covered investment advisers. If a venture capital 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 Section 10-04-10(4).
5. Electronic filing. The report filings described in subparagraph 3(b) above shall be made electronically through the Investment Adviser Registration Depository (IARD). A report shall be deemed filed when the report and the fee required by Section 10-04-10(8)(c) are filed and accepted by the IARD on the state's behalf.

6. Limited Exemptions. The exemptions provided in this Order extend to state investment adviser registration requirements and investment adviser representative registration requirements only and do not excuse the obligation to comply with all other applicable securities registration, anti-fraud, fiduciary and related provisions under the Act.
7. 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.

IN TESTIMONY WHEREOF, witness my hand and seal this 23rd day of September, 2024.




Karen J. Tyler, Securities Commissioner
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