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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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

Revision Type (check all that apply):

<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Content based on previous emergency rule filed on _____
<input type="checkbox"/> New	<input type="checkbox"/> Content is identical to the emergency rule
<input type="checkbox"/> Repeal	

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

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.
10. Any person satisfying the requirements of parts (1)(c)2. and 3. of this Rule shall not be subject to the requirements prescribed in Rule 0780-04-03-.07.

(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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 06/20/2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 06/20/2023

Date: Jul 20, 2023

Signature: 
Carter Lawrence Jul 20, 2023 15:04 CDT

Name of Officer: Carter Lawrence

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-04-03

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Jonathan Skrametti
Attorney General and Reporter

9-15-2023

Date

Department of State Use Only

Filed with the Department of State on: 9/26/2023

Effective on: 12/25/2023

RECEIVED

Sep 26 2023, 3:33 pm

Secretary of State
Division of Publications


Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. The Securities Division of the Tennessee Department of Commerce and Insurance ("Division") received comment from multiple industry members and interest groups prior to the public hearing expressing concern that the proposed rule, as drafted, could be interpreted to require such persons who qualified for the private fund exemption from registration to be subject to the investment adviser custody rule found in Tenn. Comp. R. & Regs. 0780-04-03-.07. The comment requested that language be amended to clarify an exemption to such custody rules. These industry members and interest groups included Abby Trotter, Executive Director, Life Science Tennessee; Lindsey Cox, Executive Director, Launch Tennessee; Brandon Bruce, General Partner of Market Square Ventures; and John Bruck, Founder and Co-Managing Partner of Market Square Ventures, Knoxville, TN.

Response: In response to this feedback the Division announced at the rulemaking hearing that it added part 1(c)10 to the proposed rule. This added part clarifies that persons who qualify for the private fund exemption from registration as an investment adviser are not subject to the investment adviser custody rule found in Tenn. Comp. R. & Regs. 0780-04-03-.07

2. The Division received a letter of support from Joe Cook III, Managing Director of Mountain Group Partners in Nashville, Tennessee. Mr. Cook noted that the proposed rule puts Tennessee in alignment with guidance from the North American Securities Administrators Association ("NASAA") regarding private fund investment advisers, and that that the proposed rule would help increase availability of capital for early-stage companies in Tennessee.

Response: The Division appreciates your support of the proposed rule amendment.

3. The Division received a letter of support from Lindsey A. Cox, CEO of Launch Tennessee. Ms. Cox noted that the proposed rule ensures that Tennessee remains a business-friendly climate state for venture capital funds that seek to establish a presence and provide capital in support of growing businesses.

Response: The Division appreciates your support of the proposed rule amendment.

4. The Division received a letter of support from Brandon Bruce, General Partner of Market Square Ventures in Knoxville, Tennessee. Mr. Bruce wrote that this proposed rule amendment further ensures that Tennessee is a business friendly state for venture capital organizations like Market Square Ventures, and that adoption of this proposed rule would put Tennessee in alignment with NASAA guidance on exemptions from registration for private fund investment advisers.

Response: The Division appreciates your support of the proposed rule amendment.

5. The Division received a letter of support from Abby Trotter, Executive Director of Life Science Tennessee. Ms. Trotter wrote that the proposed rule amendment will support increased availability of venture capital for small businesses seeking to commercialize technologies in Tennessee. Ms. Trotter noted that this will create jobs and investments in Tennessee.

Response: The Division appreciates your support of the proposed rule amendment.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The analysis set forth by T.C.A. § 4-5-402(b) is as follows:

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the rule being proposed that would bear the cost of, or directly benefit from the rule being proposed;

All small businesses acting as investment advisers to private funds would directly benefit from this rule of obtaining an exemption from registration as an investment adviser. There is not an estimated number of small businesses to whom this rule would apply. No business would bear any cost due to the rule being proposed. All small businesses to which this rule applies would be granted an exemption from registration with an overall reduced fee from two hundred dollars (\$200) to one hundred fifty dollars (\$150).

2. The projected reporting, record keeping and other administrative costs required for compliance with the rule being proposed, including the type of professional skills necessary for preparation of the report or record;

This rule would require the business to file with the state a duplicate filing currently required by the Securities and Exchange Commission. As such, the reporting requirement is negligible. Additionally, because current investment advisers are not exempt from registration along with the custody requirements found in Tenn. Comp. R. & Regs. 0780-04-03-.07, this amendment will remove those reporting requirements and other administrative costs currently required for those maintaining custody of a qualified private fund.

