State Implementation of the Dodd-Frank Private Fund Adviser Exemption: Surveying the First Wave

Jay Fishman, J.D.
Attorney-Editor

Wolters Kluwer
Law & Business

Introduction

Investment advisers to hedge funds and certain other private funds must now, under Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, register with the Securities and Exchange Commission (SEC). Other advisers, including advisers to venture capital funds, are exempt from registration but must submit reports to the SEC. The Dodd-Frank Act led first to the SEC's adoption of an exemption from registration for certain private fund advisers. The North American Securities Administrators Association (NASAA) followed with a more comprehensive exemption for the states to model that, to date, eight jurisdictions have promulgated. This white paper separately sets forth the provisions of the NASAA model rule to analyze the eight states' treatment of those provisions.

Background

Title IV of the Dodd-Frank Act made significant changes to the regulation of investment advisers under the Investment Advisers Act of 1940 (Advisers Act). These changes included eliminating the longstanding *de minimis* exemption under Advisers Act Section 203(b), which exempted from registration advisers with fewer than 15 clients who did not generally hold themselves out to the public as investment advisers. Advisers to hedge and other private funds relied on the *de minimis* exemption to avoid registration and, hence, federal regulatory oversight. The lack of oversight enabled some advisers to engage in fraudulent activities and other abuses against investors.

To provide regulatory oversight to help deter these abuses, the Dodd-Frank Act replaced the Section 203(b) exemption with two new exemptions, one at Section 203(l) and the other at Section 203(m). Section 203(l) provides an exemption from federal registration for advisers that advise only venture capital funds. Section 203(m) provides an exemption from federal registration for advisers that act only as advisers to private funds and have assets under management of less than $150 million, but these "exempt reporting advisers" must submit reports to the SEC and maintain certain books and records.

The Dodd-Frank Act also amended Advisers Act Section 202(a)(29) to define a "private fund" as an issuer that would be an investment company under Section 3 of the Investment Company Act of 1940 (1940 Act) but for an exclusion provided from that definition by either 1940 Act Section 3(c)(1) or 3(c)(7). Section 3(c)(1) provides an exclusion from the "investment company" definition for a fund whose securities are owned by not more than 100 persons and are not publicly offered. Section 3(c)(7) provides an exclusion from the "investment company" definition for a fund whose securities are owned only by qualified purchasers and are not publicly offered.

The Advisers Act amendments took effect on July 21, 2011, one year after adoption of the Dodd-Frank Act, and required the SEC to adopt rules to implement the statutory requirements.

The SEC adopted a final rule in June 2011 implementing the private fund adviser exemption at Section 203(m) of the Advisers Act as amended by Dodd-Frank [See *Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets under Management, and Foreign Private Advisers***,** Release No. IA-3222 (June 22, 2011)]. Effective July 21, 2011, Advisers Act Rule 203(m)-1 (17 CFR §275.203(m)-1) reads as follows:

> **§275.203(m)-1. Private fund adviser exemption.**
>
> (a) *United States investment advisers*.— For purposes of section 203(m) of the Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business in the United States is exempt from the requirement to register under section 203 of the Act if the investment adviser:
>
> > (1) Acts solely as an investment adviser to one or more qualifying private funds; and
> >
> > (2) Manages private fund assets of less than $150 million.
>
> (b) *Non-United States investment advisers*.— For purposes of section 203(m) of the Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business outside of the United States is exempt from the requirement to register under section 203 of the Act if:
>
> > (1) The investment adviser has no client that is a United States person except for one or more qualifying private funds; and
> >
> > (2) All assets managed by the investment adviser at a place of business in the United States are solely attributable to private fund assets, the total value of which is less than $150 million.
>
> (c) *Frequency of Calculations*.— For purposes of this section, calculate private fund assets annually, in accordance with General Instruction 15 to Form ADV (§279.1 of this chapter).
>
> (d) *Definitions*.— For purposes of this section:
>
> > (1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter).
> >
> > (2) *Place of business* has the same meaning as in §275.222-1(a).
> >
> > (3) *Principal office and place of business* of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(4) *Private fund assets* means the investment adviser's assets under management attributable to a qualifying private fund.

(5) *Qualifying private fund* means any private fund that is not registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) and has not elected to be treated as a business development company pursuant to section 54 of that Act (15 U.S.C. 80a-53). For purposes of this section, an investment adviser may treat as a private fund an issuer that qualifies for an exclusion from the definition of an "investment company," as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), in addition to those provided by section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7)), provided that the investment adviser treats the issuer as a private fund under the Act (15 U.S.C. 80b) and the rules thereunder for all purposes.

(6) *Related person* has the same meaning as in §275.206(4)-2(d)(7).

(7) *United States* has the same meaning as in §230.902(l) of this chapter.

