

REGULATORY OUTLINE · AUGUST 2026

# Investment Adviser Regulation of Syndicate Sponsors and Emerging Fund Managers

*The two layers of adviser regulation — federal and state — as they apply to sponsors of SPV programs, venture funds, and real estate funds, with a state-by-state survey.*

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## PRACTICE

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## Overview

### WHO THIS GUIDE IS FOR

This guide is for emerging fund managers moving from deal-by-deal syndicates to committed venture capital or private real estate vehicles. It tracks the core regulatory outcomes: federal registration or exemption, state registration or exemption, or non-adviser status.

### THE FEDERAL THRESHOLD QUESTIONS

The first question is whether the sponsor is an “**investment adviser**” at all. Status is tested vehicle by vehicle, so SPV programs, venture capital funds, and real estate joint ventures may produce different answers.

### STATUTORY THRESHOLDS

- **Under \$25 million** in assets under management: SEC registration is prohibited; state law controls.
- **\$25 million to \$100 million:** a mid-sized adviser generally remains with its home state.
- **Over \$100 million:** SEC registration becomes available, and is required above the \$110 million buffer.
- **Up to \$150 million:** ceiling for the federal private fund adviser exemption.

## THE STATUTORY EXEMPTIONS

- **Section 203(l) (Venture Capital Exemption):** advisers solely to venture capital funds, at any asset size.
- **Section 203(m) (Private Fund Adviser Exemption):** advisers solely to qualifying private funds with less than \$150 million in U.S. assets under management.
- Both are conditioned on reporting to the SEC as an **exempt reporting adviser (ERA)**. The Form ADV reports, the antifraud provisions, and the Section 206(4) rules continue to apply.

## THE REAL ESTATE DIFFERENCE

A real estate sponsor faces three questions: whether the fund is an “investment company,” whether a federal adviser exemption remains available, and whether the managed interests are securities. **Section 3(c)(5)(C)** can exclude a qualifying real estate fund from the Investment Company Act, but a fund relying solely on that exclusion is not a “private fund,” so the Advisers Act exemptions keyed to **3(c)(1)** and **3(c)(7)** funds fall away for that vehicle. Non-security joint venture or general partnership interests may also place a direct-title manager outside the adviser definition.

## THE STATE LAYER

A manager outside SEC registration answers to its home state. Key variables include:

- **Exemption conditions.** Qualified-client or accredited-investor ownership gates, written disclosure, and annual audits for non-venture **3(c)(1)** funds.
- **De minimis fragility.** Client-count relief that a single separately managed account or co-investment vehicle can break.
- **No-relief states.** Full registration at any asset size.
- **Sequencing.** The order in which a growing manager should run the analysis.

The Appendix classifies every state and the District of Columbia by exemption regime.

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## Introduction

Sponsors of investment syndicates (programs of special purpose vehicles (“SPVs”) formed deal by deal, together with the venture capital and real estate funds that grow out of them) are regulated in the United States as “investment advisers” under the U.S. Investment Advisers Act of 1940 (“Advisers Act” or “Act”) or similar state statutes, if they are regulated as advisers at all. This outline describes the two layers of that regulation: the federal layer administered by the U.S. Securities and Exchange Commission (“SEC”), and the state layer administered by the securities authority of each state in which a sponsor has a place of business or clients.

The current allocation of responsibility between the two layers is the product of three statutes. The Advisers Act, as adopted in 1940, required registration of nearly all advisers, subject to a private adviser exemption for advisers with fewer than fifteen clients. The National Securities Markets Improvement Act of 1996 (“NSMIA”) divided the field, assigning smaller advisers to the states and larger advisers to the SEC, and codifying the division in Section 203A of the Act.<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) repealed the fewer-than-fifteen-clients exemption, raised the general threshold for SEC registration from \$25 million to \$100 million of assets under management, and created in its place two narrower exemptions (Section 203(l) for advisers solely to venture capital funds and Section 203(m) for advisers solely to private funds with less than \$150 million in U.S. assets under management), whose reliance is conditioned on reporting to the SEC as an “exempt reporting adviser” (“ERA”).<sup>2</sup> The states responded in 2011 with a model rule of the North American Securities Administrators Association (“NASAA”) exempting private fund advisers from state registration on similar conditions, which a majority of states have since adopted in some form.<sup>3</sup>

Two features of this framework drive the analysis for syndicate sponsors. First, the framework classifies advisers by the size and composition of their “regulatory assets under management” (“RAUM”), and it classifies each advised vehicle by its status under the Investment Company Act of 1940 (“Investment Company Act”): as a venture capital fund, a “private fund” relying on Section 3(c)(1) or 3(c)(7), or a vehicle outside the definition of “investment company” altogether. The applicable regime therefore differs not only between venture capital and real estate strategies but from vehicle to vehicle within a single program. Second, the two layers do not preempt one another below the federal registration thresholds: a sponsor must satisfy the federal analysis and, separately, the law of its home state.

The outline that follows is divided into five sections, each of which addresses a different question: Who is an “investment adviser”? Which investment advisers must register with the SEC, and which instead report as exempt reporting advisers? What requirements apply to an exempt reporting adviser? How does the analysis

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<sup>1</sup> National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996). The provisions allocating regulatory responsibility between the SEC and the states are codified principally in Section 203A. See Staff of the Investment Adviser Regulation Office, Division of Investment Management, SEC, *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission* (Mar. 2013) (“2013 Staff Outline”), Part III.A.

<sup>2</sup> Dodd-Frank Act, Pub. L. No. 111-203, §§ 403, 407-408, 410, 124 Stat. 1376 (2010); *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) (“Release 3222”); *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) (“Release 3221”).

<sup>3</sup> NASAA, *Registration Exemption for Investment Advisers to Private Funds Model Rule* (adopted Dec. 16, 2011, amended Oct. 8, 2013) (“NASAA Model Rule”).

differ for a real estate fund sponsor? How do the states regulate advisers that do not register with the SEC? An appendix surveys the state-law treatment of private fund advisers in each of the fifty states and the District of Columbia.

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## II

# Who Is an “Investment Adviser”?

## A. DEFINITION OF INVESTMENT ADVISER

Section 202(a)(11) of the Act defines an investment adviser as any person or firm that:

- for compensation,
- is engaged in the business of,
- providing advice to others, or issuing reports or analyses, regarding securities.

A person must satisfy all three elements to fall within the definition.<sup>4</sup>

- **Compensation.** The term “compensation” has been broadly construed: the receipt of any economic benefit satisfies this element.<sup>5</sup> A syndicate sponsor’s management fees and carried interest each constitute compensation, whether paid by the fund or by its investors.
- **Engaged in the Business.** Advising need not be the person’s sole or principal activity, but it must occur with some regularity. The SEC staff takes the position that a person is “in the business” if the person (i) holds itself out as an adviser; (ii) receives compensation that represents a clearly definable charge for securities advice; or (iii) provides specific securities advice on other than rare, isolated, and non-periodic instances.<sup>6</sup> A repeated program of investment vehicles clearly satisfies this element and a single SPV may also do so if the advice occurs with some degree of regularity.
- **Advising Others About Securities.** Advice about specific securities (stock, notes, limited partnership interests) plainly satisfies the third element. The SEC staff has stated that advice about real estate, by contrast, is not advice about securities.<sup>7</sup> As to the “others” element, the adviser’s client is the fund itself, not the fund’s investors: a general partner or manager that directs the investments of a pooled vehicle is advising “others” even though it may hold legal title to the vehicle’s assets, and even though its only client is the vehicle.<sup>8</sup>

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<sup>4</sup> Section 202(a)(11). The SEC staff has addressed the application of the three elements in an extensive interpretive release. *Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services*, Investment Advisers Act Release No. 1092 (Oct. 8, 1987) (“Release 1092”).

<sup>5</sup> Release 1092, *supra*.

<sup>6</sup> Release 1092, *supra*.

<sup>7</sup> 2013 Staff Outline, *supra*, Part II.A.3.a. Section II.D of this outline and Section V address the boundary between the two categories.

<sup>8</sup> *Goldstein v. SEC*, 451 F.3d 873 (D.C. Cir. 2006) (the client of a private fund’s adviser is the fund, not the investors in the fund); *Abrahamson v. Fleschner*, 566 F.2d 862, 870 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978).

## B. APPLICATION TO SYNDICATE SPONSORS

A venture syndicate sponsor ordinarily satisfies all three elements: the sponsor's portfolio decisions for each SPV are advice about securities; its carried interest and management fees are compensation; and a repeated program is a business. Falling within the definition does not necessarily mean registration: it requires either registration or an available exemption, as discussed in Section III, and every adviser, registered or not, is subject to the Act's antifraud provisions.<sup>9</sup>

**Platform Programs.** On the dominant syndicate platforms, the investment adviser to each vehicle is typically the platform's affiliated adviser, operating under the platform's own registration or exemption. A sponsor operating on such a platform is relying on that affiliated adviser's regulatory status; a sponsor moving off-platform is not transferring an adviser posture but establishing one for the first time, and must run the analysis in this outline from the beginning.

## C. APPLICATION TO REAL ESTATE FUND SPONSORS

Many real estate fund sponsors do not satisfy the third element of the definition at all, because their advice concerns assets that are not securities. "Security" is defined in materially identical terms under the Advisers Act and the Investment Company Act; the definitions enumerate notes, stock, bonds, evidences of indebtedness, investment contracts, and other instruments, and do not include real estate.<sup>10</sup> The SEC has stated that fee-simple ownership of real estate is not a security, and the position extends to wholly-owned subsidiaries holding fee-simple real estate and, where sufficient control features are present, to partially owned vehicles.<sup>11</sup> The classification operates asset by asset, not fund by fund, and therefore must be re-examined at each acquisition.

The dividing line is control:

- **Passive Minority Interests.** A passive minority interest in an entity holding real estate is generally an "investment contract" (an investment of money, in a common enterprise, with profits expected from the efforts of others) and therefore a security, even though the underlying asset is real property.<sup>12</sup> Limited partnership interests are the paradigm: courts treat them as securities because the general partner, not the limited partner, conducts the enterprise.
- **General Partnership and Joint Venture Interests.** These interests carry the opposite presumption. Courts hold that a general partnership or joint venture interest is presumed not to be a security, because the holder's legal powers afford it access to information and protection against dependence on a promoter. The presumption is overcome, and the "efforts of others" element satisfied, only where the investor can establish one of the following: (i) the agreement "leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership"; (ii) the investor is "so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers"; or (iii) the investor is "so dependent on some unique entrepreneurial or managerial ability

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<sup>9</sup> Sections 203(a), 206. See Section IV.B of this outline.

<sup>10</sup> Advisers Act Section 202(a)(18); Investment Company Act Section 2(a)(36).

<sup>11</sup> See 2013 Staff Outline, *supra*, Part II.A.3.a; Section V.B of this outline (comment-process authority). The interests issued by the fund to its investors remain securities; it is the advice rendered to the fund that concerns non-securities assets.

<sup>12</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).



of the promoter or manager” that it cannot replace the manager or otherwise exercise meaningful powers.<sup>13</sup> Joint venture documentation accordingly should confer genuine major-decision rights (budgets, capital events, financing, leasing, dispositions, manager removal) on a holder competent to exercise them. The SEC staff has taken the same view in the no-action context: a general partnership interest in a real estate joint venture is the functional equivalent of direct ownership of the underlying real estate, and not a security for securities law purposes, where the interest (i) involves a limited number of partners; (ii) actively involves the holder in the management and operation of the venture; and (iii) requires the holder’s agreement for all major decisions affecting the venture.<sup>14</sup> The letters state the corollary as well: a minority partnership interest as to which the holder’s agreement is not required for all major decisions is treated as a miscellaneous investment, not as an interest in real estate.

