

**BEFORE THE
MARYLAND SECURITIES COMMISSIONER**

IN THE MATTER OF:

*

EXEMPT REPORTING
INVESTMENT ADVISERS

*

June 15, 2012

*

* * * * *

ORDER

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; and

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 Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2007 Repl. Vol. & Supp. 2011) (the “Maryland Securities Act” or the “Act”); and

WHEREAS, on December 16, 2011, the North American Securities Administrators Association, Inc. (“NASAA”) adopted a model rule providing a Registration Exemption for Investment Advisers to Private Funds (the “NASAA Model Rule”) to address the treatment under the Uniform Securities Act of certain private fund advisers; and

WHEREAS, Section 11-203(b)(2) of the Maryland Securities Act provides that in prescribing rules and forms the Maryland Securities Commissioner (the “Commissioner”) may cooperate with the securities administrators of the other states and the Securities and Exchange Commission 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, Section 11-401(d) of the Maryland Securities Act provides, *inter alia*, that, by rule or order, the Commissioner may modify the requirements of the registration provisions to exempt any investment adviser or federal covered adviser from the registration requirements if the Commissioner determines that compliance with that section is not necessary or appropriate for the protection of investors and that the exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS, Section 11-203 (b) (1) of the Maryland Securities Act provides that a rule, form, or order may not be made, amended, or rescinded unless the Commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the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; and

WHEREAS, the Commissioner has determined that action is necessary and appropriate in the public interest and for the protection of investors and is consistent with the purposes intended by the policy and provisions of the Maryland Securities Act to adopt the provisions of the NASAA Model Rule in connection with the treatment of certain private fund advisers; and

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the authority granted by Sections 11-401 and 11-203 of the Act, that for purposes of compliance with the investment adviser provisions of the Maryland Securities Act, a private fund adviser acting in compliance with the conditions set forth in this Order shall be exempt from the investment adviser registration provision of the Maryland Securities Act and shall be considered an exempt reporting adviser for purposes of compliance with the Maryland Securities Act;

CONDITIONS

1. For purposes of the exemption set forth in this Order, the following definitions apply:
 - A. “Private fund adviser” means an investment adviser that provides advice solely to one or more qualifying private funds.
 - B. “Qualifying private fund” means a qualifying private fund as defined in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.
 - C. “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).
 - D. “Venture Capital Fund” means a venture capital fund as defined in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.
 - E. “Qualified client” means a qualified client as defined in SEC Rule 205-3, 17 C.F.R. § 275.205-3.

2. A private fund adviser shall be exempt from the registration requirements of Section 11-401 of the Maryland Securities Act if the private fund adviser satisfies each of the following conditions:
 - A. Neither the private fund adviser nor any of its advisory affiliates is subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;
 - B. The private fund adviser files with the Commissioner through IARD each report and amendment 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. If the private fund adviser advises at least one (3)(c)(1) Fund that is not a venture capital fund (“Non-VC (3)(c)(1) Fund”), the private fund adviser shall:
- I. Advise only those Non-VC (3)(c)(1) Funds whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who each meet the definition of a qualified client, at the time the securities are purchased from the issuer;
 - II. Disclose in writing to each beneficial owner of a Non-VC (3)(c)(1) Fund, at the time of purchase, the following:
 - a. All services, if any, to be provided to the 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; and
 - III. As of each Non-VC (3)(c)(1) Fund’s fiscal year end occurring after the date of this Order, obtain on an annual basis audited financial statements of the Non-VC (3)(c)(1) Fund and deliver, within 120 days of the Fund’s fiscal year end, a copy of those statements to each beneficial owner of the fund.

3. An investment adviser to a Non-VC (3)(c)(1) Fund that has one or more beneficial owners who are not qualified clients is eligible for the exemption contained in paragraph 2 of this Order if the following conditions are satisfied:
 - A. The subject fund existed prior to the date of this Order;
 - B. As of the date of this Order, the subject fund ceases to accept beneficial owners who are not qualified clients;
 - C. Within 90 days of the date of this Order, the investment adviser discloses in writing to all beneficial owners of the fund the information described in paragraph 2.C.II of this Order; and
 - D. The investment adviser delivers audited financial statements as required by paragraph 2.C.III of this Order.
4. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser is not eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section 11-405(b) of the Maryland Securities Act.
5. A person is exempt from the investment adviser representative registration requirements of Section 11-402 of the Maryland Securities Act 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 he or she does not otherwise act as an investment adviser representative.
6. An investment adviser that 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.

The Commissioner reserves the authority under section 11-203(a) of the Act to amend or rescind this Order.

DATE OF THIS ORDER:

June 15, 2012

SO ORDERED:

**Commissioner's Signature is
on File with Original Document**

Melanie Senter Lubin
Securities Commissioner