(8) *United States person* means any person that is a U.S. person as defined in §230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

Note to paragraph (d)(8): A client will not be considered a United States person if the client was not a United States person at the time of becoming a client.

NASAA Model Rule

On December 16, 2011, NASAA adopted its own model rule exempting private fund advisers. The final rule was the culmination of two proposed versions of the rule and comments by financial institutions, law firms and state securities regulators.

The five comments received by NASAA on the first proposal focused on the exemption's narrow application to 3(c)(7) funds. Industry commenters argued that excluding venture capital and 3(c)(1) funds from the exemption would severely restrict capital formation. Industry commenters also argued that exempting 3(c)(1) and venture capital funds would not impede investor protection because these fund investors are institutional rather than retail clients and, therefore, are sophisticated and knowledgeable enough not to need protection. One industry comment further urged NASAA to allow the exemption for 3(c)(1) funds but explicitly require that the investors be either: (1) "accredited investors" as defined in Rule 501(a) of SEC Regulation D; or (2) "qualified clients" as defined in Advisers Act Rule 205(3)(d)(i).

A comment from a state securities regulator argued that the exemption for 3(c)(7) funds should be restricted to qualified purchasers that are not composed partially or entirely of natural persons. On the other hand, this commenter advocated allowing the exemption for venture capital funds regardless of the amount of assets the adviser manages, to facilitate uniformity at the federal level because private equity funds are excluded from the SEC's "venture capital" definition.

NASAA incorporated most of the above comments, resulting in a final rule that differs from the first proposal in the following respects:

- The adopted rule exempts advisers to venture capital and 3(c)(1) funds, as well as 3(c)(7) funds, but arrives at a compromise benefitting both the industry and regulators in that the beneficial owners of the 3(c)(1) funds, i.e., the investors, must be "qualified clients" as defined in Advisers Act Rule 205(3)(d)(i), and the value of an investor's primary residence must be excluded from the investor's net worth calculation for determining whether the investor is a "qualified client." The rule drafters were concerned that not including 3(c)(1) funds would hinder capital formation efforts but were also concerned that not imposing a restriction on the 3(c)(1) funds would impede investor protection.

- The adopted rule contains a disclosure requirement that advisers to 3(c)(1) funds provide investors with: (1) audited financial statements annually; and (2) additional written disclosures of the services and duties owed to the investors by the adviser and the material information affecting the investors' rights and responsibilities.

- The adopted rule contains a transition provision mandating that advisers who become ineligible for the exemption register or notice file with the state within 90 days after the date of their ineligibility.

- The adopted rule includes a grandfathering provision allowing advisers to 3(c)(1) funds whose existing investors are *non*-qualified clients under Advisers Act Rule 205(3)(d)(i) to claim the exemption if: (1) the fund existed before the model rule's effective date; and (2) as of the model rule's effective date, the fund ceased to accept beneficial owners who are not "qualified clients" as defined in Rule 205(3)(d)(i).

As adopted, NASAA's final rule provides as follows:

> **Rule XXX. Registration exemption for investment advisers to private funds.**
>
> (a) ***Definitions***. For purposes of this regulation, the following definitions shall apply:
>
> (1) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.
>
> (2) "Private fund adviser" means an investment adviser who provides advice solely to one or more private funds.

(3) “Private fund” means an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, but for section 3(c)(1) or 3(c)(7) of that Act.

(4) “3(c)(1) fund” means a private fund that is excluded from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

(5) “Venture capital fund” means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

(b) ***Exemption for private fund advisers.*** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of Section XXX [403 of USA 2002] if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;

(2) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(3) the private fund adviser pays the fees specified in Section XXX [410 of USA 2002];

(c) ***Additional requirements for private fund advisers to certain 3(c)(1) funds***. In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

(1) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person’s net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(2) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(A) the fund, rather than the individual beneficial owners, is the investment adviser’s client;

(B) all services, if any, to be provided to individual beneficial owners;

(C) all duties, if any, the investment adviser owes to the beneficial owners; and

(D) any other material information affecting the rights or responsibilities of the beneficial owners.

(3) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

(d) ***Federal covered investment advisers***. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section XXX [405 of USA 2002].

(e) ***Investment adviser representatives***. A person is exempt from the registration requirements of Section XXX [404 of USA 2002] if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

(f) ***Electronic filing***. The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section XXX [410 of USA 2002] are filed and accepted by the IARD on the state's behalf.

(g) ***Transition***. An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

(h) ***Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients***. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that is beneficially owned by one or more persons who are not qualified clients as described in subparagraph (c)(1) may qualify for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:

(1) the subject fund existed prior to the effective date of this regulation; and,

(2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation.