- **Comment-Process Treatment.** Registrants have applied this framework in the SEC’s disclosure review process without staff objection. CBRE Realty Finance, Inc. took the position in 2006 that approval rights over all “major decisions” of each venture “transform [...] its membership interest into the functional equivalent of a general partnership interest,” making the joint venture position the functional equivalent of direct ownership of the underlying properties. CIM Group’s opportunity zone fund took the corresponding position in 2023 that its general partner, managing member, and manager interests in project joint ventures are not securities under *Howey* and *Williamson* where the fund is active in management, the ownership experience being “sufficiently similar to directly holding the underlying investment.”<sup>15</sup> A passive minority position in another sponsor’s venture remains a security; the same building may accordingly be real estate in one fund’s hands and a security in another’s.
- **Cash Management.** The most common way a real estate sponsor acquires a securities-advisory business is through cash management. Advice to hold idle fund cash in exchange-traded funds, money market funds, or publicly traded REIT shares is advice about securities, and once it occurs on other than rare, isolated, and non-periodic instances, the sponsor is “in the business” under Release 1092.<sup>16</sup> Bank deposits and direct government instruments do not present the issue. REIT shares, limited partnership interests in other funds, and mezzanine debt with equity features are likewise securities, and any of them in the portfolio revives the adviser analysis.

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<sup>13</sup> *Williamson v. Tucker*, 645 F.2d 404, 424 (5th Cir. 1981). The three factors are disjunctive; any one suffices.

<sup>14</sup> *United States Property Investments N.V.*, SEC Staff No-Action Letter (pub. avail. May 1, 1989), available at <https://www.sec.gov/divisions/investment/noaction/1989/united-states-property-investments-nv-050189-3c5.pdf> (general partnership interests in joint ventures formed to own fee interests in real estate or to make mortgage loans treated as the functional equivalents of direct ownership, and not securities, where, among other things, each venture had a small number of partners, the holder had a right of first refusal over its partners’ interests, the holder was actively involved in the management and operation of the venture, and the holder’s agreement was required for all major decisions); *NAB Asset Corp.*, SEC Staff No-Action Letter (pub. avail. June 20, 1991), available at <https://www.sec.gov/divisions/investment/noaction/1991/nab-asset-corp-062091-3c5.pdf> (same, for general partnerships involving not more than five other partners in which the company or its wholly owned subsidiary was actively involved in management and operation and whose agreement was required for all major decisions; a partnership interest not satisfying those conditions treated as a miscellaneous investment for purposes of the Section 3(c)(5)(C) asset-composition tests).

<sup>15</sup> CBRE Realty Finance, Inc., Response to SEC Staff Comments (May 2006), available at <https://www.sec.gov/Archives/edgar/data/1330969/000119312506119567/filename1.htm>; CIM Opportunity Zone Fund, L.P., Response to SEC Staff Comments (2023), available at <https://www.sec.gov/Archives/edgar/data/1765107/000162828023037055/filename1.htm>.

<sup>16</sup> Release 1092, *supra*. See Section II.A.2 of this outline.

## Which Investment Advisers Must Register with the SEC?

A firm that falls within the definition of “investment adviser” must register with the SEC under Section 203(a) of the Act unless it is prohibited from registering under Section 203A or an exemption from registration is available.<sup>17</sup> The two questions (prohibition and exemption) are analytically distinct, and for a syndicate sponsor they must be answered in that order: the prohibitions determine whether the sponsor’s regulator is the SEC or its home state, and the exemptions determine whether an SEC-eligible sponsor registers or instead reports as an exempt reporting adviser.

### A. PROHIBITIONS FROM REGISTRATION

Section 203A allocates regulatory responsibility between the SEC and the states by RAUM, and it operates as a prohibition, not an exemption: an adviser below the thresholds is not merely excused from SEC registration but barred from it, while state adviser statutes are preempted for advisers registered with the SEC.<sup>18</sup> Three size categories result.

- **Small Advisers.** Section 203A(a)(1) prohibits SEC registration by an adviser with less than \$25 million of RAUM whose principal office and place of business is in a state that has enacted an investment adviser statute (today, every state).<sup>19</sup> A small adviser therefore looks solely to its home state: it registers there, relies on a state exemption, or falls within a state de minimis exclusion, and files nothing with the SEC. For the same reason, a small adviser cannot report as an exempt reporting adviser, because the SEC staff takes the position that an adviser must be otherwise required to register with the SEC to be eligible to file as an exempt reporting adviser.<sup>20</sup>
- **Mid-Sized Advisers.** Section 203A(a)(2) prohibits SEC registration by an adviser with between \$25 million and \$100 million of RAUM only if two conditions are both satisfied: the adviser (i) is required to be registered as an investment adviser in the state of its principal office and place of business, and (ii) is subject to examination by that state’s securities authority.<sup>21</sup> Where both conditions are true, the home state is the exclusive regulator. Where either fails, the prohibition does not apply, and the adviser must register with the SEC or, if Section 203(l) or 203(m) is available, report as an exempt reporting adviser. The two conditions may fail in different ways. The examination condition fails in New York, which has not represented to the SEC

<sup>17</sup> Section 203(a). All advisers, registered or not, remain subject to the Act’s antifraud provisions. See Section IV.B of this outline.

<sup>18</sup> Sections 203A(a), 203A(b); 2013 Staff Outline, *supra*, Part III.A. Section 203A creates a prohibition, not an exemption. *In the Matter of Matthew P. Brady*, Investment Advisers Act Release No. 2178 (Sept. 30, 2003).

<sup>19</sup> Section 203A(a)(1). The SEC interprets the prohibition to apply only where the principal-office state has enacted an adviser statute. *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 1633 (May 15, 1997). The 2013 Staff Outline gives Wyoming as the example of a state without an adviser statute; Wyoming has since enacted one, so the illustration no longer has application.

<sup>20</sup> SEC Division of Investment Management, *Frequently Asked Questions on Form ADV and IARD*, “Must I be otherwise required to register with the SEC to be eligible to file as an SEC Exempt Reporting Adviser?” (posted Oct. 26, 2023) (“Yes. Because filing as an Exempt Reporting Adviser is an exemption from registration with the SEC, an adviser must be otherwise required to register with the SEC to rely on such exemption.”), available at <https://www.sec.gov/about/divisions-offices/division-investment-management/electronic-filing-investment-advisers-iard/frequently-asked-questions-form-adv-iard>. A small adviser prohibited from SEC registration by Section 203A(a)(1) is not otherwise required to register and accordingly cannot file as an exempt reporting adviser; the worked illustration in Section VI.E rests on the same position.



that its registered advisers are subject to examination; a mid-sized adviser with its principal office in New York is accordingly regulated federally from \$25 million.<sup>22</sup> The registration condition fails whenever the home state itself does not require the adviser to register: a private fund sponsor relying on a state private fund adviser exemption or de minimis exclusion is not “required to be registered” in its home state, so the prohibition does not attach and the sponsor must file the federal ERA report. Thus, a mid-sized sponsor exempt from registration in its home state files federally as an ERA, while a mid-sized sponsor that must register with its home state and is examined there files nothing with the SEC.

- **Large Advisers.** Above \$100 million of RAUM, the Section 203A prohibitions no longer apply: the adviser is eligible to register with the SEC, must do so absent an exemption, and is thereafter outside the reach of state registration and qualification requirements.<sup>23</sup>
- **Exceptions to the Prohibitions.** Section 203A and Rule 203A-2 except several categories of adviser from the prohibitions, permitting or requiring SEC registration below the thresholds: (i) advisers to registered investment companies and business development companies;<sup>24</sup> (ii) pension consultants to employee benefit plans of \$200 million or more;<sup>25</sup> (iii) related advisers sharing a principal office and place of business with an SEC-registered adviser;<sup>26</sup> (iv) newly formed advisers with a reasonable expectation of SEC eligibility within 120 days;<sup>27</sup> (v) advisers that would otherwise be required to register in fifteen or more states;<sup>28</sup> and (vi) certain internet advisers.<sup>29</sup> None of these ordinarily describes a syndicate sponsor.
- **Non-U.S. Advisers.** An adviser whose principal office and place of business is outside the United States is not subject to the Section 203A prohibitions and thus not subject to the RAUM thresholds; such an adviser advising U.S. persons must register with the SEC unless an exemption, most relevantly the foreign private adviser exemption of Section 203(b)(3) and Section 202(a)(30), is available.<sup>30</sup>

## B. EXEMPTIONS FROM REGISTRATION: EXEMPT REPORTING ADVISERS

An adviser that is eligible to register with the SEC avoids registration, if at all, principally through two Dodd-Frank Act exemptions, each conditioned on reporting to the SEC as an exempt reporting adviser. The two exemptions are alternative paths to the same status.

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<sup>21</sup> Section 203A(a)(2); Release 3221, *supra*.

<sup>22</sup> Instructions to Item 2 of Form ADV, Part 1A; SEC Division of Investment Management, *Frequently Asked Questions Regarding Mid-Sized Advisers*. The 2013 Staff Outline identifies New York and Wyoming; Wyoming has since enacted an investment adviser statute, leaving New York as the principal example.

<sup>23</sup> Sections 203(a), 203A(b). Rule 203A-1(a) provides a buffer against repeated switching: a mid-sized adviser may register with the SEC upon reaching \$100 million of RAUM, must register upon reaching \$110 million, and, once registered, need not withdraw in favor of state registration unless its RAUM falls below \$90 million.

<sup>24</sup> Sections 203A(a)(1)(B), 203A(a)(2)(A).

<sup>25</sup> Rule 203A-2(a).

<sup>26</sup> Rule 203A-2(b).

<sup>27</sup> Rule 203A-2(c).

<sup>28</sup> Rule 203A-2(d).

<sup>29</sup> Rule 203A-2(e).

<sup>30</sup> 2013 Staff Outline, *supra*, Part III.A.1.c; Sections 202(a)(30), 203(b)(3); Rule 202(a)(30)-1.

- **Advisers Solely to Venture Capital Funds: Section 203(l).** Section 203(l) exempts an adviser that advises solely venture capital funds, without limit on RAUM. Rule 203(l)-1 defines a “venture capital fund” as a private fund that, among other things: (i) holds no more than 20 percent of its capital commitments in assets other than “qualifying investments” (in general, equity securities acquired directly from private operating companies) and short-term holdings; (ii) borrows or otherwise incurs leverage of no more than 15 percent of capital, and only on a short-term basis (120 days or less); (iii) grants investors no redemption rights except in extraordinary circumstances; (iv) represents itself to investors as pursuing a venture capital strategy; and (v) is not registered under the Investment Company Act and has not elected business development company status<sup>31</sup>. Secondary purchases (interests bought from an existing holder rather than acquired directly from the portfolio company) are not qualifying investments<sup>32</sup>. **Consequences of a non-conforming vehicle.** Because Section 203(l) is available only to an adviser that advises *solely* venture capital funds, one non-conforming vehicle can disqualify the adviser from the exemption for the entire program. This includes, for example, an SPV formed to warehouse a secondary position or an “access” SPV formed to hold an interest in another manager’s fund; neither is a venture capital fund for this purpose. Sponsors therefore commonly build the Section 203(m) alternative into their documents from the outset. A program documented exclusively as a venture capital fund program leaves no room for the one vehicle that does not qualify.
- **Advisers Solely to Private Funds Under \$150 Million: Section 203(m).** Section 203(m) and Rule 203(m)-1 exempt an adviser that advises solely “private funds” (issuers that would be investment companies but for Section 3(c)(1) or 3(c)(7) of the Investment Company Act) if the adviser’s private fund assets under management in the United States are less than \$150 million.<sup>33</sup> The \$150 million is RAUM, calculated annually in accordance with the Form ADV instructions, and it includes uncalled capital commitments; a sponsor whose called capital is well under the threshold may nonetheless exceed it on committed but undrawn amounts.<sup>34</sup>
- **Consequences of Losing the Exemption.** An adviser that ceases to qualify for its exemption must register (with the SEC if eligible, otherwise with its home state), and registration carries the full compliance apparatus: a chief compliance officer, written policies and procedures, a Form ADV Part 2 brochure, custody rule mechanics, and examination.<sup>35</sup>

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## IV

# What Requirements Apply to an Exempt Reporting Adviser?

Exempt reporting adviser status is a reporting regime, not an absence of regulation. The requirements fall into three groups: reporting, the antifraud provisions, and the subset of Section 206(4) rules that reach unregistered advisers.

