Government of the District of Columbia
Vincent C. Gray, Mayor
Department of Insurance, Securities and Banking

William P. White
Commissioner

EXEMPT REPORTING ADVISERS	)	ORDER NO.: SB-06-12

ORDER GRANTING TEMPORARY EXEMPTION OF "EXEMPT REPORTING ADVISERS" FROM THE DEFINITION OF "INVESTMENT ADVISER" IN THE DISTRICT OF COLUMBIA SECURITIES ACT OF 2000

WHEREAS, the Commissioner of the Department of Insurance, Securities and Banking ("Department") is charged with the administration of the District of Columbia Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code §§ 31-5601.01 *et seq.* (2001)) ("Act");

WHEREAS, D.C. Official Code § 31-5602.02(a) of the Act provides that no person shall transact business in the District as an investment adviser or investment adviser representative unless the person is licensed, or exempt from licensure, under the Act, or the person has no place of business in the District and meets the *de minimis* exemption provided in D.C. Official Code § 5602.02(a)(2) of the Act;

WHEREAS, D.C. Official Code § 31-5601.01(10) of the Act defines "federal covered adviser" as a person who is registered, or required to be registered, under Section 203 of the Investment Advisers Act of 1940 ("Advisers Act");

WHEREAS, D.C. Official Code § 31-5601.01 (17)(B)(i) of the Act excludes "federal covered advisers" from the definition of "investment adviser";

WHEREAS, investment advisers that are exempt from registration under Section 203 of the Advisers Act are not "federal covered advisers" under D.C. Official Code § 31-5601.01 (10), and are therefore subject to the investment adviser licensing requirements of D.C. Official Code § 31-5602.02;

WHEREAS, effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank") eliminated the exemption from registration for investment advisers contained in section 203(b)(3) of the Advisers Act (known as the "private adviser exemption");

WHEREAS, effective July 21, 2011, Dodd-Frank amended Section 203 of the Advisers Act to add (1) an exemption from registration in Section 203(*l*) of the Advisers Act for investment advisers rendering advice solely to one or more venture capital funds, subject to such reporting and record keeping requirements as the Securities and Exchange Commissioner ("SEC") may prescribe; and (2) an exemption from registration in Section 203(m) of the Advisers Act for investments 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. Investment advisers in categories (1) and (2), above, are "exempt reporting advisers";

WHEREAS, the SEC announced rules regarding the requirements for exempt reporting advisers in Rule 203(*l*)-1 and Rule 203(m)-1, and Rule 204-4 of the Advisers Act and required such firms to be in compliance by March 30, 2012 in Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) and Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011);

WHEREAS, the Department issued Bulletin 11-SB-03-07/21 on July 21, 2011 notifying investment advisers that, subject to any rule or order that may hereafter be adopted or issued by the Department, exempt reporting advisers that transact business in the District must be in compliance with the investment adviser licensing requirements of D.C. Official Code § 31-5602.02 by March 30, 2012;

WHEREAS, the Department is considering whether, and if so in what manner, to exempt some or all exempt reporting advisers from the licensing requirements of D.C. Official Code § 31-5602.02;

WHEREAS, the Commissioner finds that it would be potentially disruptive to require "exempt reporting advisers" to comply with the District's investment adviser licensing requirements while this matter is under consideration;

WHEREAS, D.C. Official Code § 31-5601.01(17)(B)(xiii) of the Act, provides the Commissioner with the authority to exclude from the definition of "investment adviser" any person or class of persons not within the intent of this paragraph as the Commissioner, by rule or order, may designate, thereby causing those persons to not be subject to the investment adviser licensing requirements of D.C. Official Code § 31-5602.02; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED that:

This Order shall be deemed issued and shall take effect on March 30, 2012.

1. The following persons, known as "exempt reporting advisers," shall be exempt from the definition of "investment adviser" under D.C. Official Code § 31-5601.01 (17):

    a. An investment adviser solely to one or more venture capital funds that is exempt from the investment adviser registration requirements under Section 203(*l*) of the Advisers Act and is in compliance with SEC Rule 203(*l*)-1.

    b. An investment adviser solely to private funds with assets under management of $100 million to $150 million that is exempt from the investment adviser registration requirements under Section 203(m) of the Advisers Act and is in compliance with SEC Rule 203(m)-1.

2. An exempt reporting adviser shall comply with the reporting requirements of SEC Rule 204-4 and make a notice filing with the Department of its exempt reporting adviser status on Form ADV through the IARD system.

3. An exempt reporting adviser shall pay a notice filing fee of $250 to the District through the IARD system.

4. An individual employed by or associated with an exempt reporting adviser that is exempt from the District's investment adviser licensing requirements pursuant to this Order shall not be within the definition of "investment adviser representative" in D.C. Official Code § 31-5601.01(18) by virtue of such individual's activities on behalf of the exempt reporting adviser, during such time as the exemption pursuant to this order is in effect.

5. The position expressed in this Order extends to state investment adviser and investment adviser representative registration requirements only, and does not excuse compliance with applicable securities registration, anti-fraud or related provisions.

6. The exemptive relief provided in this Order shall not be available to any investment adviser with less than $100 million in assets under management at the end of its most recent fiscal year, regardless of whether they would otherwise qualify for the exempt reporting adviser exemptions found in Section 203(*l*) or 203(m) of the Advisers Act. Such investment advisers will be required to be licensed under D.C. Official Code § 31-5602.02 by March 30, 2012.

7. Nothing in this Order shall prohibit an investment adviser eligible for an exemption hereunder from voluntarily seeking investment adviser registration under the Act.

8. This Order shall remain in effect until December 31, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Department in the District of Columbia, this 29th day of March, 2012.

William P. White

William P. White, Commissioner