State Implementation to Date

As of this writing, the following eight states have promulgated a private fund adviser exemption based on the NASAA model rule:

- **California**, by proposed rule out for public comment until March 25, 2012
- **Indiana**, by administrative order effective January 9, 2012
- **Maine**, by administrative order effective February 16, 2012
- **Massachusetts**, by adopted rule effective February 3, 2012, enforced August 3, 2012
- **Michigan**, by administrative order [sixth transition order] effective March 3, 2011
- **Rhode Island**, by proposed rule out for public comment until April 19, 2012
- **Virginia**, by proposed rule out for public comment until April 12, 2012 with anticipated effective date of May 1, 2012
- **Wisconsin**, by administrative order effective February 17, 2012

Other states will likely follow suit in 2012 and beyond. Historically, however, the states have not been uniform in their treatment of NASAA model rules, and their approach thus far to the private fund adviser rule is no exception. As discussed below, the states to date have taken divergent approaches to the private fund adviser exemption.

The provisions of the NASAA model rule are reproduced individually below, followed by a table listing which states have adopted, or chosen not to adopt, that provision. Unless noted otherwise, a state that has adopted the NASAA provision has done so without modification.

Definitions — "Value of Primary Residence"

(a) ***Definitions***. For purposes of this regulation, the following definitions shall apply:

(1) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

Adopts	Does Not Adopt
California	Indiana
Massachusetts	Maine
Rhode Island	Michigan
Virginia	
Wisconsin	

Analysis: This is the first of many instances in the charts to follow where California, Massachusetts, Rhode Island, Virginia and Wisconsin provide the most comprehensive treatment of the exemption by adopting all or most of the NASAA model rule provision verbatim. This may be due several factors. The securities commissioners of three of the five states—California, Massachusetts and Wisconsin—have historically been active at the NASAA organization by serving as its president and on its committees. Also, four of the five states—California, Massachusetts, Rhode Island and Virginia—have promulgated the exemption through rulemaking rather than via policy statement or administrative order. Rulemaking is typically a more formal, deliberative and exhaustive process than orders or policies and, therefore, tends to address the finer points and provisions of the subject matter.

Another chart further down will show which of the five states adopting the "value of primary residence" definition also provide that the value of a person's primary residence must be deducted from that person's net worth.

Definitions — "Private Fund Adviser"

> (2) "Private fund adviser" means an investment adviser who provides advice solely to one or more private funds.

Adopts	Does Not Adopt
California	Indiana
Massachusetts	Maine
Rhode Island	Michigan
Virginia	
Wisconsin	

Analysis: Again, California, Massachusetts, Rhode Island, Virginia and Wisconsin adopt the NASAA definition verbatim, in this case, the definition of "private fund adviser." Indiana, Maine and Michigan do not define the term.

Definitions — "Private Fund"

> (3) "Private fund" means an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, but for section 3(c)(1) or 3(c)(7) of that Act.

Adopts	Does Not Adopt
California: Refers to it as a "qualified private fund" as follows: "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in Rule 203(m)-1, adopted by the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended (17 C.F.R. 270.203(m)-1).	Maine: Does not define the term but refers to "a qualifying private fund eligible for the exclusion from the definition of an investment company under Section 3(c) (1) of the Investment Company Act of 1940."
Indiana: Does not provide its own definition but says "advises a qualifying	

private fund as defined in SEC Rule 203(m)-1."	
Massachusetts: "An issuer that qualifies for an exclusion from the definition of an investment company pursuant to section(s) 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940."	
Michigan: Does not provide its own definition but says "private funds as defined in Section 402(a) of the Dodd-Frank Act."	
Rhode Island	
Virginia: Defines a "qualified private fund" as a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1.	
Wisconsin: Defines a "qualified private fund" as a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1.	

Analysis: Rhode Island adopts the NASAA definition of "private fund" verbatim, while Massachusetts adopts a slight variation by referring to the exclusion of 1940 Act Sections 3(c)(1) and 3(c)(7). Michigan too adopts the above definition, but impliedly, by referring to Dodd-Frank Act Section 402(a), which defines a private fund as an issuer that would be an investment company as defined in 1940 Act Section 3 but for Section 3(c)(1) or 3(c)(7) of that Act. Maine does not explicitly provide a "private fund" definition but refers to "a qualifying private fund eligible for the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940." Thus, Maine differs from the NASAA model rule by only including Section 3(c)(1) rather than both Sections 3(c)(1) and 3(c)(7) in its definition. California, Virginia and Wisconsin closely mirror the NASAA model rule except that they refer to a private fund as a *qualified* private fund defined in SEC Rule 203(m)-1. That rule exempts any adviser acting solely as an adviser to private funds and having U.S. assets under management of less than $150 million.

