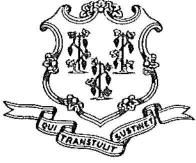


STATE OF CONNECTICUT

DEPARTMENT OF BANKING

260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800

Howard F. Pitkin
Commissioner

ORDER ESTABLISHING A STATE REGISTRATION TIMETABLE FOR CERTAIN INVESTMENT ADVISERS AFFECTED BY 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 (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, Section 36b-6(e) of the Act exempts from state registration any investment adviser that is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940 (the "Advisers Act"), and requires that such investment adviser first file with the Commissioner a notice of exemption and pay a nonrefundable filing fee, such notice filing to be renewed each calendar year;

WHEREAS, Section 203A(a)(1) of the Advisers Act states that "No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 203 [of the Advisers Act], unless the investment adviser (A) has assets under management of not less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; or (B) is an adviser to an investment company registered under title I of this Act";

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, Dodd-Frank added a new subdivision (2) to Section 203A(a) of the Advisers Act precluding certain investment advisers (hereinafter, "Mid-sized Advisers") from registering with the Securities and Exchange Commission (the "SEC") under Section 203 of the Advisers Act. To be precluded from SEC registration, the Mid-sized Adviser would have to meet certain conditions: 1) the Mid-sized Adviser would be required to register as an investment adviser with the state in which it maintains its principal office and place of business; 2) the Mid-sized Adviser would be subject to examination by the securities regulator in that state; 3) the Mid-sized Adviser would be required to have between $25 million and $100 million in assets under management; 4) the Mid-sized Adviser could not act as an adviser to an investment company registered under the Investment Company Act of 1940 (the "Company Act") or a company electing to be a business development company under Section 54 of the Company Act; and 5) as a result of the amendment, the Mid-Sized Adviser would not be required to register with 15 or more states;

WHEREAS, the practical effect of Dodd-Frank was to increase the ceiling for state investment adviser registration from $25 million to $100 million in assets under management effective July 21, 2011, and to require certain Mid-sized Advisers to transition from SEC registration to state registration effective July 21, 2011;

WHEREAS, in Release No. IA-3221 (Rules Implementing Amendments to the Investment Advisers Act of 1940; June 22, 2011) (the "Implementing Release"), the SEC announced that it had adopted final rules and rule amendments under the Advisers Act, including the following:

a) Rule 203A-5(a) exempting Mid-sized Advisers registered with the SEC on July 21, 2011 from the prohibition on SEC registration contained in Section 203A(a)(2) of the Advisers Act on a temporary basis. The exemption would run until January 1, 2012. Consequently, Mid-sized Advisers registered with the SEC on July 21, 2011 would remain federally registered for the duration of 2011, notwithstanding Dodd-Frank's July 21, 2011 effective date;

b) Rule 203A-5(b) requiring all investment advisers registered with the SEC on January 1, 2012 to amend their Form ADV no later than March 30, 2012 to reflect their assets under management as of a date within 90 days prior to the filing of such amended Form ADV;

c) Rule 203A-5(c)(1) requiring Mid-sized Advisers registered with the SEC on January 1, 2012 (and who were not otherwise exempt from the prohibition on SEC registration in Section 203A(a)(2) of the Advisers Act by virtue of Rule 203A-2) to withdraw their SEC registration no later than June 28, 2012. The Implementing Release explained that Rule 203A-5 provided "an additional 90 days (i.e., by June 28, 2012) for an adviser no longer eligible for Commission registration to register with the states and withdraw its registration with [the SEC]"; and

d) Rule 203A-1(a)(1) permitting, but not requiring, Mid-sized Advisers to register with the SEC if they had assets under management of at least $100 million but less than

$110 million, and providing that Mid-sized Advisers electing to register with the SEC under Rule 203A-1(a)(1) need not withdraw their federal registration unless they had less than $90 million in assets under management;

WHEREAS, effective July 21, 2011, Dodd-Frank also 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, as a result of the repeal of the private adviser exemption in Section 203(b)(3) of the Advisers Act, certain private advisers that would not qualify for federal exemptive treatment post-Dodd-Frank and who were not excepted from the definition of "investment adviser" in Section 202(a)(11) of the Advisers Act would be required to register with the SEC on July 21, 2011 (and file a notice with affected states), or, if their assets under management were less than $100 million (and they were not otherwise permitted or required to register with the SEC), to register with one or more states;

