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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Tennessee Securities Division
Contact Person:	Jacob Strait
Address:	500 James Robertson Parkway, Nashville, TN 37243
Phone:	615-253-0646
Email:	Jacob.Strait@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, Nashville, TN 37243
Phone:	615-741-6500
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway, Nashville, TN 37243		
Address 2:	Room 1A		
City:	Nashville		
Zip:	37243		
Hearing Date:	06/20/2023		
Hearing Time:	10:00 A.M.	<u> x </u> CST/CDT	<u> </u> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal



Chapter Number	Chapter Title
0780-04-03	Industry Regulation
Rule Number	Rule Title
0780-04-03-.05	Exemptions from Investment Adviser Registration

Chapter 0780-04-03
Industry Regulation
Amendments

Rule 0780-04-03-.05 Exemptions from Investment Adviser Registration is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Subject to the conditions, restrictions, and exclusions set forth in this Rule, the following persons shall be exempted from the definition of investment adviser pursuant to T.C.A. § 48-1-102(12)(F) and thereby exempt from the registration requirements for investment advisers set forth in T.C.A. § 48-1-109:
 - (a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or
 - (b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.
 - (c) Any person domiciled in this state who is a private fund adviser and who satisfies all applicable requirements set forth in part (1)(c)2. and 3. of this Rule.
1. Definitions. For purposes of this Rule, the following definitions shall apply:
 - (i) "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.
 - (ii) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.
 - (iii) "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.
 - (iv) "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).
 - (v) "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.
2. Exemption for private fund advisers. Subject to the additional requirements of part (1)(c)3. of this Rule, a private fund adviser shall be exempt from the registration requirements of T.C.A. § 48-1-109 if the private fund adviser satisfies each of the following conditions:
 - (i) 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);
 - (ii) The private fund adviser files with the Division 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
 - (iii) The private fund adviser pays the following reporting fees to the Division:
 - (I) An initial reporting fee in an amount of \$150.00; and

- (II) An annual renewal reporting fee in an amount of \$150.00.
- 3. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in part (1)(c)2. of this Rule, 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 subparts (1)(c)2.(i-iii) of this Rule, comply with the following requirements:
 - (i) 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;
 - (ii) 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:
 - (I) All services, if any, to be provided to individual beneficial owners;
 - (II) All duties, if any, the investment adviser owes to the beneficial owners; and
 - (III) Any other material information affecting the rights or responsibilities of the beneficial owners.
 - (iii) 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.
- 4. 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 T.C.A. § 48-1-109(c)(2).
- 5. Investment adviser representatives. A person is exempt from the registration requirements of T.C.A. § 48-1-109(c) if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subparagraph (1)(c) of this Rule and does not otherwise act as an investment adviser representative.
- 6. Electronic filing. The report filings described in subpart (1)(c)2.(ii) of this Rule shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by subpart (1)(c)2.(iii) of this Rule are filed and accepted by the IARD on the Division's behalf.
- 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.
- 8. Waiver Authority with Respect to Statutory Disqualification. Subpart (1)(c)2.(i) of this Rule shall not apply upon a showing of good cause and without prejudice to any other action of the Tennessee Securities Division, if the commissioner or the commissioner's designee determines that it is not necessary under the circumstances that an exemption be denied.
- 9. Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subpart (1)(c)3.(i) of this Rule is eligible for the exemption contained in part (1)(c)2. of this Rule if the following conditions are satisfied:

- (i) The subject fund existed prior to the effective date of subparagraph (1)(c) of this Rule;
- (ii) As of the effective date of subparagraph (1)(c) of this Rule, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subpart (1)(c)3.(i) of this Rule;
- (iii) The investment adviser discloses in writing the information described in subpart (1)(c)3.(ii) of this Rule to all beneficial owners of the fund; and
- (iv) As of the effective date of this regulation, the investment adviser delivers audited financial statements as required by subpart (1)(c)3.(iii) of this Rule.

(2)

- (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this Rule.
- (b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this Rule.

(3) This Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: April 20, 2023

Signature: 

Name of Officer: Jacob Strait

Title of Officer: Associate General Counsel

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Filed with the Department of State on: 4/20/2023


Tre Hargett
Secretary of State

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COMMERCE AND INSURANCE
DIVISION OF SECURITIES
INDUSTRY REGULATION

0780-04-03-.05 EXEMPTIONS FROM INVESTMENT ADVISER REGISTRATION

- (1) Subject to the conditions, restrictions, and exclusions set forth in this Rule, the following persons shall be exempted from the definition of investment adviser pursuant to T.C.A. § 48-1-102(12)(F) and thereby exempt from the registration requirements for investment advisers set forth in T.C.A. § 48-1-109:
- (a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or
 - (b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.
 - (c) Any person domiciled in this state who is a private fund adviser and who satisfies all applicable requirements set forth in part (1)(c)2. and 3. of this Rule.
 - 1. Definitions. For purposes of this Rule, the following definitions shall apply:
 - (i) "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.
 - (ii) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.
 - (iii) "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.
 - (iv) "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).
 - (v) "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.
 - 2. Exemption for private fund advisers. Subject to the additional requirements of part (1)(c)3. of this Rule, a private fund adviser shall be exempt from the registration requirements of T.C.A. § 48-1-109 if the private fund adviser satisfies each of the following conditions:
 - (i) 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);
 - (ii) The private fund adviser files with the Division 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

(iii) The private fund adviser pays the following reporting fees to the Division:

(I) An initial reporting fee in an amount of \$150.00; and

(II) An annual renewal reporting fee in an amount of \$150.00.

3. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in part (1)(c)2. of this Rule, 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 subparts (1)(c)2.(i-iii) of this Rule, comply with the following requirements:

(i) 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;

(ii) 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:

(I) All services, if any, to be provided to individual beneficial owners;

(II) All duties, if any, the investment adviser owes to the beneficial owners; and

(III) Any other material information affecting the rights or responsibilities of the beneficial owners.

(iii) 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.

4. 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 T.C.A. § 48-1-109(c)(2).

5. Investment adviser representatives. A person is exempt from the registration requirements of T.C.A. § 48-1-109(c) if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subparagraph (1)(c) of this Rule and does not otherwise act as an investment adviser representative.

6. Electronic filing. The report filings described in subpart (1)(c)2.(ii) of this Rule shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by subpart (1)(c)2.(iii) of this Rule are filed and accepted by the IARD on the Division's behalf.

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.
8. Waiver Authority with Respect to Statutory Disqualification. Subpart (1)(c)2.(i) of this Rule shall not apply upon a showing of good cause and without prejudice to any other action of the Tennessee Securities Division, if the commissioner or the commissioner's designee determines that it is not necessary under the circumstances that an exemption be denied.
9. Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subpart (1)(c)3.(i) of this Rule is eligible for the exemption contained in part (1)(c)2. of this Rule if the following conditions are satisfied:
 - (i) The subject fund existed prior to the effective date of subparagraph (1)(c) of this Rule;
 - (ii) As of the effective date of subparagraph (1)(c) of this Rule, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subpart (1)(c)3.(i) of this Rule;
 - (iii) The investment adviser discloses in writing the information described in subpart (1)(c)3.(ii) of this Rule to all beneficial owners of the fund; and
 - (iv) As of the effective date of this regulation, the investment adviser delivers audited financial statements as required by subpart (1)(c)3.(iii) of this Rule.

(2)

- (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this Rule.
 - (b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this Rule.
- (3) This Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.