Definitions — "3(c)(1) Fund"

> (4) "3(c)(1) fund" means a private fund that is excluded from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

Adopts	Does Not Adopt
California: refers to it as a "qualified private fund," as follows: "3(c)(1) fund" means a qualifying private fund that qualifies for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).	Michigan
Indiana: Indirectly defined in that it refers to a "fund adviser who advises at least one qualifying private fund eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940 that is not a venture capital fund."	
Maine: Indirectly defined in that it refers to an "investment adviser who advises at least one qualifying private fund eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940 that is not a venture capital fund defined in SEC Rule 203(l)-1."	
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: Of the five states that most comprehensively adopt the NASAA model rule provisions, Massachusetts, Rhode Island, Virginia and Wisconsin adopt NASAA's language verbatim, while California diverges by referring to the "private fund" in the NASAA definition as a *qualified*

private fund. Indiana and Maine join California by referring to a *qualified* private fund in their indirect definitions. Michigan does not provide a definition or mention 3(c) funds.

Definitions — "Venture Capital Fund"

> (5) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

Adopts	Does Not Adopt
California: refers to it as a "venture capital investment" as follows: A "venture capital investment" is an acquisition of securities in an operating company as to which the investment adviser, the entity advised by the investment adviser, or an affiliated person of either has or obtains management rights as defined in subsection (a)(7).	Maine: Mentions a "venture capital fund."
Indiana: Specifies that SEC Rule 203(l)-1 defines a venture capital fund to include funds that represent to investors that it: (1) pursues a venture capital strategy; (2) holds no more than 20% of its assets in securities of qualifying companies; (3) does not issue excessive debt; (4) does not issue redeemable securities; and (5) is not registered under Section 8 of the Investment Company Act of 1940 and does not define itself as a business development company.	Michigan
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: Of the five definitions in the NASAA model rule, "venture capital fund" has the least consensus among the states. Massachusetts, Rhode Island, Virginia and Wisconsin adopt NASAA's language verbatim. California diverges by referring to a "venture capital fund" as a venture capital *investment* and by providing a definition for this term more complex than the

NASAA definition. Indiana, too, diverges from the NASAA model rule by providing a more complex definition that includes five conditions. Maine does not define "venture capital fund" but mentions the term. Michigan neither defines nor mentions the term.

Definitions — Other

Additional definitions not contained in the NASAA Model Rule:

Adopts	Does Not Adopt
California: adds the following definitions to its private fund adviser exemption: "Advisory Affiliates" are: (1) all of the investment adviser's officers, partners, or directors (or any *person* performing similar functions); (2) all *persons* directly or indirectly *controlling* or *controlled* by the investment adviser; and (3) all of the investment adviser's current *employees* (other than *employees* performing only clerical, administrative, support or similar functions), or any other persons defined as "advisory affiliates" by the Securities and Exchange Commission. "Affiliated person" means a person that controls, is controlled by, or is under common control with the other specified persons. Control means possessing directly or indirectly, the power to direct or cause the direction of management and policies. An acquisition of securities is a "derivative investment" if it is acquired by a venture capital company in the ordinary course of its business in exchange for an existing venture capital investment either (i) upon the exercise or conversion of the existing venture capital investment or (ii) in connection with a public offering of securities or the merger or reorganization of the operating company to which the existing venture capital investment relates. "Management rights" means the right, obtained contractually or through ownership of securities, either through one person alone or in conjunction with one or more persons acting together or through an affiliated person, to substantially participate in, to substantially influence the conduct of, or to provide (or to offer to provide) significant guidance and counsel concerning, the management, operations or business objectives of the operating company in which the venture	Indiana Maine Massachusetts Michigan Rhode Island Virginia Wisconsin

capital investment is made. An "operating company" means an entity that is primarily engaged, directly or through a majority owned subsidiary or subsidiaries, in the production or sale (including any research or development) of a product or service other than the management or investment of capital, but shall not include an individual or sole proprietorship. An entity is a "venture capital company" if, on at least one occasion during the annual period commencing with the date of its initial capitalization, and on at least one occasion during each annual period thereafter, at least fifty percent (50%) of its assets (other than short-term investments pending long-term commitment of distribution to investors), valued at cost, are venture capital investments, defined in subsection (a)(5), or derivative investments described in subsection (a)(6).	

Analysis: California is the only one of the eight promulgating states to adopt additional provisions beyond those contained in the NASAA model rule. Similar to Indiana's more complex definition of "venture capital fund," California defines a "venture capital *company*" in addition to "advisory affiliates," "affiliated person," "derivative investment," "management rights" and "operating company." The NASAA model rule in subsection (b)(1) below refers to advisory affiliates, but the term is defined only in California's provision.