WHEREAS, in the Implementing Release, the SEC announced that it had adopted Rule 203-1(e) under the Advisers Act. Rule 203-1(e) provided that investment advisers exempt from SEC registration on July 20, 2011 in reliance on Section 203(b)(3) of the Advisers Act, as it existed prior to its repeal by Dodd-Frank, would remain exempt from federal registration until March 30, 2012 provided that the affected investment adviser 1) had fewer than fifteen clients during the course of the preceding twelve months; and 2) 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 that had elected to be a business development company under Section 54 of the Company Act and had not withdrawn its election. After March 30, 2012, such investment advisers would be required to register with the SEC absent another exemption from federal registration;

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-7(b) of the Act provides, in part, that: "The commissioner may, by . . . order, waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors";

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. In light of the legal and operational complexities surrounding implementation of Dodd-Frank, including but not limited to necessary upgrades to the Investment Adviser Registration Depository (IARD) system, the following classes of investment advisers will have until the dates specified below to fulfill applicable registration or notice filing requirements under the Act, absent an exclusion or exemption under the Act:

   (a) *June 28, 2012 State Registration Deferral.* Investment advisers registered with the SEC following the effective date of this Order and whose assets under management are less than $90 million as of March 30, 2012 shall have until the earlier of the effective date of their withdrawal from registration with the SEC and June 28, 2012 to register as an investment adviser under the Act. During the term of this state registration deferral, such investment advisers remain subject to state notice filing requirements;

   (b) *March 30, 2012 Notice Filing Deferral for Advisers Relying on Rule 203-1(e).* Investment advisers relying on the transition provision in Rule 203-1(e) under the Advisers Act who otherwise would have had to register with the SEC and to file a notice with Connecticut due to the repeal of the private adviser exemption afforded by Section 203(b)(3) of the Advisers Act and the unavailability of another exemption under Section 203 of the Advisers Act may defer the filing of a notice under Section 36b-6(e) of the Act until March 30, 2012; and

   (c) *March 30, 2012 State Registration Deferral for Advisers Relying on Former Section 203(b)(3) Whose Assets Under Management Would Not Qualify Them for SEC Registration.* The following investment advisers will have until March 30, 2012 to register as investment advisers under the Act: Investment advisers relying as of July 20, 2011 on the private adviser exemption afforded by Section 203(b)(3) of the Advisers Act who, due to their assets under management and the unavailability of another exemption under Section 203 of the Advisers Act (and the unavailability of an exemption from the prohibition on SEC registration pursuant to Section 203A(c) of the Advisers Act) would be ineligible to register with the SEC on and after March 30, 2012;

2. Investment advisers that would be subject to state registration requirements but for an applicable deferral in paragraph 1. above shall not be deemed "required to be registered" for purposes of Sections 36b-5(b) and 36b-5(c) of the Act during the term of the deferral;

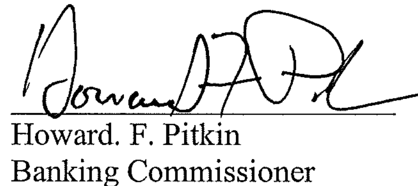
3. The terms of this Order apply only to those investment advisers described in subparagraphs (a), (b) and (c) of paragraph 1. above. All other investment advisers remain subject to applicable registration and notice filing requirements under the Act, including, without limitation, investment advisers commencing business on or after July 21, 2011 that are ineligible for federal registration under Section 203 of the Advisers Act as amended by Dodd-Frank. In addition, this Order does not address those investment advisers who would be exempt from federal registration under Section 203 of the Advisers Act as amended by Dodd-Frank, and the Commissioner may address the status of such advisers subsequent to the issuance of this Order;

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, which covered private advisers previously relying on Section 203(b)(3) of the Advisers Act, 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 a deferral under paragraph 1. of this Order 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.

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



Howard. F. Pitkin
Banking Commissioner