3. A statement of the probable effect on impacted small businesses and consumers;

Small businesses acting as investment advisers to private funds will obtain an exemption to registration as an investment adviser. Further, those taking custody of funds will not be required to comply with certain record keeping and account requirements currently required. Consumers will likely see an increase in the number of private fund investment advisers from which to choose due to this regulation likely increasing the number of participants within this market.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business

There is no known less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist. This rule creates an exemption to a current regulation and as such, reduces current regulatory requirements and fees.

5. A comparison of the rule being proposed with any federal or state counterparts; and

Several other states have a similar rule including Arkansas, California, Colorado, Delaware, Iowa, Massachusetts, Michigan, Missouri, Nebraska, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, and Wyoming. A similar exemption exists by statute in Minnesota, Nevada, and Arizona. The Securities and Exchange Commission ("SEC") has a similar rule creating an exemption for private fund advisers meeting the threshold of SEC regulation.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the rule being proposed.

This rule creates an exemption to current regulation for any business, including small businesses. As such, small businesses will benefit from this rule. Exempting small businesses from this rule would effectively remove their ability to obtain the exemption. Doing such would be counterproductive to the anticipated end.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The proposed rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule will exempt investment advisers who provide advice solely to one or more qualifying private funds from having to register with the Tennessee Securities Division ("Division"). Qualifying private funds are defined by the Securities and Exchange Commission ("SEC") in 17 C.F.R. § 275.203(m)-1. In order to be exempted, the private fund investment adviser cannot be otherwise disqualified from registration, must file a report with the Division that is identical to the one required by the SEC for investment advisers to venture capital funds and private funds with less than \$150 million in assets under management, and pay an annual reporting fee of one hundred fifty dollars (\$150) to the Division. Additionally, such qualifying private fund investment advisers will be exempt by the Division from certain regulations and reporting requirements when maintaining custody of such qualifying private investment funds. This custody exemption mirrors a similar exemption under the SEC.

Qualifying private fund investment advisers are currently required to register with the Division as investment advisers and pay a two hundred dollar (\$200) registration fee. This amendment requires an annual reporting fee of one hundred fifty dollars (\$150) to the Division to process and review the required annual report in lieu of a registration fee. As such, this amendment will decrease overall fees by fifty dollars (\$50) for qualifying investment advisers paid to the Division for the same activity. Additionally, private fund investment adviser representatives are currently required to pay a fifty dollar (\$50) fee to the Division as part of their annual registration. This proposed rule would eliminate this fee for private fund investment adviser representatives who solely advise qualifying private funds.

A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto. This rule was drafted based upon model language created by the North American Securities Administrators Association ("NASAA").

Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Investment advisers to qualifying private funds who are not subject to registration with the SEC are most directly affected by this rule. Multiple Tennessee companies and organizations reached out to the Department inquiring about the availability of this exemption in Tennessee and expressed strong desire for Tennessee to implement this exemption. Those included Launch Tennessee, Life Science Tennessee, and Market Square Ventures, all of which urged adoption of this amendment.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule.

An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact due to this amendment is estimated to be minimal.

Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Bowling, Assistant Commissioner for Securities

Jacob Strait, Associate General Counsel for Securities
Anthony Glandorf, Chief Counsel for Securities

Identification of the appropriate agency representative or representatives who will explain the rule at scheduled meeting of the committees;

Elizabeth Bowling, Assistant Commissioner for Securities
Jacob Strait, Associate General Counsel for Securities
Anthony Glandorf, Chief Counsel for Securities

Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Nashville, TN 37243
Elizabeth Bowling - 615-770-0088, elizabeth.bowling@tn.gov
Jacob Strait - 615-253-0646, jacob.strait@tn.gov
Anthony Glandorf - 615-253-3703, anthony.glandorf@tn.gov

Any additional information relevant to the rule proposed for continuation that the committee requests;

None known

*****UPDATED BASED ON COMMENTS RECEIVED*****

**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.
10. Any person satisfying the requirements of parts (1)(c)2. and 3. of this Rule shall not be subject to the requirements prescribed in Rule 0780-04-03-.07.

(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.