Exemption Conditions — Rule 262

> (b) ***Exemption for private fund advisers.*** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of Section XXX [403 of USA 2002] if the private fund adviser satisfies each of the following conditions:
>
> > (1) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;

Adopts	Does Not Adopt
California	Michigan
Indiana	
Maine	
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: On the substantive provisions of the NASAA exemption, California, Massachusetts, Rhode Island, Virginia and Wisconsin again adopt all or most of the model rule provisions verbatim, and most likely for the reasons mentioned in the analysis for the first definition above. At the other end of the spectrum, Michigan does not adopt any of the substantive provisions. Michigan adopted its exemption months before NASAA even proposed its exemption and therefore did not have a model on which to base its exemption. Moreover, Michigan's performance-based compensation and custody requirements for investment advisers were integrated into the discussion of the private fund adviser exemption, resulting in a cursory treatment of the exemption by that state. Because of this cursory treatment, Michigan may have to re-issue the exemption in more detail after the process by which SEC-registered advisers switch to state registration ends on June 28, 2012. Indiana and Maine, who adopted their exemptions by administrative order, remain in the middle of the eight promulgating states, adopting some, but not all, of the NASAA model rule provisions.

Regarding the first substantive provision above, namely that advisers subject to "bad actor" disqualification provisions under Rule 262 of federal Regulation A cannot claim the exemption, all states but Michigan adopt this provision. Since the states consider disqualifying provisions to be essential for protecting investors, Michigan may revise its private fund adviser exemptions at a later date to adopt the Regulation A provision.

Exemption Conditions — Reporting under Rule 204-4

> (2) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

Adopts	Does Not Adopt
California	Indiana
Maine	Michigan
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: Only the five states adopting exemptions that most closely resemble the NASAA model rule—California, Massachusetts, Rhode Island, Virginia and Wisconsin—adopt the reporting requirement from SEC Rule 204-4. What is noteworthy here is that Indiana does not adopt this most substantive of provisions, while it does adopt many of the other provisions.

Exemption Conditions — Fee Payment

> (3) the private fund adviser pays the fees specified in Section XXX [410 of USA 2002];

Adopts	Does Not Adopt
California: $125	Indiana: No reporting requirement or fee specified
Massachusetts: $300	Maine: Reporting requirement but no fee

Rhode Island: $300	Michigan: No reporting requirement or fee specified
Virginia: $250	Wisconsin: Reporting requirement but no fee

Analysis: Although four of the five states that most closely follow the NASAA Model rule—California, Massachusetts, Rhode Island and Virginia—require a fee to be filed with the SEC Rule 204-4 report, Wisconsin only requires the report itself, as does Maine.

Exemption Conditions — Other

Additional conditions not mentioned in the NASAA Model Rule:

Adopts	Does Not Adopt
Indiana: The person must maintain a place of business in Indiana, during the preceding 12 months did not have more than five client residents of Indiana, and does not hold itself out generally to the public as an investment adviser.	California
Maine: The person must maintain a place of business in Maine and does not hold itself out generally to the public as an investment adviser.	Massachusetts
	Michigan
	Rhode Island
	Virginia
	Wisconsin

Analysis: Indiana, although not adopting the reporting requirement from subsection (b)(2) of the NASAA model rule above, does adopt the full *de minimis* exemption from SEC Rule 203(b). In this respect, Indiana, as well as Maine to a lesser extent, diverges from the NASAA model rule and from a majority of the eight promulgating states.

3(c)(1) Fund Requirements — Qualified Client

(c) ***Additional requirements for private fund advisers to certain 3(c)(1) funds***. In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

(1) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

Adopts	Does Not Adopt
California: Substitutes definition of "accredited investor under Rule 501(a) of the federal Regulation D" for "qualified client in SEC Rule 205-3." Does not include "the deduction of the value of the primary residence from the person's net worth."	Michigan: Incorporates the "qualified client" definition from Rule 257.205-3(d)(1). Incorporates the "accredited investor" definition from Rule 501(a) of SEC Regulation D.
Indiana: Substitutes definition of "accredited investor under Rule 501(a) of the federal Regulation D" for qualified client in SEC Rule 205-3." Does not include "the deduction of the value of the primary residence from the person's net worth."	
Maine	
Massachusetts: Adds to the language "that is not a venture capital fund in (c)(intro) and (c)(1): *nor a 3(c)(7) fund.*	

Rhode Island	
Virginia	
Wisconsin: Substitutes the definition of "accredited investor under Rule 501(a) of the federal Regulation D" for "qualified client in SEC Rule 205-3."	