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<sup>31</sup> Section 203(l); Rule 203(l)-1(a); Release 3222, *supra*.

<sup>32</sup> Rule 203(l)-1(c) (definition of “qualifying investment”); Release 3222, *supra*.

<sup>33</sup> Section 203(m); Rule 203(m)-1; Section 202(a)(29) (defining “private fund”).

<sup>34</sup> Form ADV, Part 1A, Instruction 5.b (regulatory assets under management include uncalled capital commitments); Rule 203(m)-1(d).

<sup>35</sup> Rules 206(4)-7, 204-3, 206(4)-2; Section IV of this outline. Rule 203(m)-1(e) provides a transition period of 90 days after the annual updating amendment for an adviser that exceeds the \$150 million threshold to register, provided it has complied with its ERA reporting obligations. [VERIFY: pinpoint to Rule 203(m)-1(c).]

## A. REPORTING ON FORM ADV

Rule 204-4 requires an exempt reporting adviser to file, through the Investment Adviser Registration Depository (“IARD”), the subset of Form ADV Part 1A designated for ERAs, within 60 days of first relying on Section 203(l) or 203(m), and to amend the filing annually and upon material changes.<sup>36</sup> An ERA does not prepare or deliver a Form ADV Part 2 brochure; that obligation applies to registered advisers only.<sup>37</sup> An ERA remains subject to the books-and-records authority of the Act and to SEC examination authority.<sup>38</sup>

## B. THE ANTIFRAUD PROVISIONS

Section 206 applies to every investment adviser, registered or not. The Supreme Court has explained that Section 206 establishes a federal fiduciary standard: the adviser owes its client duties of care and loyalty and must fully and fairly disclose conflicts of interest.<sup>39</sup> The SEC brings Section 206 enforcement actions against exempt reporting advisers; conflicts, allocation favoritism, and fee disclosure are recurring subjects.

## C. THE SECTION 206(4) RULES

Section 206(4) authorizes rules defining and preventing fraudulent practices. The rules do not all reach ERAs; the distinction turns on whether the rule by its terms applies to advisers “registered or required to be registered” or to all advisers.

- **Rule 206(4)-8: Pooled Investment Vehicles. Applies to ERAs.** The rule makes it a fraudulent practice for any adviser to a pooled investment vehicle to make untrue or misleading statements to investors or prospective investors in the vehicle, or otherwise to defraud them, regardless of the adviser’s registration status.<sup>40</sup> Every private placement memorandum, pitch deck, side letter, and investor update an ERA produces is subject to the rule, which functions as the operative standard for investor communications.
- **Rule 206(4)-5: Pay to Play. Applies to ERAs.** The rule by its terms covers registered advisers, exempt reporting advisers, and foreign private advisers. Political contributions by the adviser or its covered associates to officials who can influence the award of government-plan business can trigger a two-year prohibition on receiving compensation from that government entity.<sup>41</sup> Advisers soliciting public-plan capital commonly adopt pre-clearance policies before accepting it.
- **Rule 206(4)-1: Marketing. Does not apply to ERAs.** The marketing rule by its terms applies only to advisers registered or required to be registered.<sup>42</sup> Its core principles (prohibition of cherry-picked performance, presentation of gross performance alongside net, substantiation of material claims, and disclosure conditions for testimonials and endorsements) nonetheless inform what is misleading under Section 206 and Rule 206(4)-8, and materials prepared to the rule’s standards do not require rebuilding if the adviser later registers.

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<sup>36</sup> Rule 204-4; Form ADV, Part 1A (ERA items). The filing is public.

<sup>37</sup> Rule 204-3 (brochure delivery by advisers “registered or required to be registered”).

<sup>38</sup> Section 204(a) (records of advisers relying on Section 203(l) or 203(m) are subject to examination); see Release 3221, *supra*.

<sup>39</sup> Section 206; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963); *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Investment Advisers Act Release No. 5248 (June 5, 2019).

<sup>40</sup> Rule 206(4)-8; *Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles*, Investment Advisers Act Release No. 2628 (Aug. 3, 2007).

<sup>41</sup> Rule 206(4)-5; *Political Contributions by Certain Investment Advisers*, Investment Advisers Act Release No. 3043 (July 1, 2010).

<sup>42</sup> Rule 206(4)-1; *Investment Adviser Marketing*, Investment Advisers Act Release No. 5653 (Dec. 22, 2020).

- **Rule 206(4)-7: Compliance Program. Does not apply to ERAs.** The requirement to adopt written compliance policies, designate a chief compliance officer, and conduct an annual review applies to registered advisers only.<sup>43</sup> ERAs commonly maintain basic written policies (conflicts, allocation, valuation) because those documents evidence compliance with the Section 206 duties that do apply and are the first materials an examiner or institutional investor requests.
- **Rules 206(4)-2 (Custody) and 206(4)-6 (Proxy Voting). Do not apply to ERAs.** Both rules reach only advisers registered or required to be registered.<sup>44</sup> Fund governing documents and administrator controls address the subject matter in practice.

**Vacated Private Fund Adviser Rules.** In 2023 the SEC adopted rules that would have imposed restricted-activities and preferential-treatment (side-letter disclosure) requirements on all private fund advisers, including ERAs; the Fifth Circuit vacated the rules in 2024, and they are not in force.<sup>45</sup> The disclosure expectations articulated in the adopting release continue to inform staff views under Section 206, and institutional investors frequently obtain equivalent transparency by contract.

**Performance Fees.** The “qualified client” restriction on performance-based compensation applies to advisers registered or required to be registered with the SEC; ERAs are not subject to it federally, but several states reimport the standard as a condition of their exemptions.<sup>46</sup>

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## V

# How Does the Analysis Differ for a Real Estate Fund Sponsor?

For a real estate sponsor, the federal analysis turns on both statutes at once. Under the Advisers Act, the threshold question is whether the sponsor is giving advice about securities at all, as discussed in Section II.C. Under the Investment Company Act, the question is whether each fund is an “investment company” that must rely on an exclusion, and, if so, which exclusion it uses. That choice matters under the Advisers Act because it determines whether the fund is a “private fund” and whether its assets count toward the sponsor’s RAUM. Two independent paths can keep a real estate fund outside the Investment Company Act, and well-documented funds preserve both.

## A. WHETHER THE FUND IS AN “INVESTMENT COMPANY” AT ALL

- **The Primarily Engaged Test: Section 3(a)(1)(A).** Section 3(a)(1)(A) defines as an investment company an issuer that “is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.” The Commission has stated that primary engagement is determined by reference to five factors: (i) the issuer’s historical development; (ii) its public representations of policy; (iii) the activities of its officers and directors; (iv) the nature of its present assets; and (v) the sources of its present income.<sup>47</sup> Thus, a fund that acquires and operates real property, represents itself to investors as

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<sup>43</sup> Rule 206(4)-7.

<sup>44</sup> Rules 206(4)-2, 206(4)-6.

<sup>45</sup> *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, Investment Advisers Act Release No. 6383 (Aug. 23, 2023), vacated by *National Association of Private Fund Managers v. SEC*, [VERIFY: 103 F.4th 1097] (5th Cir. June 5, 2024).

<sup>46</sup> Section 205(a)(1), (e); Rule 205-3. See Section VI.B of this outline.

a real estate fund, and derives its income from rents and disposition gains does not satisfy the test, provided its offering documents do not describe it as investing in securities.

- **The 40 Percent Test: Section 3(a)(1)(C).** Section 3(a)(1)(C) separately defines as an investment company an issuer engaged in the business of investing in securities that owns “investment securities” exceeding 40 percent of its total assets (exclusive of Government securities and cash items) on an unconsolidated basis. “Investment securities” excludes securities issued by majority-owned subsidiaries that are not themselves investment companies or funds relying on Section 3(c)(1) or 3(c)(7); a joint venture interest that is not a security under *Williamson* does not enter the numerator at all.<sup>48</sup> A fund that holds direct real estate and controlled ventures and keeps passive securities positions below the 40 percent line is not an investment company, and no exclusion is required.

#### B. THE REAL ESTATE EXCLUSION: SECTION 3(C)(5)(C)

Section 3(c)(5)(C) excludes from the definition of investment company an issuer that is “primarily engaged in . . . purchasing or otherwise acquiring mortgages and other liens on and interests in real estate,” provided the issuer does not issue redeemable securities.<sup>49</sup> The operative standard is the SEC staff’s asset-composition test, under which the issuer must hold: (i) at least 55 percent of its assets in “qualifying interests”; (ii) at least 80 percent in qualifying interests plus real-estate-related assets; and (iii) no more than 20 percent in miscellaneous assets.<sup>50</sup> What counts as a qualifying interest is the subject of a body of staff no-action letters:

- **Core Qualifying Interests.** Fee-simple real estate, whole mortgage loans fully secured by real property, deeds of trust, and agency whole pool certificates qualify; wholly-owned property subsidiaries are looked through.
- **Tier 1 Mezzanine Loans.** The staff takes the position that a mezzanine loan secured by 100 percent of the equity of the property-owning entity, underwritten on the same basis as a mortgage and carrying control on default, is a qualifying interest because it is “the functional equivalent of, and provide[s] its holder with the same economic experience as, a second mortgage.”<sup>51</sup>
- **B-Notes.** The junior participation in an A/B mortgage structure qualifies where it is an interest in a loan fully secured by real property and carries approval rights over material servicing decisions and effective control over remedies following default; absent the control features, the participation falls out of the 55 percent basket.<sup>52</sup>
- **Controlling Joint Venture Interests.** Where the fund serves as general partner, managing member, or manager and is active in management, the ownership experience is sufficiently similar to holding the property directly for the interest to be treated as a qualifying interest. The staff has so concluded in the no-action context

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<sup>47</sup> Investment Company Act Section 3(a)(1)(A); *In the Matter of Tonopah Mining Co. of Nevada*, Investment Company Act Release No. 1084, 26 S.E.C. 426, 427 (July 22, 1947). For an application of the five factors in the registration-statement comment process, see CEVA, Inc., Response to SEC Staff Comments (2012), available at <https://www.sec.gov/Archives/edgar/data/1173489/000119312512451447/filename1.htm>.

<sup>48</sup> Investment Company Act Sections 3(a)(1)(C), 3(a)(2); *Williamson v. Tucker*, supra; Section II.C.2 of this outline.

<sup>49</sup> Investment Company Act Section 3(c)(5)(C).

<sup>50</sup> *M.D.C. Holdings, Inc.*, SEC Staff No-Action Letter (May 5, 1987), available at <https://www.sec.gov/divisions/investment/noaction/1987/mdc-holdings-050587-3c5.pdf>. The formulation recurs through the staff’s subsequent Section 3(c)(5)(C) letters and current registration-statement comment practice.

<sup>51</sup> *Capital Trust, Inc.*, SEC Staff No-Action Letter (May 24, 2007), available at <https://www.sec.gov/divisions/investment/noaction/2007/capitaltrust052407-3c5c.pdf>.



where the holder serves as general partner with a limited number of partners, is actively involved in management and operation, and must agree to all major decisions.<sup>53</sup>

- **Non-Qualifying Assets.** Securities of other real estate businesses do not qualify: REIT shares, limited partnership interests in other funds, and CMO residual interests (the asset addressed in *M.D.C. Holdings* itself). The staff has taken the position that credit risk transfer securities are real-estate-related assets, within the 80 percent basket but not the 55 percent basket.<sup>54</sup>

The Section 3(c)(5)(C) asset-composition framework relies on SEC staff positions rather than formalized Commission rules. In 2011, the Commission issued a concept release questioning whether historical staff letters 'may have contained, or led to, interpretations that are beyond the intended scope of the exclusion,' focusing specifically on mortgage-REIT leverage and whole pool certificates. Because no formal rulemaking followed, these letters remain the prevailing guidance. To manage the risk of this non-binding framework, fund sponsors explicitly hardcode asset-composition covenants into their governing documents, maintaining asset allocations safely above the minimum 55% and 80% thresholds.

