STATE OF CONNECTICUT

DEPARTMENT OF BANKING

260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800

Howard F. Pitkin
Commissioner

ORDER GOVERNING CERTAIN INVESTMENT ADVISERS EXEMPT FROM FEDERAL REGISTRATION FOLLOWING PASSAGE OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

WHEREAS, the Banking Commissioner (the "Commissioner") is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act, as amended by P.A. 11-110 (effective July 21, 2011) and P.A. 11-216 (effective upon passage) (the "Act") and Sections 36b-31-2 *et seq.* of the Regulations of Connecticut State Agencies (the "Regulations") promulgated under the Act;

WHEREAS, Section 36b-3(11) of the Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities";

WHEREAS, Section 36b-6(c)(1) of the Act provides, in part, that: "No person shall transact business in this state as an investment adviser unless registered as such by the commissioner as provided in sections 36b-2 to 36b-34, inclusive, or exempted pursuant to subsection (e) of this section";

WHEREAS, Title III of Public Law 104-290, The National Securities Markets Improvement Act of 1996 ("NSMIA"), which became effective on July 8, 1997, preempted state registration of certain investment advisers who were either registered under Section 203 of the federal Investment Advisers Act of 1940 (the "Advisers Act") or excepted from the federal definition of "investment adviser" under Section 202(a)(11) of the Advisers Act. This preemptive provision is currently contained in Section 203A(b)(1) of the Advisers Act;

WHEREAS, NSMIA expressed a Congressional intent, now embodied in Section 203A(a) of the Advisers Act, that an investment adviser would be required to register under Section 203 of the Advisers Act where it 1) had assets under management of not less than $25 million or such higher amount as the Securities and Exchange Commission (the "SEC") by rule deemed appropriate; or 2) was an adviser to an investment company registered under the Investment Company Act of 1940 (the "Company Act");

WHEREAS, NSMIA was silent on whether the states were preempted from regulating investment advisers who, rather than being registered under Section 203 of the Advisers Act or excepted from the definition of "investment adviser" under Section

202(a)(11) of the Advisers Act, were exempt from federal registration under Section 203 of the Advisers Act;

WHEREAS, the SEC has interpreted the Advisers Act in light of NSMIA as not foreclosing state registration of investment advisers who were not required to register federally by virtue of Section 203 of the Advisers Act;

WHEREAS, on October 14, 1997, the Commissioner issued an *Order Governing Certain Federally Exempt Investment Advisers* which excluded from the Connecticut definition of "investment adviser" those firms who, but for Section 203(b)(3) of the Advisers Act, as then constituted, would have been required to register with the SEC. Section 203(b)(3) of the Advisers Act provided a federal registration exemption for an investment adviser that, during the course of the preceding 12 months, had fewer than 15 clients and neither held itself out generally to the public as an investment adviser nor acted as an investment adviser to any investment company registered under the Company Act (or a company electing to be a business development company under Section 54 of the Company Act and which had not withdrawn its election). The October 14, 1997 Order incorporated by reference a non-exclusive safe harbor in SEC Rule 203(b)(3)-1 which defined the term "client" for purposes of Section 203(b)(3) of the Advisers Act. Rule 203(b)(3)-1 was rescinded by SEC Release IA-3221 [Rules Implementing Amendments to the Investment Advisers Act of 1940, June 22, 2011];

WHEREAS, on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank") became law. Title IV of the bill, which contains most of the provisions on investment advisers, carries a July 21, 2011 effective date;

WHEREAS, effective July 21, 2011, Dodd-Frank repealed the exemption in Section 203(b)(3) of the Advisers Act for any investment adviser who during the course of the preceding twelve months had fewer than fifteen clients and who neither held itself out generally to the public as an investment adviser nor acted as an investment adviser to a federally registered investment company or a business development company;

WHEREAS, effective July 21, 2011, Dodd-Frank also amended Section 203 of the Advisers Act to (a) add an exemption in Section 203(b)(3) of the Advisers Act for foreign private advisers as defined in Section 202(a)(30) of the Advisers Act; (b) modify the exemption in Section 203(b)(6) of the Advisers Act to cover certain commodity trading advisors advising a private fund as defined in Section 202(a)(29) of the Advisers Act; (c) add an exemption in Section 203(b)(7) of the Advisers Act for investment advisers to small business investment companies ("SBICs") licensed under the Small Business Investment Act of 1958; (d) add an exemption in Section 203(*l*) of the Advisers Act for advisers to venture capital funds, subject to such reporting and record keeping requirements as the SEC may prescribe; and (e) add an exemption in Section 203(m) of the Advisers Act for investment advisers rendering advice solely to private funds having less than $150 million in assets under management in the United States, subject to such reporting and record keeping requirements as the SEC may prescribe;

WHEREAS, in Release No. IA-3222 (Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers; June 22, 2011) and Release No. IA-3221 (Rules Implementing Amendments to the Investment Advisers Act of 1940; June 22, 2011), the SEC announced that it had promulgated final rules and rule amendments under the Advisers Act affecting certain investment advisers exempt from federal registration under Section 203 of the Advisers Act following enactment of Dodd-Frank;

WHEREAS, such final rules included Rule 204-4 requiring investment advisers relying on the exemption under Section 203(*l*) or Section 203(m) of the Advisers Act to file reports on Form ADV;