Analysis: Of the five states most closely following the NASAA model rule, Massachusetts deviates the most from the others (California, Rhode Island, Virginia and Wisconsin) by expressly excluding 3(c)(7) funds, as well as venture capital funds, from the 3(c)(1) funds for which private fund advisers may provide investment advice. Another noteworthy contrast is that, while the NASAA rule requires the beneficial owners of a 3(c)(1) fund to meet the SEC Rule 205-3 definition of a qualified client, California, Indiana and Wisconsin substitute the SEC Rule 501(a) definition of an accredited investor as the condition for meeting this requirement. Michigan incorporates both the "qualified client" and the "accredited investor" definitions.

3(c)(1) Fund Requirements — Disclosure

> (2) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
>
> > (A) the fund, rather than the individual beneficial owners, is the investment adviser's client;
> >
> > (B) all services, if any, to be provided to individual beneficial owners;
> >
> > (C) all duties, if any, the investment adviser owes to the beneficial owners; and
> >
> > (D) any other material information affecting the rights or responsibilities of the beneficial owners.

Adopts	Does Not Adopt
California: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	Michigan

Indiana: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	
Maine: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	
Massachusetts: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	
Rhode Island	
Virginia: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	
Wisconsin: Does not require (from Subsection (2)(A) of the NASAA Model Rule) a written disclosure that the fund, rather than the individual beneficial owners, is the client.	

Analysis: Only Rhode Island adopts the first condition of this NASAA provision specifying that the 3(c)(1) fund, rather than the individual beneficial owners of the fund, is the investment adviser's client. The rest of the requirements (involving disclosures) are uniformly adopted by all the promulgating states except Michigan (but that is most likely for the reason stated in the analysis of the first substantive provision above).

3(c)(1) Funds Requirements — Audited Financial Statements

> (3) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

Adopts	Does Not Adopt
California	Michigan
Indiana	
Maine	
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: This annual financial statement requirement is adopted by all of the eight promulgating states except Michigan (but again most likely for the reason stated in the analysis of the first substantive provision above).

3(c)(1) Fund Requirements — Other

Additional conditions not mentioned in the NASAA Model Rule:

Adopts	Does Not Adopt
California: California also requires advisers to comply with Section 25234(a)(1) of the California Corporate Securities Law of 1968 and Section 260.234 of the California Securities Rules, both sections pertaining to performance based compensation.	Indiana
	Maine

	Massachusetts
	Michigan
	Rhode Island
	Virginia
	Wisconsin

Analysis: California consistently remains the only state to adopt additional conditions (and definitions) not included in the NASAA model rule.

SEC-Registered Advisers

(d) ***Federal covered investment advisers***. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section XXX [405 of USA 2002].

Adopts	Does Not Adopt
California	Indiana
Massachusetts	Maine: States that its administrative order neither relieves nor imposes any legal or regulatory obligations on federal covered investment advisers or their representatives, including notice filing requirements.
Rhode Island	Michigan
Virginia	
Wisconsin	

Analysis: Only the five states whose exemption most closely resembles the NASAA model rule expressly adopt this provision prohibiting federal covered investment advisers from claiming the exemption. Maine takes the most interesting position by remaining neutral.

Adviser Representatives

> (e) ***Investment adviser representatives***. A person is exempt from the registration requirements of Section XXX [404 of USA 2002] if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

Adopts	Does Not Adopt
California	Indiana
Maine: In addition to adopting the NASAA Model Rule provision, Maine adds that the exemption extends only to the licensing requirements for investment advisers and investment adviser representatives, and does not, therefore, excuse compliance with the State's securities registration or antifraud provisions.	Michigan
Massachusetts	
Rhode Island	
Virginia	
Wisconsin	

Analysis: California, Massachusetts, Rhode Island, Virginia and Wisconsin adopt the investment adviser representative provision verbatim. Maine include an additional condition not excusing investment adviser representatives from the securities registration or anti fraud provisions of the Maine Securities Act.

Electronic Filing

(f) ***Electronic filing***. The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section XXX [410 of USA 2002] are filed and accepted by the IARD on the state's behalf.

Adopts	Does Not Adopt
California	Indiana
Massachusetts	Maine
Rhode Island	Michigan
Virginia	
Wisconsin	

Analysis: Of the six states to require the SEC Rule 204-4 report filing, only Maine does not mandate that the filing be made electronically through the Investment Adviser Registration Depository (IARD).

Transition Period

(g) ***Transition***. An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

Adopts	Does Not Adopt
California	Indiana
Rhode Island	Maine

Virginia	Massachusetts
Wisconsin	Michigan

Analysis: Of the five states adopting the most verbatim version of the NASAA model rule—California, Massachusetts, Rhode Island, Virginia and Wisconsin—all but Massachusetts adopt this transition provision.

Grandfather Clause

(h) ***Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients***. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that is beneficially owned by one or more persons who are not qualified clients as described in subparagraph (c)(1) may qualify for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:

(1) the subject fund existed prior to the effective date of this regulation; and,

(2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation.