### C. CONSEQUENCES UNDER THE ADVISERS ACT

A fund's status under the Investment Company Act directly dictates its regulatory obligations under the Advisers Act. A "private fund" is defined strictly as an issuer that would be an investment company but for the exclusions in Section 3(c)(1) or 3(c)(7). Conversely, a fund relying on Section 3(c)(5)(C) is not a private fund, and its assets do not automatically generate Regulatory Assets Under Management (RAUM) for its sponsor<sup>55</sup>. A manager advising exclusively 3(c)(5)(C) vehicles may have no RAUM, no path to Exempt Reporting Adviser (ERA) status, and no federal filing requirements. However, if that same fund mistakenly utilizes Section 3(c)(1) or 3(c)(7)—a frequent consequence of adopting templates designed for securities funds—it becomes a private fund. Its full assets, including uncalled capital commitments, then count as RAUM, forcing the sponsor to secure an exemption like Section 203(m). Fund structure must therefore be chosen deliberately, never by template default.

Three practical considerations shape this non-registration strategy. First, offering documents and side letters frequently contain investor-mandated representations regarding the sponsor's registration status. Second, certain institutional allocators and ERISA fiduciaries contractually require a registered investment adviser as a counterparty. Third, launching a future product line outside of real estate will immediately pull the broader business back into the Advisers Act's scope. These same operational variables must be evaluated by multi-strategy sponsors running an exempt real estate business alongside a registered affiliate, as well as by registered real estate managers considering deregistration on the basis that their legacy funds never strictly required Section 3(c)(1) or 3(c)(7).

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<sup>52</sup> *Capital Trust, Inc.*, SEC Staff No-Action Letter (Feb. 3, 2009), available at <https://www.sec.gov/divisions/investment/noaction/2009/capitaltrust020309-3c5c.htm>.

<sup>53</sup> *United States Property Investments N.V. and NAB Asset Corp.*, supra; see also the CBRE and CIM comment-process authority cited in Section II.C.3 of this outline.

<sup>54</sup> *Redwood Trust, Inc.*, SEC Staff No-Action Letter (Oct. 16, 2017), available at <https://www.sec.gov/divisions/investment/noaction/2017/redwood-group-101617.htm>.

<sup>55</sup> Advisers Act Section 202(a)(29); Form ADV, Part 1A, Instruction 5.b.



## How Do the States Regulate Advisers That Do Not Register with the SEC?

### A. FRAMEWORK

Federal ERA status does not preempt state law. A sponsor must satisfy the law of each state in which it maintains a place of business, and of any state in which it has more than five clients during a twelve-month period. For this purpose a fund generally counts as a single client (the principle of SEC Rule 222-2, which the NASAA Model Rule follows), so for most sponsors only the home state requires analysis.<sup>56</sup> State regimes fall into three categories.

### B. PRIVATE FUND ADVISER EXEMPTION STATES

A majority of states have adopted a version of the NASAA Model Rule. This standard pattern exempts an adviser from state registration if their only clients are Section 3(c)(1) and 3(c)(7) funds, provided they make an ERA-style notice filing by submitting a truncated Form ADV through the IARD and paying a state fee.<sup>57</sup> Because these exemptions merely streamline rather than eliminate regulatory obligations, conditions vary significantly by state:

- **Non-Venture 3(c)(1) Funds.** Under the model rule, a Section 3(c)(1) fund that is not a venture capital fund carries additional conditions: written disclosure to investors, annual audited financial statements, and beneficial ownership limited to “qualified clients” within the meaning of Rule 205-3; currently at least \$1.4 million under management with the adviser or a net worth of at least \$2.7 million, as adjusted by SEC order from time to time.<sup>58</sup> A venture capital fund is excepted from these conditions in most states; a real estate fund electing Section 3(c)(1) is not, and it therefore takes the qualified-client, disclosure, and audit conditions in full.
- **Texas.** Texas excepts private equity funds, real estate funds, and venture capital funds (defined by reference to Form ADV and Rule 203(l)-1) from its additional Section 3(c)(1) conditions, including the qualified-client ownership test and as-if-registered custody compliance, audit included. The one Texas requirement that applies to every private fund adviser, exempt or registered, is delivery of quarterly account statements to the fund’s investors.<sup>59</sup>
- **Massachusetts.** Massachusetts applies the model rule’s conditions without real-estate relief: qualified-client owners and a mandatory annual audit for non-venture 3(c)(1) funds.<sup>60</sup>

<sup>56</sup> Rule 222-2; NASAA Model Rule, *supra*.

<sup>57</sup> NASAA Model Rule, *supra*. California, Colorado, Massachusetts, Texas, Virginia, and Wisconsin are among the adopting states. The Appendix surveys each jurisdiction.

<sup>58</sup> NASAA Model Rule, *supra*; Rule 205-3(d). The dollar thresholds are adjusted for inflation by Commission order every five years pursuant to Section 205(e) and Rule 205-3(e). [CONFIRM CURRENT LAW: the stated thresholds reflect the most recent adjustment.]

<sup>59</sup> 7 Tex. Admin. Code § 139.23; 7 Tex. Admin. Code § 116.17 (quarterly account statements).

<sup>60</sup> 950 Mass. Code Regs. § 12.205(2)(c).

- **California.** California's exemption is broader than the model rule. Its "qualifying private fund" includes funds relying on Section 3(c)(1), 3(c)(5), or 3(c)(7) of the Investment Company Act, so a Section 3(c)(5)(C) real estate fund adviser may claim the exemption directly, without electing Section 3(c)(1). The rule's additional conditions attach only to "retail buyer funds," defined as 3(c)(1) funds other than venture capital companies; a fund relying on Section 3(c)(5) is a qualifying private fund but not a retail buyer fund, and accordingly takes none of the additional conditions. A retail buyer fund must be owned exclusively by accredited investors (or the adviser's principals and employees), receive plain-English written disclosure of all material facts, and receive annual audited financial statements prepared by a PCAOB-registered accountant within 120 days of fiscal year-end, and the adviser may charge performance fees only to investors who are "qualified clients."<sup>61</sup>
- **Connecticut.** Connecticut arrives at a result similar to the NASAA Model Rule via administrative decree rather than formal codification. Pursuant to the Banking Commissioner's Exemptive Order<sup>62</sup>, the state exempts venture capital and private fund advisers with less than \$150 million in assets under management, provided they satisfy SEC Rules 203(m)-1 and 204-4 and submit their ERA reports via the IARD system. Because federal compliance serves as the baseline state condition, Connecticut imposes no independent state-level audit mandates or qualified-client performance fee overlays. However, a technical friction exists for sub-\$25 million boutique managers: because they fall below the statutory threshold to file as a federal ERA, they cannot strictly execute the reporting routing required by the text of the order. Consequently, managers with less than \$25 million in RAUM must clear their reporting mechanics directly with the Department of Banking Securities Division before relying on the exemption."
- **New Hampshire and the District of Columbia.** New Hampshire and the District of Columbia: New Hampshire stands as one of the nation's most restrictive jurisdictions for emerging managers, extending its state exemption exclusively to qualifying venture capital fund advisers. All other private fund managers must formally register as a state RIA at any asset size, triggering a mandatory annual audit requirement and restricting performance fees strictly to qualified clients. Conversely, the District of Columbia has abandoned its historically rigid stance. Pursuant to an administrative exemptive order, D.C. exempts advisers managing exclusively private funds with less than \$150 million in assets. To secure this status, managers must simply submit a truncated Form ADV notice filing and pay the requisite district fee. Notably, the District's framework imposes no independent state audit mandate and permits standard accredited-investor status to suffice for fund participants.<sup>63</sup>
- **Delaware and Washington.** These states limit the exemption to advisers of Section 3(c)(7) funds, Washington doing so by requiring qualified-purchaser investors in any fund that is not a venture fund (Delaware's codified rule expressly excludes 3(c)(1) funds from its "qualifying private fund" definition; see the Appendix). Kentucky, formerly grouped with these states, adopted a full NASAA-model exemption by statute effective July 15, 2024, and is treated with the model-rule states in the Appendix

<sup>61</sup> Cal. Code Regs. tit. 10, § 260.204.9.

<sup>62</sup> Conn. Dep't of Banking, Order Regarding Registration Exemptions for Certain Investment Advisers (July 11, 2011, effective July 21, 2011), available at <https://portal.ct.gov/dob/securities-licensing/licensing-general/dodd-frank-ia-exemptive-order>.

<sup>63</sup> See the Appendix (New Hampshire; District of Columbia, citing Order SB-09-16 (June 10, 2016)).

### C. DE MINIMIS STATES

Some states provide self-executing de minimis relief keyed strictly to in-state client counts, typically requiring no regulatory filings. Florida grants a statutory exclusion under Section 517.021(20)(b)7 for any adviser who has had fewer than six in-state clients during the preceding twelve months, defining 'client' by explicit reference to Rule 222-2. New York and New Jersey similarly provide exclusions at the fewer-than-six threshold. In New York, this operates as a structural exclusion from the statutory definition of an 'investment adviser' itself, meaning an exempt sponsor's initial regulatory footprint is purely federal. Illinois and Pennsylvania set their thresholds at five or fewer clients. For advisers with an in-state place of business, North Carolina allows fewer than fifteen clients, provided there is no public holding-out; for out-of-state advisers, the limit drops to five or fewer.<sup>64</sup>

Conversely, certain states pair their numerical exclusions with administrative strings. Georgia mandates an initial and annual Form ADV notice filing notwithstanding its five-or-fewer-client threshold. Louisiana and Tennessee apply fewer-than-fifteen metrics tied to strict 'no public holding-out' constraints. However, Louisiana is a notable trap, as it historically looks through the fund vehicle to count individual in-state investors rather than treating the fund as a single client. Tennessee's de minimis, by contrast, is self-executing (fewer than fifteen clients, no public holding out, and no investment company clients), although the Securities Division has stated that it does not excuse compliance with the custody rules and is unavailable to an adviser that takes custody of client funds or securities; a NASAA-model private fund adviser exemption, added by a 2025 amendment, exempts qualifying advisers from both registration and the custody requirements on the standard conditions. Hybrid frameworks for Kansas, Ohio, and Indiana are cataloged in the Appendix. Because a private fund is generally treated as a single client under these state matrices, an emerging sponsor frequently owes no filings; however, this relief remains fragile. A single separately managed account (SMA) or a parallel co-investment vehicle can instantly alter the client count, inadvertently triggering full state registration.

### D. NO-EXEMPTION STATES

A steadily shrinking minority of jurisdictions provides no specialized state-level private fund adviser relief: Alaska, Hawaii, Maine, Mississippi, Montana, and West Virginia. An adviser maintaining a physical place of business in these states—or crossing the statutory de minimis threshold of more than five in-state residents as clients—must undergo full registration as a state Registered Investment Adviser (RIA) regardless of fund size or strategy.

This category has contracted significantly over recent years as states modernize their blue sky regimes to conform to national standards. Specifically, South Carolina (2019), Idaho (2020), Alabama (2024), Kentucky (July 2024), and North Dakota (December 2025) have each abandoned their historical all-or-nothing registration mandates, adopting variations of the NASAA Model Rule to establish clear Exempt Reporting Adviser (ERA) pathways for local fund managers. Maine has proposed a comparable exemption in its regulatory agendas but has not adopted it<sup>65</sup>.

### E. ILLUSTRATION: A FLORIDA SPONSOR CROSSING \$25 MILLION

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<sup>64</sup> N.C. Gen. Stat. § 78C-16(a); see the Appendix for the remaining citations and conditions.

<sup>65</sup> See the Appendix for each state's authority and effective date.

The interaction of the two layers is best seen in a single worked application. A Florida sponsor's RAUM grows through two phases.

