

STATE OF NORTH DAKOTA

SECURITIES DEPARTMENT

In the Matter of:)
)
) **TEMPORARY ORDER EXCLUDING**
) **CERTAIN EXEMPT REPORTING**
Advisers to Private Venture) **ADVISERS FROM THE DEFINITION**
Capital Funds) **OF "INVESTMENT ADVISER"**
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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, Section 10-04-03(2) of the Act provides that the Securities Commissioner may issue an order necessary or appropriate to carry out the provisions of the Act, including rules and forms governing registration statements, applications, notice filings and other records; 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 a 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 10-04-02(10) of the Act provides the Commissioner with the authority to exclude from the definition of "investment adviser" any person not within the intent of this subsection as the Commissioner, by rule or order, may designate, thereby causing those persons to not be subject to the investment adviser registration requirements of Section 10-04-10 of the Act; and

WHEREAS, the Commissioner finds that, subject to the provisions of this Order, investment advisers rendering advice solely to one or more venture capital funds are not

within the intent of the definition of "investment adviser" under Section 10-04-02(10) of the Act; 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. An investment adviser that: (a) acts solely as an adviser to one or more "venture capital funds" (meaning 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), (b) is exempt from the investment adviser registration requirements under Section 203(I) of the Advisers Act; and (c) is in compliance with SEC Rule 203(I)-1 ("Exempt VC Adviser") shall be excluded from the definition of "investment adviser" under Section 10-04-02(10) of the Act for purposes of the investment adviser registration requirements of Section 10-04-10 of the Act.
2. An Exempt VC Adviser that is excluded from the definition of investment adviser pursuant to this Order shall comply with the reporting requirements of SEC Rule 204-4, 17 C.F.R. § 275.204-4, and shall make a notice filing with the North Dakota Securities Department ("the Department") of its exempt reporting adviser status on Form ADV through the Investment Adviser Registration Depository ("IARD") system.
3. An Exempt VC Adviser that is excluded from the definition of investment adviser pursuant to this Order shall pay a notice filing fee of \$100 to the Department through the IARD system.

4. An Exempt VC Adviser that is excluded from the definition of investment adviser pursuant to this Order may not be 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); and may not hold itself out generally to the public as an investment adviser.
5. Any venture capital funds being advised under the terms set forth in this Order must continue to meet all of the requirements and qualifications of “venture capital funds” as set forth in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-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).
6. An individual employed by or associated with an Exempt VC Adviser that is exempt from the investment adviser registration requirements pursuant to this Order shall be excluded from the definition of “investment adviser representative” in Section 10-04-02(11) of the Act, by virtue of such individual's activities on behalf of the Exempt VC Adviser, during such time as the exemption pursuant to this Order is in effect.
7. The exclusions and 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.
8. This Order is effective as of March 1, 2022, and shall remain in effect until modified or rescinded.

IN TESTIMONY WHEREOF, witness my hand and seal this 1st day of March, 2022.



A handwritten signature in blue ink, appearing to read "Karen J. Tyler", written over a horizontal line.

Karen J. Tyler, Securities Commissioner
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