Adopts	Does Not Adopt
California: In addition to adopting (h)(1) and (2) of the NASAA Model Rule, California adds a subsection (3) and (4) as follows: (3) "the investment adviser discloses in writing the information described in paragraph (c)(2) to all beneficial owners of the fund; and (4) as of the effective date of this regulation, the investment adviser delivers audited financial statements as required by paragraph (c)(3).	Indiana
Massachusetts: Substitutes "existed prior to February 3, 2012" for existed prior to the effective date of this regulation" in subsection (h)(1) of the NASAA Model Rule. Substitutes "as of February 3, 2012" for "as of the effective	Maine

date of this regulation" in subsection (h)(2) of the NASAA Model Rule. Massachusetts adds three additional subsections, namely that the private fund adviser: (3) was in compliance with Massachusetts investment /investment adviser representative registration requirements as of February 3, 2012; (4) discloses in writing the duties, services and other material information to be provided to beneficial owners; and (5) delivers audited financial statements to the beneficial owners.	
Rhode Island	Michigan
Virginia: Substitutes "existed prior to May 1, 2012" for existed prior to the effective date of this regulation" in subsection (h)(1) of the NASAA Model Rule. Substitutes "as of May 1, 2012" for "as of the effective date of this regulation" in subsection (h)(2) of the NASAA Model Rule. Virginia adds two additional subsections, namely that the investment adviser: (3) discloses in writing the duties, services and other material information to be provided to beneficial owners; and (4) delivers audited financial statements to the beneficial owners as of May 1, 2012.	
Wisconsin: Substitutes "existed prior to the effective date of this order" for existed prior to the effective date of this regulation" in subsection (h)(1) of the NASAA Model Rule. Substitutes "as of the effective date of this order" for "as of the effective date of this regulation" in subsection (h)(2) of the NASAA Model Rule. Wisconsin adds two additional subsections, namely that the investment adviser: (3) discloses in writing the duties, services and other material information to be provided to beneficial owners; and (4) delivers audited financial statements to the beneficial owners as of the effective date of this order.	

Analysis: Of the five states adopting all or most of the NASAA model rule provisions, only Rhode Island adopts this provision verbatim. The other four states—California, Massachusetts, Virginia and Wisconsin—each mandate additional compliance with the same disclosure and annual financial statement report requirements from two previously analyzed NASAA provisions.

Other Provisions

Additional sections not contained in the NASAA Model Rule:

Adopts	Does Not Adopt
California adds its own final section to the exemption entitled "Temporary Exemption Extension for Private Advisers" to become inoperative on June 28, 2012 [Essentially, California is allowing its previously adopted *de minimis* exemption, below, to continue until the date advisers no longer eligible for SEC registration must be withdrawn from SEC registration]: An exemption from the provisions of Section 25230 of the Code is hereby granted, as being necessary and appropriate in the public interest, to any person who (i) does not hold itself out generally to the public as an investment adviser, (ii) during the course of the preceding twelve months has had fewer than 15 clients, (iii) does not act as an investment adviser to any investment company registered under title I of the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of title I of the Investment Company Act of 1940 and has not withdrawn its election, and (iv) either (A) has assets under management, as defined in subsection (i)(2)(B), of not less than $25,000,000 or (B) provides investment advice to only venture capital companies, as defined in subsection (a)(4). For purposes of this subsection (i), the following definitions shall apply: "Client" has the same meaning as defined in Rule 222-2 adopted by the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended (17 C.F.R. § 275.222-2).	Indiana

"Assets under management" means the securities with respect to which an investment adviser and its affiliated persons provide continuous and regular supervisory or management services; provided, that in the case of securities managed for an entity which is excluded from the definition of investment company by the exclusion provided in Section 3(c)(1) or Section 3(c)(7) of the federal Investment Company Act of 1940, as amended, assets under management shall also include any amount payable to such entity pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the entity upon demand of such entity.	
	Maine
	Massachusetts
	Michigan
	Rhode Island
	Virginia
	Wisconsin

Analysis: Just as California is the only one of the eight states to have a private fund adviser exemption containing definitions beyond the terms defined in the NASAA model rule, California is also the only state whose exemption has provisions beyond those contained in the NASAA model rule. The NASAA model rule in subsection (c) refers to an investment adviser's client but the term "client" is *defined* only in California's private fund adviser exemption. Moreover, California is the only state to define the term "assets under management" (AUM) following the AUM definition in the SEC Rule 203m-1 exemption for private fund advisers. Lastly, California is the only state to contain a transition provision expressly allowing investment advisers to rely on the de minimis exemption in SEC Rule 203(b) until June 28, 2012, the date the adviser switch process from federal to state registration ends.