- **Phase One: \$18 Million, Three Venture SPVs.** *Federal layer.* The sponsor is an investment adviser, but as a small adviser it is prohibited from SEC registration by Section 203A(a)(1), and it cannot report as an ERA because it is not otherwise eligible to register with the SEC.<sup>66</sup> It files no federal Form ADV of any kind; Section 206 and Rule 206(4)-8 nonetheless apply, because the antifraud provisions have no asset floor. *State layer.* Florida is a de minimis state, and each SPV is one client under Rule 222-2; with three in-state clients, the sponsor owes Florida neither registration nor a notice filing. The result — an adviser registered and filing nowhere — is the intended operation of the statutory allocation, not a gap in compliance. In a no-exemption state, or a de minimis state where the client count is exceeded, the state registration would be the sponsor's only regulatory home, with no federal filing standing in for it.
- **Phase Two: More Than \$25 Million but Not More Than \$100 Million.** *Federal layer.* The sponsor is now a mid-sized adviser. Because Florida's de minimis exclusion means it is not "required to be registered" in Florida, the Section 203A(a)(2) prohibition does not attach; the sponsor is eligible to register with the SEC, and, advising only private funds, it reports instead as an ERA (under Section 203(l) if every fund is a venture capital fund, otherwise under Section 203(m)), filing the truncated Form ADV through IARD within 60 days of reliance. *State layer.* Florida's exclusion continues to answer first. If the in-state client count remains below six, Florida requires nothing, and the federal ERA report is the sponsor's only filing. If the count reaches six, the sponsor registers with Florida as a state investment adviser; as a state-registered, state-examined mid-sized adviser it is then prohibited from SEC registration, its federal ERA posture ends, and the state registration is its only regulatory home.

The illustration yields the general rule: below \$25 million there is no federal filing of any kind; between \$25 million and \$100 million the federal ERA filing is due only because, and only for so long as, the sponsor is not required to be registered in its home state (or the home state does not examine advisers); above \$100 million SEC registration becomes the default, with Section 203(m) relief available until private fund assets reach \$150 million. The antifraud standards of Section 206 and Rule 206(4)-8 apply at every size.

#### F. THE REAL ESTATE SPONSOR'S STATE ANALYSIS

State definitions of an 'investment adviser' generally track the federal framework. Consequently, the position that advising on direct real estate does not constitute securities advice ordinarily holds true at the state level. A pure Section 3(c)(5)(C) sponsor may have no filing or registration obligations in any jurisdiction, provided they maintain the exact asset discipline required by the federal analysis. A single inadvertent REIT position or a securities-based cash management program will revive investment adviser status under state law at the same moment it does federally. Where adviser status does attach, the manager's home-state framework for non-venture funds determines the ongoing operational costs, dividing the jurisdictions into three distinct tiers:

- **De Minimis Tier.** New York, New Jersey, Illinois, Florida, and North Carolina evaluate obligations strictly by local client count, imposing no independent state audit mandates, no qualified-client testing, and (with the exception of Georgia's mandatory notice filing) nothing to file. Because each private fund counts as a single client, a de minimis home state offers the least burdensome posture for an emerging real estate sponsor.

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<sup>66</sup> See Section III.A.1 of this outline.

Within this group, North Carolina's fewer-than-fifteen threshold provides the most generous client-count ceiling, while Florida, New York, and New Jersey cap their exclusions at fewer than six residents.

- **Condition Tier.** Jurisdictions in this tier condition their relief on specific operational criteria. Massachusetts applies the NASAA Model Rule conditions in full, offering no specialized real estate safe harbors. California provides a dedicated ERA pathway by explicitly including Section 3(c)(5) vehicles within its private fund exemption; however, if the fund admits ordinary accredited investors, it is categorized as a 'Retail Buyer Fund,' triggering mandatory disclosures, PCAOB-registered audits, and qualified-client performance fee limits. Texas limits its private fund exemption framework (Rule 139.23) strictly to 3(c)(1) and 3(c)(7) structures. This means a Texas-based manager can operate a pure 3(c)(5)(C) real estate fund completely outside the state's ERA framework, provided they avoid rendering advice on securities. Connecticut conditions its relief solely on federal ERA compliance, subject to the sub-\$25 million asset friction noted in Section VI.B.5. Throughout this tier, the statutory election carries significant weight: utilizing Section 3(c)(5)(C) over Section 3(c)(1) can be the structural pivot that avoids an unworkable state compliance regime.
- **Venture-Only and No-Exemption Tier.** In New Hampshire and the remaining no-exemption states, a non-venture manager has no regulatory safe harbor to claim. The sponsor must either maintain the strict position that its portfolio contains zero securities advice or undergo full registration as a state RIA, along with the structural audits and performance-fee limits that registration mandates.

**The Sequencing Protocol:** Compliance analysis must accordingly proceed in a fixed, sequential order before any fund organizational documents are executed: first, determine whether the portfolio can be managed so that investment adviser status never attaches; second, if status attaches, evaluate whether the vehicle can utilize Section 3(c)(5)(C) in a home state that structurally accommodates it; third, test whether a de minimis client count can insulate the business; and finally, determine the full operational cost of registration. This sequence is unalterable, as the specific exclusion elections and portfolio operating covenants must be permanently hardcoded directly into the fund's governing agreements.

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## VII

### Sequence of Analysis

The two-layer analysis reduces to five steps, each repeated at every new vehicle, asset type, and office location. First, classification: whether the sponsor provides securities advice, for compensation, as a business: ordinarily yes for a venture sponsor, and ordinarily no for a sponsor holding direct real estate, retested at each acquisition. Second, the federal exemption per vehicle: Section 203(l) if every fund is a venture capital fund; Section 203(m) otherwise, with the fallback built into the documents at formation. Third, the home state: identification of the applicable category and, for non-venture 3(c)(1) funds, the investor-qualification and audit conditions. Fourth, the filings the answers require: below \$25 million of RAUM, no federal filing, with the home state controlling; from \$25 million, the federal ERA report within 60 days of reliance where the sponsor is SEC-eligible, together with any state notice filing; at \$100 million, SEC registration, subject to the Rule 203A-1 buffer. Fifth, monitoring: adviser status is not a one-time determination, and both the RAUM thresholds and the home-state client count move.



*This outline is for information only. It is not legal advice. Adviser-status analysis is fact-specific and changes frequently; the authorities cited should be confirmed as current before reliance. Consult counsel before forming or offering any investment vehicle.*

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## Appendix: State-by-State Survey (Advisers to Real Estate Funds)

Each entry below classifies the jurisdiction under the structural categories of Section VI and establishes what it imposes on a non-venture private fund (the posture a real estate fund electing Section 3(c)(1) inherits). Where a state explicitly recognizes Section 3(c)(5) funds or provides specialized carve-outs for real estate asset strategies, it is noted below. Qualified-client dollar thresholds adjust by SEC order from time to time; entries state the baseline legal condition rather than specific fluid dollar amounts. Several state classifications have changed recently (including Alabama, Idaho, Kentucky, North Dakota, and South Carolina), and each entry must be treated as a starting point for active intake verification against the current rule, not a substitute for formal legal counsel<sup>67</sup>.

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### CATEGORY 1: NO-EXEMPTION STATES (FULL RIA REGISTRATION REQUIRED)

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#### Alaska

**REGIME** No-Exemption Jurisdiction

**RULE AUTHORITY** AS § 45.56 (Statutory registration & exemptions) & 3 AAC 08.010 (Administrative Code regulations)

**REAL ESTATE TREATMENT** Strict. Providing advice on any securities (including holding cash reserves in liquid interest-bearing securities) triggers full state registration.

**CORE CONDITIONS** Full state RIA registration required at any asset size. Mandates an annual third-party fund audit and restricts performance fees strictly to "qualified clients". The only regulatory relief for an RE sponsor is maintaining a pure, 100% direct-asset portfolio with zero securities advice.

#### Hawaii

**REGIME** No-Exemption Jurisdiction

**RULE AUTHORITY** Haw. Rev. Stat. § 485A-403

**REAL ESTATE TREATMENT** Strict; standard federal asset-by-asset boundary applies.

**CORE CONDITIONS** Full state registration is required for any adviser transacting business in Hawaii unless exempt, and the statute contains no private fund adviser exemption. The only statutory relief runs to advisers with no place of business in the state: an out-of-state adviser whose Hawaii clients are limited to institutional investors, registered advisers, or broker-dealers, or bona fide preexisting out-of-state clients, and an out-of-state adviser with not more than five Hawaii-resident clients during the preceding twelve months. A locally based sponsor therefore registers at any asset size.

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<sup>67</sup> The regulatory framework governing investment advisers, syndicate sponsors, and private funds is complex, fact-specific, and subject to frequent amendment and varying administrative interpretation. This outline and its accompanying appendix are prepared strictly for general educational and informational purposes. They do not constitute legal, tax, financial, or regulatory compliance advice, and they do not create an attorney-client relationship between the reader and the authors or publishers. The survey was compiled in July 2026 from the statutes, rules, and orders cited in the individual entries and the authorities cited in Section VI.

## Maine

**REGIME** No-Exemption Jurisdiction (Private Fund Adviser Exemption Proposed but Not Adopted)

**RULE AUTHORITY** 32 M.R.S. § 16403; Office of Securities Rule Ch. 515 (investment adviser licensing)

**REAL ESTATE TREATMENT** Strict; for a Maine-based sponsor, the no-securities-advice position is the only relief.

**CORE CONDITIONS** A Maine-based private fund adviser must be licensed. Neither the Maine Uniform Securities Act nor Rule Chapter 515 contains a private fund adviser exemption; Chapter 515 is the general licensing rule (electronic filing through IARD, examinations, custody, minimum net worth, and brochure delivery). The Office of Securities has listed a model private fund adviser exemption in its regulatory agendas, but as of August 2026 no such rule has been adopted, and earlier survey descriptions of Maine as a NASAA-model state are incorrect. The statutory relief of § 16403 is limited to advisers with no place of business in Maine whose Maine clients are institutional or number not more than five residents in the preceding twelve months.

## Mississippi

**REGIME** No-Exemption Jurisdiction (Physical Presence)

**RULE AUTHORITY** Miss. Code Ann. § 75-71-403(a)

**REAL ESTATE TREATMENT** Standard; cash management and passive positions revive adviser status.

**CORE CONDITIONS** Full state registration required for any adviser maintaining a physical place of business in the state, regardless of client count. Out-of-state advisers without a local office may utilize a de minimis exception if they have five or fewer Mississippi residents as clients.

## Montana

**REGIME** No-Exemption Jurisdiction

**RULE AUTHORITY** Mont. Code Ann. § 30-10-201(3).

**REAL ESTATE TREATMENT** Strict; no specialized state-level private fund relief.

**CORE CONDITIONS** Full state registration is required, and the statute contains no private fund adviser exemption. The only statutory relief runs to advisers with no place of business in Montana: clients limited to institutional investors (§ 30-10-201(3)(b)), or not more than five Montana-resident clients in the preceding twelve months (§ 30-10-201(3)(c)). A locally based sponsor therefore registers at any asset size.

## West Virginia

**REGIME** No-Exemption Jurisdiction

**RULE AUTHORITY** W. Va. Code § 32-2-201

**REAL ESTATE TREATMENT** Strict. Managing real estate through a template Section 3(c)(1) securities fund triggers full state registration. Operating a pure Section 3(c)(5)(C) direct-title program (where the manager never gives advice on securities, including cash/liquid reserves) is the only pathway to bypass registration.

**CORE CONDITIONS** Full state registration is mandatory for any manager maintaining an in-state place of business;

the statute contains no private fund adviser exemption. The only statutory relief runs to advisers with no West Virginia office: clients limited to institutional investors, including employee benefit plans with assets of at least \$1 million, or not more than five West Virginia-resident clients in a twelve-month period.

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## CATEGORY 2: DE MINIMIS TIER STATES (CLIENT-COUNT EXEMPTIONS)

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### Florida

**REGIME** De Minimis Exclusion or Statutory Exemption

**RULE AUTHORITY** Fla. Stat. § 517.021(20)(b)7 & Fla. Stat. § 517.12

**REAL ESTATE TREATMENT** Follows standard federal asset classification.

**CORE CONDITIONS** Self-executing exclusion requires no filing if the sponsor has fewer than six in-state clients (counting each fund as a single client). Crossing six clients requires an IARD state notice filing under the accredited-investor exemption. No audit mandates apply on either pathway.