WHEREAS, the SEC has indicated that, at the request of state securities authorities, it expected to add to Form ADV a check box and instructions permitting exempt reporting advisers to direct the filing of reports filed with the SEC to the state securities authorities [Release No. IA-3110; Rules Implementing Amendments to the Investment Advisers Act of 1940, November 19, 2010, at n. 127];

WHEREAS, as a result of Dodd-Frank's addition of new exemptive provisions to Section 203 of the Advisers Act, investment advisers relying on those exemptions would generally have to register as investment advisers under the Act;

WHEREAS, P.A. 11-110 (effective July 21, 2011) amended the registration provisions in Section 36b-6 of the Act by adding a new subsection (*l*) providing, in part, that: "The commissioner may by . . . order, conditionally or unconditionally, exempt from the requirements of this section any person or class of persons upon a finding that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this chapter";

WHEREAS, Section 36b-31(c) of the Act provides, in part, that: "To encourage uniform interpretation and administration of sections 36b-2 to 36b-34, inclusive, and effective securities regulation and enforcement, the commissioner may cooperate with . . . the Securities and Exchange Commission . . . ."

WHEREAS, Section 36b-31 of the Act provides, in part, that: "(a) The commissioner may from time to time make, amend and rescind such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive, including . . . orders governing registration statements, notice filings, applications, and reports, and defining any terms, whether or not used in said sections, insofar as the definitions are not inconsistent with the provisions of said sections. For the purpose of . . . orders, the commissioner may classify securities, persons and matters within his or her jurisdiction, and prescribe different requirements for different classes. (b) No . . . order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive. In prescribing . . . orders, the

commissioner may cooperate with the . . . Securities and Exchange Commission with a view to effectuating the policy of said sections to achieve maximum uniformity in the form and content of registration statements, notice filings, applications and reports wherever practicable";

WHEREAS, the Commissioner finds that the entry of this Order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

NOW THEREFORE THE COMMISSIONER ORDERS AS FOLLOWS:

1. This Order shall be deemed issued and shall take effect on July 21, 2011.

2. The following investment advisers shall be exempt from the registration requirement in Section 36b-6(c)(1) of the Act:

   (a) Any investment adviser that is a foreign private adviser within the meaning of Sections 202(a)(30) and 203(b)(3) of the Advisers Act and the rules thereunder;

   (b) Any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and that fulfills the conditions for exempt treatment under Section 203(b)(6) of the Advisers Act, including, in the case of commodity trading advisors advising private funds, as defined in Section 202(a)(29) of the Advisers Act, the requirement that the business of such commodity trading advisor not be predominately the provision of securities-related advice. A commodity trading advisor required to register with the SEC because it does not fulfill the conditions in Section 203(b)(6) of the Advisers Act shall be subject to the notice filing requirements in Section 36b-6(e) of the Act if it transacts business as an investment adviser in this state;

   (c) Any investment adviser qualifying for the SBIC exemption in Section 203(b)(7) of the Advisers Act;

   (d) Any investment adviser qualifying for the exemption under Section 203(*l*) of the Advisers Act who acts as an investment adviser solely to one or more venture capital funds, as defined in SEC Rule 203(*l*)-1, as amended from time to time, and who is in compliance with the reporting requirements in SEC Rule 204-4. An investment adviser relying on the exemption from state registration under this paragraph shall make the reports required by SEC Rule 204-4 available to the Commissioner in electronic format once the Investment Adviser Registration Depository (IARD) system has been updated to accept such reports and relay them to affected states. The exemption from state registration in this paragraph incorporates by reference the "grandfather" provision in subsection (b) of SEC Rule 203(*l*)-1; and

(e) Any investment adviser qualifying for the exemption under Section 203(m) of the Advisers Act who acts as an investment adviser solely to private funds, as defined in Section 202(a)(29) of the Advisers Act, and who has assets under management in the United States of less than $150 million, provided that: (1) an investment adviser relying on the exemption hereunder shall make the reports required by SEC Rule 204-4 available to the Commissioner in electronic format once the IARD system has been updated to accept such reports and relay them to affected states; (2) neither the private fund adviser relying on the exemption hereunder nor its supervised persons (as defined in Section 202(a)(25) of the Advisers Act) or any person directly or indirectly controlling or controlled by the investment adviser is subject to an administrative, civil or criminal sanction described in Section 36b-15(a)(2) of the Act; and (3) the investment adviser is in compliance with SEC rules promulgated under Section 203(m) of the Advisers Act, including, without limitation, Rule 203(m)-1.

3. An individual employed by or associated with an investment adviser relying on an exemption pursuant to this Order shall be exempt from having to register as an investment adviser agent under Section 36b-6(c)(2) of the Act by virtue of such individual's activities on behalf of the exempt investment adviser.

4. Effective July 21, 2011, and having been superseded by Dodd-Frank's repeal of Section 203(b)(3) of the Advisers Act, the department's October 14, 1997 Order Governing Certain Federally Exempt Investment Advisers, is rescinded and shall no longer be in force and effect;

5. Nothing in this Order shall be construed to prohibit an investment adviser otherwise eligible for an exemption hereunder from voluntarily seeking investment adviser registration under the Act; and

6. This Order shall remain in effect until modified, superseded, withdrawn, rescinded or vacated by the Commissioner or other lawful authority.

Dated at Hartford, Connecticut
this 11th day of July 2011.

Howard. F. Pitkin
Banking Commissioner