



ORDER IMPLEMENTING REGISTRATION EXEMPTIONS FOR INVESTMENT ADVISERS TO
PRIVATE FUNDS AND RESCINDING A PRIOR ORDER TO THAT EFFECT,
ORDER NO. SEC-2025-02

WHEREAS, the North Dakota Insurance Commissioner (“Commissioner”) is charged with the administration of the North Dakota Securities Act of 1951, as amended, (hereinafter the “Act”, codified at Chapter 10-04 of the North Dakota Century Code); and

WHEREAS, Subsection 10-04-03(2) of the Act provides in part that the Commissioner may “[a]dopt, amend, and rescind such rules, forms, and orders as are necessary under this chapter . . .”; and

WHEREAS, Subsection 10-04-03(3) of the Act provides in part that the Commissioner “shall 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, Subsection 10-04-10(3)(a) of the Act provides in part that certain persons are exempt from registration as investment advisers, including “[a]ny other person exempted by rule or order of the commissioner issued under this chapter[]”; and

WHEREAS, the North American Securities Administrators Association (“NASAA”) has published the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule, adopted December 16, 2011, amended October 08, 2013, contributes to the uniformity of interpretation and administration of securities laws among the adopting jurisdictions and with the United States; and

WHEREAS, on Sep. 23, 2024, the then Securities Commissioner issued an 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 (“2024 Order”), pursuant to Section 10-04-03(2) of the Act and Section 10-04-10(3)(a)(3) of the Act, vacating the preceding Temporary Order Excluding Certain Exempt Reporting Advisers from the Definition of Investment Adviser (“2022 Order”), implementing a definition for “venture capital fund adviser” and exemptions from registration requirements of Section 10-04-02(10) of the Act for applicable venture capital fund advisers; and

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Jon Godfread, Commissioner

WHEREAS, the Commissioner finds the provisions of the 2024 Order to be less efficacious in achieving the maximum uniformity of regulations regarding the business practices of the securities industry than the provisions of the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule as implemented below;

THEREFORE, IT IS HEREBY ORDERED, pursuant to Subsections 10-04-03(2), 10-04-03(3), and 10-04-10(3)(a) of the Act, the 2024 Order, having implemented a definition for “venture capital fund adviser” and exemptions from registration requirements of Section 10-04-02(10) of the Act for applicable venture capital fund advisers, is **RESCINDED**, excepting those provisions of the 2024 Order vacating an earlier order, and it is **ORDERED** that the subject matter of the 2024 Order is to be regulated as appropriate under the Act, Title 73 of the North Dakota Administrative Code, other relevant provisions of the North Dakota Administrative Code, and the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule implemented here as follows:

(a) **Definitions.** For purposes of this regulation, 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 Section 10-04-10 of the North Dakota Century Code 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 Section 10-04-

10 of the North Dakota Century Code.

(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 Section 10-04-10 of the North Dakota Century Code.

(e) Investment adviser representatives. A person is exempt from the registration requirements of Section 10-04-10 of the North Dakota Century Code 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 and the fee required by Section 10-04-10 of the North Dakota Century Code 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.

(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 North Dakota Insurance and Securities Department, if the Commissioner determines that it is not necessary under the circumstances that an exemption be denied.

This Order shall remain in effect until amended or rescinded by the Commissioner.

Dated this 18th day of December, 2025.



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