### Illinois

**REGIME** Self-Executing De Minimis Exclusion

**RULE AUTHORITY** 815 ILCS 5/8

**REAL ESTATE TREATMENT** Favorable; private funds count as a single client.

**CORE CONDITIONS** Self-executing; nothing to file while exempt. Restricted to five or fewer in-state clients during a twelve-month period. Imposes no state audit mandates and no qualified-client testing overlays.

### New Jersey

**REGIME** Self-Executing De Minimis Exclusion

**RULE AUTHORITY** N.J. Stat. Ann. § 49:3-56

**REAL ESTATE TREATMENT** Favorable; no fund-level conditions.

**CORE CONDITIONS** Self-executing with zero regulatory filings required while under the line. Limited strictly to five or fewer in-state clients. Each fund counts as a single client. No state audit mandate or qualified-client performance fee tests.

### New York

**REGIME** Structural Definitional Exclusion

**RULE AUTHORITY** N.Y. Gen. Bus. Law § 359-eee

**REAL ESTATE TREATMENT** Initial regulatory footprint is purely federal.

**CORE CONDITIONS** Limited to fewer than six in-state clients. Under this threshold, the sponsor is structurally excluded from the statutory definition of an "investment adviser". No filings or fees are owed to the state; the first filing occurs at the federal level (Form ADV ERA) upon crossing \$25 million in RAUM. The federal filing

assumes the sponsor is then eligible to register with the SEC (see Section VI.E). No state audit or qualified-client overlays.

## North Carolina

**REGIME** Statutory De Minimis Exclusion

**RULE AUTHORITY** N.C. Gen. Stat. § 78C-16(a)

**REAL ESTATE TREATMENT** Most generous client-count ceiling in the de minimis tier.

**CORE CONDITIONS** Self-executing with nothing to file. Advisers with an in-state place of business are exempt with fewer than 15 clients in the preceding 12 months, provided there is no public holding-out. For out-of-state advisers without a physical presence, the threshold drops to five or fewer clients. No audit or qualified-client metrics.

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### CATEGORY 3: CONDITIONAL DE MINIMIS STATES (FILING REQUIRED)

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## Georgia

**REGIME** De Minimis Count with Mandatory Notice Filing

**RULE AUTHORITY** Ga. Code Ann. § 10-5-32

**REAL ESTATE TREATMENT** Low operational burden, but tracking is mandatory.

**CORE CONDITIONS** Limited to five or fewer in-state clients, treating each fund as a single client. Despite the low client count, Georgia strictly expects an initial and annual Form ADV notice filing. No state audit mandate or qualified-client testing applies.

## Ohio

**REGIME** De Minimis (Out-of-State Advisers Only)

**RULE AUTHORITY** Ohio Rev. Code Ann. § 1707.141

**REAL ESTATE TREATMENT** Limited utility; the statutory exemptions do not reach an adviser with an Ohio place of business.

**CORE CONDITIONS** Section 1707.141(A) exempts federally registered advisers, subject to a notice filing of their SEC-filed documents and a fee, and, for advisers with no place of business in Ohio, those whose only Ohio clients are institutional investors and those with not more than five Ohio clients in the preceding twelve months; exempt persons other than federally registered advisers file nothing. The statute contains no fifteen-client provision and no private fund adviser exemption, so an Ohio-based sponsor finds no relief in § 1707.141 apart from federal registration.



## Arizona

**REGIME** Heavily Modified Private Fund Framework

**RULE AUTHORITY** Ariz. Rev. Stat. § 44-3152(B), (M).

**REAL ESTATE TREATMENT** The most accommodating statutory design surveyed. The definition of "qualifying private fund" expressly includes Section 3(c)(5) issuers alongside Sections 3(c)(1) and 3(c)(7), so a real estate fund relying on Section 3(c)(5)(C) remains inside the exemption, and accredited-investor status suffices for "retail buyer funds," bypassing the qualified-client net worth threshold.

**CORE CONDITIONS** Exempt reporting status requires full compliance with three ongoing operational prongs:

**REPORTING MECHANICS** Neither the adviser nor its advisory affiliates may be subject to disqualification under Rule 262 of SEC Regulation A, and the adviser files with the Corporation Commission, through IARD, each report required of a federal exempt reporting adviser under SEC Rule 204-4.

**ANNUAL AUDIT MANDATE** A retail buyer fund, a qualifying private fund that is neither a venture capital company nor a 3(c)(7) fund, requires beneficial owners who are accredited investors under SEC Rule 501(a) (or fund employees or non-sale transferees), written disclosure at or before purchase of the services to be provided and duties owed, and annual audited financial statements delivered to purchasers; the audit is waivable for a limited retail buyer fund.

**STATUTORY FEES** A \$125 annual fee for each calendar year of reliance, paid through IARD. An adviser registered with the SEC is ineligible for the exemption.

## Kansas

**REGIME** Definitional Non-NASAA Exclusion

**RULE AUTHORITY** Kan. Admin. Regs. § 81-14-11

**REAL ESTATE TREATMENT** Generous ceiling for boutique real estate managers.

**CORE CONDITIONS** Limited to fewer than 15 clients with a principal place of business in Kansas and no public holding-out. Imposes no fund-investor net worth conditions and no audit mandates. Sub-\$25 million advisers must file a paper Form ADV Part 1A Item 1 notice by February 1 each year, carrying no state fee.

## Oregon

**REGIME** State-Specific Private Placement Exemption

**RULE AUTHORITY** Or. Admin. R. 441-175-0030

**REAL ESTATE TREATMENT** Strict operational trap regarding general solicitation.

**CORE CONDITIONS** Requires a formal state notice filing. Funds must be composed exclusively of accredited investors, and the sponsor is subject to an absolute prohibition on public advertising or general solicitation. This creates a practical bar on utilizing federal Rule 506(c) offerings. No state audit or qualified-client testing required.

## South Dakota

**REGIME** Federal Mirroring Exemption

**RULE AUTHORITY** SDCL § 47-31B-403(b)(3) (exemptions by rule or order). [VERIFY: the executing administrative rule; former ARSD 20:08:05:01 appears repealed.]

**REAL ESTATE TREATMENT** Seamless integration with standard federal Exempt Reporting Adviser (ERA) setup.

**CORE CONDITIONS** The statute exempts an out-of-state adviser whose South Dakota clients are institutional investors, registered advisers, broker-dealers, or bona fide preexisting out-of-state clients, an out-of-state adviser with not more than five South Dakota-resident clients in the preceding twelve months, and any other person exempted by rule or order. The federal-mirroring relief summarized here, exempting advisers meeting the criteria of SEC Rule 203(m)-1, rests on that authority; the current administrative provision could not be confirmed from the published rules. [VERIFY.]

## Utah

**REGIME** Institutional-Only Private Fund Exemption

**RULE AUTHORITY** Utah Admin. Code R164-4-9.

**REAL ESTATE TREATMENT** Highly restrictive; of limited use for typical syndications.

**CORE CONDITIONS** Self-executing; the rule states no notice filing or fee. Exempts an adviser whose only clients are institutional accredited investors under SEC Rule 501(a)(1) through (3) and (7) (excluding individuals), qualified institutional buyers under SEC Rule 144A, entities with a net worth of \$10 million or more, qualifying private funds, or high net worth family entities. The rule's private fund category requires equity investments that cannot be redeemed within two years and portfolio tests keyed to control and illiquidity. There is no exemption for advice to any natural person or for a private fund composed "partially or entirely of natural persons," and the exemption is unavailable to an adviser that advertises its services or holds itself out to the public. Admitting a single individual investor therefore terminates the exemption. No state audit requirement applies.

## Vermont

**REGIME** Federal Mirroring Exemption

**RULE AUTHORITY** Vermont Securities Regulation § 2-2(a)(20) (Code of Vt. R. 21-030-001).

**REAL ESTATE TREATMENT** Follows the federal boundary; a fund relying solely on Section 3(c)(5)(C) is not a qualifying private fund under SEC Rule 203(m)-1 and falls outside the exemption.

**CORE CONDITIONS** Exempts a private fund adviser, defined as an adviser solely to one or more qualifying private funds, by incorporating SEC Rule 203(m)-1 by reference. The regulation attaches no NASAA-model overlay: no qualified-client ownership gate, no fund-level audit mandate, and no state-specific disclosure conditions appear in the exemption.

The following states have adopted the standard North American Securities Administrators Association (NASAA) Model Rule pattern. This pattern exempts the adviser from state registration if their only clients are Section 3(c)(1) and 3(c)(7) funds. It requires an ERA-style notice filing (truncated Form ADV via the IARD) and an annual fee. For non-venture 3(c)(1) funds, it layers on mandatory annual third-party audits (distributed within ~120 days of fiscal year-end) and requires all beneficial owners of the fund to be "qualified clients" within the meaning of SEC Rule 205-3.

## Alabama

**REGIME** Standard NASAA Model Rule (Recent Transition)

**RULE AUTHORITY** Adopted July 8, 2024 (previously a strict no-exemption state).

**REAL ESTATE TREATMENT** Strict; no specialized real-estate carve-outs.

**CORE CONDITIONS** Standard ERA-style notice filing and fee. Non-venture 3(c)(1) real estate structures must fully absorb the qualified-client gate and mandatory annual third-party audit distributed within 120 days of year-end.

## Arkansas

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Arkansas Securities Rules, Rule 302.02(h), effective August 1, 2022.

**REAL ESTATE TREATMENT** Unmodified; real estate 3(c)(1) templates inherit full compliance overlays.

**CORE CONDITIONS** Follows the NASAA model with a modernized bad-actor standard: neither the adviser nor its advisory affiliates may be subject to a disqualifying event under Rule 506(d)(1) of SEC Regulation D, the adviser files through IARD each report required of a federal exempt reporting adviser under SEC Rule 204-4, and the adviser pays the fee set by Ark. Code Ann. § 23-42-304(a)(6). A 3(c)(1) fund that is not a venture capital fund requires beneficial owners who are qualified clients under SEC Rule 205-3, with the value of the primary residence deducted from net worth, written disclosure of the services to be provided, the duties owed, and other material information, and annual audited financial statements delivered to each beneficial owner. Grandfathering preserves the exemption for a fund existing before the rule's effective date that ceased accepting owners who are not qualified clients and satisfies the disclosure and audit conditions.

## Colorado

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** 3 CCR 704-1, Rule 51-4.11(IA), effective 2017.

**REAL ESTATE TREATMENT** Strict local office rules apply.

**CORE CONDITIONS** Truncated Form ADV ERA filing through IARD plus fee. Non-venture 3(c)(1) funds carry full qualified-client, disclosure, and annual audit conditions. Incorporates a strict Rule 506(d) "bad-actor" disqualification bar. Note: The state's 5-client de minimis exception is explicitly unavailable to any adviser maintaining a physical Colorado place of business.

## Idaho

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Idaho Department of Finance, Order Exempting Private Fund Advisers from Investment Adviser Registration Requirements (Oct. 19, 2020)

**REAL ESTATE TREATMENT** Standard model rule tracking; real estate funds utilizing 3(c)(1) must absorb full conditions.

**CORE CONDITIONS** Requires a formal ERA notice filing and a state fee via the IARD system. For non-venture 3(c)(1) funds, the manager must implement mandatory qualified-client investor gates and provide annual audited financial statements to investors.

## Iowa

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Iowa Admin. Code r. 191—50.45, effective November 6, 2013.

**REAL ESTATE TREATMENT** Standard asset-by-asset tracking.

**CORE CONDITIONS** Mandatory IARD ERA notice filing. Imposes full qualified-client ownership gates, written disclosures, and annual third-party audit requirements for non-venture 3(c)(1) funds. Includes a grandfathering clause for pre-2013 investors.

## Maryland

**REGIME** NASAA Model Rule Adopted by Commissioner's Order

**RULE AUTHORITY** Md. Code Ann., Corps. & Ass'ns § 11-401; Maryland Securities Commissioner, In the Matter of: Exempt Reporting Investment Advisers, Order (June 15, 2012).

**REAL ESTATE TREATMENT** A non-venture 3(c)(1) fund takes qualified-client owners and an annual audit delivered within 120 days of fiscal year-end.

**CORE CONDITIONS** The exemption operates by Commissioner's order under §§ 11-401 and 11-203 rather than codified rule; COMAR 02.02.05 is the general investment adviser chapter, not the exemption. The order exempts advisers solely to qualifying private funds (SEC Rule 203(m)-1) on two general conditions: no disqualification under Rule 262 of SEC Regulation A, and the filing with the Commissioner, through IARD, of each Rule 204-4 exempt reporting adviser report. For a 3(c)(1) fund that is not a venture capital fund, beneficial owners must be qualified clients at the time of purchase, the adviser must disclose in writing, at the time of purchase, all services, if any, to be provided to beneficial owners, all duties, if any, owed to them, and any other material information affecting their rights or responsibilities, and annual audited financial statements must be delivered to each beneficial owner within 120 days of fiscal year-end. Grandfathering permits a fund existing before the order date to retain non-qualified-client owners if it ceased accepting them, the required disclosures were made, and the audited financial statements are delivered. An SEC-registered adviser is ineligible and instead notice-files under § 11-405(b); personnel of an exempt adviser are exempt from investment adviser representative registration; and an adviser that loses eligibility has ninety days to register or notice-file. The statutory de minimis of § 11-401 (no

more than five non-institutional Maryland-resident clients in the preceding twelve months) is available only to advisers with no Maryland place of business.

## Massachusetts

**REGIME** Standard NASAA Model Rule (Strict End)

**RULE AUTHORITY** 950 Mass. Code Regs. § 12.205(2)(c), effective August 3, 2012.

**REAL ESTATE TREATMENT** Strict; no real-estate or strategy-based relief. A fund relying solely on Section 3(c)(5)(C) is not a “private fund” under the rule and falls outside the exemption.

**CORE CONDITIONS** Follows the NASAA model at the strict end of the spectrum: available to advisers solely to private funds, provided neither the adviser nor its advisory affiliates is subject to disqualification under Rule 262 of SEC Regulation A, the adviser files each report and amendment required of a federal exempt reporting adviser under SEC Rule 204-4, and the adviser pays a \$300 reporting fee. A 3(c)(1) fund that is not a venture capital fund additionally requires qualified-client beneficial owners under SEC Rule 205-3, written disclosure of the services to be provided, the duties owed, and other material information affecting the rights or responsibilities of beneficial owners, and annual audited financial statements delivered to each beneficial owner. Grandfathering preserves the exemption for a fund in existence before February 3, 2012 that ceased admitting non-qualified clients and satisfies the disclosure and audit conditions.

## Minnesota

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Minn. Stat. § 80A.58, effective August 1, 2013.

**REAL ESTATE TREATMENT** Strict; a fund relying solely on 3(c)(5)(C) is outside the scope of this exemption.

**CORE CONDITIONS** Requires a formal IARD ERA notice filing along with a \$100 state fee. Non-venture 3(c)(1) structures must fulfill all qualified-client, written disclosure, and annual audit conditions. Provides historical grandfathering for pre-2013 fund participants.

## Nevada

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Nev. Rev. Stat. § 90.345, effective July 1, 2022.

**REAL ESTATE TREATMENT** Strict; pure 3(c)(5)(C) direct real estate funds cannot claim this exemption path.

**CORE CONDITIONS** Mandates an IARD ERA notice filing plus state fee. Non-venture 3(c)(1) vehicles must comply with qualified-client ownership gates, mandatory point-of-sale disclosures, and an annual third-party audit. Provides grandfathering for investors who committed prior to 2022.

## New Mexico

**REGIME** Uncodified NASAA Model Framework

**RULE AUTHORITY** New Mexico Securities Division Exemptive Order (December 2, 2013).

**REAL ESTATE TREATMENT** Operational warning; current reliance must be verified directly.

**CORE CONDITIONS** Operates pursuant to an administrative exemptive order that was never formally codified in the state's administrative code. Adheres to standard model rules: requires an ERA notice filing, qualified-client investor limits, and an annual audit for non-venture 3(c)(1) vehicles.

## North Dakota

**REGIME** Standard NASAA Model Rule (Recent Transition)

**RULE AUTHORITY** Insurance and Securities Department Commissioner's Order, effective December 19, 2025.

**REAL ESTATE TREATMENT** Shifting baseline; historical "no-exemption" summaries are out of date.

**CORE CONDITIONS** Abandoned its long-standing mandatory registration framework to adopt the NASAA model rule. Expect full qualified-client ownership gates and audited-financial conditions for non-venture 3(c)(1) vehicles. Mechanics should be confirmed directly with the Department as rule text rollouts settle.

## Rhode Island

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** 230-RICR-50-05-1.8, enacted 2012.

**REAL ESTATE TREATMENT** Standard model rule tracking.

**CORE CONDITIONS** Requires a standard IARD ERA notice filing accompanied by a \$300 fee. Non-venture 3(c)(1) structures carry the full suite of qualified-client ownership constraints, mandatory written risk disclosures, and annual audits. Grandfathers pre-2012 investor accounts.

## Virginia

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** 21 Va. Admin. Code § 5-80-215, effective September 9, 2011 (amended May 7, 2012 and June 3, 2013).

**REAL ESTATE TREATMENT** Strict; no real-estate or strategy-based relief. A fund relying solely on Section 3(c)(5)(C) is outside the rule's definition of qualifying private fund.

**CORE CONDITIONS** Follows the NASAA model: available to advisers solely to qualifying private funds, provided neither the adviser nor its advisory affiliates is subject to disqualification under Rule 262 of SEC Regulation A, the adviser files with the State Corporation Commission each report required of a federal exempt reporting adviser under SEC Rule 204-4, and the adviser pays a \$250 fee. A 3(c)(1) fund that is not a venture capital fund additionally requires beneficial owners who are qualified clients under SEC Rule 205-3, with the value of the primary residence excluded from net worth, written disclosure of the services to be provided, the duties owed, and other material information affecting the rights or responsibilities of beneficial owners, and annual audited financial statements delivered to each beneficial owner; the rule states no fixed delivery deadline. Grandfathering preserves the exemption for a fund in existence before May 7, 2012 that ceased accepting owners who are not qualified clients.



## Wyoming

**REGIME** Standard NASAA Model Rule

**RULE AUTHORITY** Wyo. Stat. § 17-4-403(b)(iii) (exemptions by rule or order); rules of the Wyoming Secretary of State. [VERIFY: pinpoint citation of the private fund adviser rule.]

**REAL ESTATE TREATMENT** Standard compliance overlays.

**CORE CONDITIONS** The statute exempts only an adviser with no Wyoming place of business whose clients are limited to institutional investors, registered advisers, broker-dealers, or bona fide preexisting out-of-state clients, and an adviser with no Wyoming place of business and not more than five Wyoming-resident clients in the preceding twelve months; it authorizes further exemptions by rule or order. The NASAA-model conditions summarized here, a notice filing with annual renewal, qualified-client ownership, and an annual audit for non-venture 3(c)(1) funds, rest on rules adopted under that authority. [VERIFY: confirm the conditions against the Secretary of State's rules.]

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### CATEGORY 6: MODIFIED NASAA FRAMEWORKS (RELAXED OR RESTRUCTURED CONDITIONS)

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## California

**REGIME** Modified NASAA Private Fund Exemption

**RULE AUTHORITY** 10 CCR § 260.204.9

**REAL ESTATE TREATMENT** Most favorable condition-tier state for a 3(c)(5)(C) election. "Qualifying private fund" includes funds relying on Section 3(c)(1), 3(c)(5), or 3(c)(7), so a 3(c)(5)(C) real estate fund adviser claims the exemption directly; because a 3(c)(5) fund is not a "retail buyer fund," it takes none of the additional conditions below.

**CORE CONDITIONS** Notice filing via IARD plus fee. "Retail buyer funds" (3(c)(1) funds other than venture capital companies) must be owned exclusively by accredited investors (or the adviser's principals and employees), receive plain-English written disclosure of all material facts, and receive annual audited financial statements prepared by a PCAOB-registered accountant within 120 days of fiscal year-end; the adviser may charge performance fees only to investors who are "qualified clients" within the meaning of Rule 205-3.

## Connecticut

**REGIME** Modified ERA Alignment Framework

**RULE AUTHORITY** Conn. Gen. Stat. § 36b-6(l) (Statutory authority to order exemptions) & Banking Commissioner's Exemptive Order (July 11, 2011) (The administrative executing order).

**REAL ESTATE TREATMENT** Favorable structural alignment; it layers no specialized independent real-estate or structural overlays onto the federal definition of a private fund.

**CORE CONDITIONS** To claim the exemption, the adviser must advise exclusively venture capital funds or private funds with less than \$150 million in total assets under management. The firm must maintain strict compliance with federal Rules 203(m)-1 and 204-4 and route regular Exempt Reporting Adviser (ERA) reports through the

FINRA IARD system. It carries zero independent state audit mandates or qualified-client performance fee blocks.

**CAUTION** Sub-\$25 million boutique managers face a technical friction: because they fall below the statutory threshold to file as a federal ERA, they cannot execute the reporting routing required by the order. Managers under \$25M must clear reporting mechanics directly with the Department of Banking Securities Division before relying on the exemption.

## Delaware

**REGIME** 3(c)(7)-Only Exemption

**RULE AUTHORITY** 6 Del. Admin. Code § 711

**REAL ESTATE TREATMENT** A 3(c)(1) real estate fund adviser has no exemption path and must register.

**CORE CONDITIONS** The codified rule resolves the divergence in earlier surveys: "qualifying private fund" expressly excludes funds relying on Section 3(c)(1), limiting the exemption to advisers of Section 3(c)(7) (and similar) funds. Conditions: no Rule 506(d)(1) disqualifying events, the Rule 204-4 exempt reporting adviser reports filed with the Director through IARD, and the investment adviser filing fee. No audit or investor-qualification conditions apply, because 3(c)(1) funds are not permitted under the exemption.

## District of Columbia

**REGIME** State-Specific Relaxed ERA Framework

**RULE AUTHORITY** Administrative Exemptive Order SB-09-16 (June 10, 2016).

**REAL ESTATE TREATMENT** Favorable shift away from its historical, rigid venture-only stance.

**CORE CONDITIONS** Exempts managers advising exclusively private funds with less than \$150 million in total assets. Requires a truncated Form ADV notice filing and a \$250 district fee. Notably, the framework imposes no independent state audit mandate and permits standard accredited-investor status to suffice for fund participants.

## Indiana

**REGIME** Hybrid Cap-Based Private Exemption

**RULE AUTHORITY** Ind. Code § 23-19-4-3(b)(3) (exemptions by rule or order); Administrative Order 12-0012 AO (Jan. 9, 2012). [VERIFY: the order's conditions; the Division's published copy is not machine-readable.]

**REAL ESTATE TREATMENT** Heavy structural constraints for multi-vehicle programs.

**CORE CONDITIONS** The statute exempts only an out-of-state adviser serving institutional clients and an out-of-state adviser with not more than five Indiana-resident clients in the preceding twelve months, and authorizes further exemptions by rule or order. The private fund relief summarized here derives from Administrative Order 12-0012 AO: self-executing with no state filings while exempt, limited to an adviser of "qualifying private funds" with five or fewer Indiana fund clients and no public holding out, with written disclosures and annual third-party audits for non-venture 3(c)(1) structures and ownership gated at accredited-investor status rather than the qualified-client standard. [VERIFY: confirm each condition against the order.]

## Kentucky

**REGIME** Relaxed NASAA Framework

**RULE AUTHORITY** KRS § 292.3301 (Private fund adviser registration exemptions).

**REAL ESTATE TREATMENT** Favorable investor gating; standard accredited-investor status remains perfectly sufficient for 3(c)(1) real estate structures, completely bypassing the strict national qualified-client net worth threshold.

**CORE CONDITIONS** To claim the exemption, the adviser must satisfy the following ongoing compliance metrics:

**REPORTING MECHANICS** Must file, electronically through IARD, each report an SEC exempt reporting adviser files with the SEC under SEC Rule 204-4. Neither the adviser nor any advisory affiliate may be subject to Rule 506(d)(1) disqualification.

**MANDATORY AUDIT** The manager must obtain annual audited financial statements for each non-venture 3(c)(1) fund and distribute copies directly to every beneficial owner.

**POINT-OF-SALE DISCLOSURES** At the time of purchase, the adviser must issue clear written disclosures to all fund owners outlining all services to be provided, specific duties owed, and any material information impacting their legal rights.

## Louisiana

**REGIME** Dual-Path / NASAA Exemption Framework

**RULE AUTHORITY** 2020 Commissioner's Order & La. R.S. 51:702(7)(f).

**REAL ESTATE TREATMENT** Caution: the de minimis path is unreliable for pooled vehicles.

**CORE CONDITIONS** The statutory de minimis exclusion (fewer than 15 clients plus no holding out) is highly unsafe; regulatory surveys indicate Louisiana looks through the fund vehicle to count individual in-state investors. The reliable path is the 2020 Commissioner's Order adopting the NASAA model rule: requires a formal IARD ERA notice filing, qualified-client investor gates, and a mandatory annual third-party audit for non-venture 3(c)(1) funds.

## Michigan

**REGIME** Relaxed NASAA Framework

**RULE AUTHORITY** MCL § 451.2403 (Statutory adviser exemptions) & Michigan Administrative Code R 451.4.5 (Registration exemption for investment advisers to private funds, effective July 3, 2019).

**REAL ESTATE TREATMENT** Positioned among the least restrictive condition-tier states regarding investor gating, with the standard disclosure conditions.

**CORE CONDITIONS** To claim the exemption, the adviser must satisfy the following ongoing compliance metrics:

**REPORTING MECHANICS** Must file an electronic report via the IARD system and pay the state commissioner's required transaction fees.

**INVESTOR GATING** Under R 451.4.5(4)(a), the fund's outstanding securities must be beneficially owned entirely by persons who are either accredited investors or qualified clients at the time of purchase.

**POINT-OF-SALE DISCLOSURES** At the time of purchase, the manager must issue clear written disclosures to all owners detailing all services, if any, provided to individual owners; all duties, if any, owed to them; and any other material information affecting the rights or responsibilities of owners.

**BIFURCATED ANNUAL AUDIT MANDATE** The Audit Track: If the real estate fund admits any standard accredited investors who do not meet the qualified-client net worth threshold, a full third-party annual audit is strictly mandatory and must be delivered to all owners. The Waiver Track: Under R 451.4.5(4)(d), the annual audit is entirely waived only if 100% of the beneficial owners are qualified clients and the adviser provides a specific written disclosure explaining that the fund will not provide annual audits, noting that other similarly-situated funds may do so.

**GRANDFATHERING** Under subrule (9), a fund in existence before the rule's effective date with investors who do not meet the qualification standard retains the exemption if it immediately ceases admitting such investors and provides the required disclosures and financial statements.

**STATUTORY NOTE** The de minimis exemption of MCL § 451.2403(2) (not more than five natural-person Michigan-resident clients) is available only to advisers with no Michigan place of business; for a Michigan-based sponsor, the rule is the sole path.

## Missouri

**REGIME** Relaxed Condition-Tier Exemption

**RULE AUTHORITY** 15 CSR 30-51.180(4).

**REAL ESTATE TREATMENT** Favorable, low-burden home state for real estate 3(c)(1) structures.

**CORE CONDITIONS** Requires a formal IARD ERA notice filing. Markedly friendlier than national standards: mandates the distribution of annual financial statements to investors, but completely removes the independent third-party audit requirement. Additionally, non-venture 3(c)(1) investors need only be net-worth accredited investors or qualified clients, excluding income-only accredited individuals.

## Nebraska

**REGIME** NASAA-Model Framework Adopted as a Definitional Exclusion

**RULE AUTHORITY** Neb. Rev. Stat. § 8-1101 (definition of investment adviser); 48 Neb. Admin. Code ch. 42, §§ 003, 004, and 010 (effective May 11, 2016)

**REAL ESTATE TREATMENT** A non-venture 3(c)(1) fund takes the full model-rule conditions: qualified-client owners, written disclosure, and an annual audit delivered to investors.

**CORE CONDITIONS** A private fund adviser is excluded from the definition of "investment adviser" rather than exempted from registration, but the exclusion is conditional: no Rule 506(d)(1) disqualifying events, and each Rule 204-4 exempt reporting adviser report must be filed with the Department of Banking and Finance. For a 3(c)(1) fund that is not a venture capital fund, beneficial owners must be "qualified clients" under SEC Rule 205-3 (with the primary residence deducted from net worth) at the time of purchase, the adviser must provide written disclosure of its services, duties, and other material information, and annual audited financial statements of the fund must be obtained and delivered to each beneficial owner. Grandfathering applies to investors admitted before the 2016 effective date who were not qualified clients.

## New Hampshire

**REGIME** Strict Venture-Only Exemption

**RULE AUTHORITY** N.H. Rev. Stat. Ann. § 421-B:4-403(b).

**REAL ESTATE TREATMENT** The most restrictive home state for a non-venture sponsor.

**CORE CONDITIONS** The statute contains no private fund adviser exemption. Section 421-B:4-403(b) exempts only an out-of-state adviser whose New Hampshire clients are institutional investors, registered advisers, or broker-dealers, an out-of-state adviser with not more than five New Hampshire-resident clients in the preceding twelve months, and persons exempted by order. The venture-capital-only relief reflected in this entry therefore rests on Bureau of Securities Regulation action under that order authority. [VERIFY: identify the order or rule granting the venture capital fund adviser exemption.] All other private fund managers must register as a state RIA at any asset size.

## Oklahoma

**REGIME** Stripped-Down Condition Framework

**RULE AUTHORITY** OAC § 660:11-7-17.

**REAL ESTATE TREATMENT** Highly advantageous for real estate funds, subject to a universal asset cap.

**CORE CONDITIONS** Exempts all advisers solely to qualifying private funds with total U.S. assets under management below \$150 million. Requires an IARD ERA notice filing accompanied by a ~\$300 fee. Stripped of standard model encumbrances: imposes no independent state audit mandates and no qualified-client testing conditions on any fund type.

## Pennsylvania

**REGIME** Dual-Route Framework (NASAA or Definitional Exclusion)

**RULE AUTHORITY** 10 Pa. Code § 302.070 (effective January 13, 2018); 70 Pa. Stat. Ann. § 1-102(j)(vii).

**REAL ESTATE TREATMENT** The exclusion route requires that the adviser not hold itself out generally to the public as an investment adviser.

**CORE CONDITIONS** Choice of two distinct regulatory postures:

**NASAA-MODEL EXEMPTION** Follows the NASAA model: no disqualification under Rule 262 of SEC Regulation A, filing with the Department of each SEC Rule 204-4 exempt reporting adviser report, and, for a 3(c)(1) fund that is not a venture capital fund, qualified-client beneficial owners under SEC Rule 205-3, written disclosure at the time of purchase of the services to be provided, the duties owed, and other material information, and annual audited financial statements delivered to beneficial owners. Grandfathering covers a fund existing before January 13, 2018 that ceased accepting owners who are not qualified clients.

**DEFINITIONAL EXCLUSION** Under § 1-102(j)(vii), a person with a Pennsylvania place of business that has had not more than five clients, in or out of the state, during the preceding twelve months and does not hold itself out generally to the public as an investment adviser is excluded from the definition of investment adviser, with no filings and no fund-level conditions.

## South Carolina

**REGIME** Modified NASAA Exemption (Relaxed Tier)

**RULE AUTHORITY** S.C. Code Regs. 13-415, effective September 2019.

**REAL ESTATE TREATMENT** Highly accommodating for sub-\$25 million boutique operations.

**CORE CONDITIONS** Requires an ERA notice filing (-\$210) and an annual audit for standard non-venture 3(c)(1) funds. However, it modifies the model rule by permitting investors to be simply accredited or qualified clients. Performance fees may be taken from non-qualified clients provided written risk disclosures are delivered. Sub-\$25 million advisers are excused from the filing, fee, and audit conditions entirely.

## Tennessee

**REGIME** Dual-Path Framework (Self-Executing De Minimis or NASAA-Model Exemption)

**RULE AUTHORITY** Tenn. Comp. R. & Regs. 0780-04-03-.05(1)(b), (1)(c) (as amended 2025); TDCI Securities Division guidance (July 10, 2025)

**REAL ESTATE TREATMENT** Favorable if navigating the reporting exemption pathway. The de minimis path does not excuse compliance with the state custody rules and is therefore generally unavailable to a sponsor with custody of fund assets.

**CORE CONDITIONS** Real estate sponsors must look at their cash and asset architecture to select between two distinct tracks:

- ❑ *The Private Fund Exemption Track (Rule 0780-04-03-.05(1)(c))*: Designed for advisers whose only clients are private funds. Requires a formal Exempt Reporting Adviser (ERA) notice filing and annual renewal via the IARD system. It explicitly excuses the sponsor from state-level registration and standard custody requirements, imposing no independent state-level third-party audit mandates.
- ❑ *The De Minimis Track (Rule 0780-04-03-.05(1)(b))*: Self-executing for firms domiciled in Tennessee with fewer than 15 clients in 12 months who do not hold themselves out to the public. However, this track strictly prohibits the adviser from taking custody or possession of client funds. If a real estate manager holds investor capital in a fund bank account, this path is legally void.

## Texas

**REGIME** State-Specific Private Fund Exemption

**RULE AUTHORITY** 7 TAC § 139.23 & 7 TAC § 116.17

**REAL ESTATE TREATMENT** Favorable; private equity, real estate, and venture capital funds are carved out of the most restrictive state conditions.

**CORE CONDITIONS** Requires an ERA-style notice filing via the IARD. While standard 3(c)(1) funds face qualified-client gates and full custody/audit rules, designated real estate and private equity funds are exempt from those conditions. However, **all** private fund advisers in Texas (exempt or registered) must distribute quarterly account statements to fund investors.



## Washington

**REGIME** Stricter Institutional Gating / Highly Modified NASAA

**RULE AUTHORITY** Wash. Rev. Code § 21.20.040 [VERIFY: the exemption conditions appear in the Washington Administrative Code, not the cited registration statute].

**REAL ESTATE TREATMENT** Functions effectively as a full registration state for standard 3(c)(1) real estate sponsors.

**CORE CONDITIONS** Heavily modified and highly restrictive. Exempt advisers are effectively forced into a Section 3(c)(7)-style posture: all non-venture fund investors must meet the high threshold of a "qualified purchaser" (\$5 million-plus in liquid investments for individuals), which sits far above the standard qualified-client level. Mandates a state notice filing and a full annual audit.

## Wisconsin

**REGIME** Modified NASAA Framework (Accredited-Investor Standard)

**RULE AUTHORITY** Wis. Stat. § 551.403; Final Order Granting Exemption from the Registration Requirements for Investment Advisers to Private Funds (Division of Securities, Feb. 17, 2012).

**REAL ESTATE TREATMENT** Favorable investor gating; for a non-venture 3(c)(1) fund, accredited-investor ownership suffices in place of the qualified-client standard.

**CORE CONDITIONS** The exemption operates by administrative order rather than codified rule. It exempts advisers solely to qualifying private funds, provided neither the adviser nor its advisory affiliates is subject to disqualification under Rule 262 of SEC Regulation A and the adviser files through IARD each report required of a federal exempt reporting adviser under SEC Rule 204-4, with no state fee. A 3(c)(1) fund that is not a venture capital fund requires beneficial owners who are accredited investors under SEC Rule 501(a), with the value of the primary residence deducted from net worth, at the time of purchase, written disclosure of the services to be provided, the duties owed, and other material information affecting the rights or responsibilities of beneficial owners, and annual audited financial statements delivered to each beneficial owner. Grandfathering permits a fund existing before February 17, 2012 to retain non-accredited owners if it ceased accepting them and satisfies the disclosure and audit conditions. Personnel of an exempt private fund adviser are exempt from investment adviser representative registration.

*This guide is for information only. It is not legal advice. Adviser-status analysis is fact-specific and changes frequently. Consult counsel before forming or offering any investment vehicle.*

#### SCHEDULE A CONSULTATION

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