What's Next: The Other States

The first wave of private fund adviser exemptions offers insight into how the remaining states will act. Because seven of the eight promulgating states adopt the additional disclosure and annual financial statement reporting requirements, it seems likely that other states will do the same. For the same reason, two other provisions equally likely to be adopted by additional states are the SEC Rule 204-4 reporting requirement (whether or not the state requires a fee) and the Regulation A "bad actor" disqualification provision. Less likely to be adopted by other states is the provision requiring disclosure that the fund (and not the beneficial owner) is the client, since only Rhode Island's exemption includes this provision.

More interesting are the provisions on which the eight promulgating states diverge. The five states adopting all or most of the NASAA model rule include the following four provisions in their private fund adviser exemptions: (1) the provision prohibiting federal covered investment advisers from claiming the exemption; (2) the provision exempting investment adviser representatives from registration if the representatives are associated with an exempt investment adviser; (3) the provision requiring electronic filing of the Rule 204-4 reports and amendments through the IARD; and (4) the transition provision mandating that advisers register or notice file within 90 days after becoming ineligible for the private fund adviser exemption. It is likely that throughout 2012, additional states adopting a private fund adviser exemption will include these four provisions, as the provisions directly involve an adviser's status as a state-registered investment adviser. An adviser's status as a state- or SEC-registered adviser will become increasingly important as the adviser nears and goes beyond the June 28, 2012 completion date for switching from federal to state registration.

Indiana and Maine are the only two promulgating states to include some of the old *de minimis* exemption language from Advisers Act Section 203(b) as a condition for claiming their private fund adviser exemption, namely, that the person must maintain a place of business in the state and not hold itself out generally to the public as an investment adviser, and in the case of Indiana, that the person must not have had more than five client-residents in the state during the preceding 12 months. Because this *de minimis* requirement does not appear in the NASAA model rule or in the exemptions for the five states adopting all or most of the model rule provisions, it is unlikely to appear in the exemptions of other states that are likely to adopt all or most of the model rule provisions, particularly larger states like California or Massachusetts. The requirement may appear as a provision in the private fund adviser exemption for smaller states that are less likely to mirror the NASAA model rule provisions.

The following NASAA model rule provisions have the least consensus among the eight promulgating states and thus are most likely to divide other states that adopt private fund adviser exemptions:

- *"Value of primary residence" definition and deduction of home value from net worth.* While seven of the eight promulgating states adopt the definition and deduction, states that have not yet promulgated exemptions are likely to follow the lead of Washington, which in March 2012 proposed an amendment to replace this simple home-value deduction with one that factors in the amount of indebtedness on the

primary residence. State securities practitioners have increasingly commented to regulators that only a net worth calculation taking into account the indebtedness on an investor's primary residence is a realistic, and therefore fair, calculation.

- *"Private fund" definition.* At first glance, the states' variations of this definition seem to differ only in minor ways: States adopting the NASAA model rule verbatim, like Rhode Island, refer to a *private fund* as an issuer that would be an investment company as defined in Section 3 of the 1940 Act but for Sections 3(c)(1) and 3(c)(7), while California and Indiana refer to a *qualifying private fund* in SEC Rule 203(m)-1, and Michigan relies on the private fund definition from Section 402(a) of the Dodd-Frank Act. But while all eight states' definitions of a private fund appear substantively the same, those states that adopt the "qualified private fund" definition in SEC Rule 203(m)-1 as their private fund definition may be defining a private fund more broadly than the states that adopt the simple definition from the NASAA model rule. The SEC rule allows investment advisers to treat as a private fund an issuer that qualifies for an exclusion from the "investment company" definition in 1940 Act Section 3, *in addition to those [funds] provided by Section 3(c)(1) or 3(c)(7) of the 1940 Act* (as long as the adviser treats the issuer as a private fund under the Advisers Act and rules).

- *"Venture capital fund" definition and exclusion of venture capital funds from 3(c)(1) funds.* There is consensus among the SEC in Rule 203(l)-1, the NASAA organization in Subsection (c) of the model rule and the eight promulgating states that advisers to venture capital funds are exempt from registration. The non-uniformity, however, occurs with the definition of a venture capital fund: Two of the promulgating states, California and Indiana, diverge from subsection (a)(5) of the NASAA model rule that defines a venture capital fund as a private fund meeting the definition of a venture capital fund in SEC Rule 203(l)-1. California's definition differs from the NASAA model rule by not only defining a venture capital *investment* rather than a venture capital *fund* but by providing a more complex definition than the one in the NASAA model rule and by defining a "venture capital *company*," a term not defined in the NASAA model rule. In addition, California's definition of a venture capital investment mentions "affiliated persons," "management rights" and "operating companies" that are elsewhere defined in the California exemption but not in the NASAA model rule. And Indiana's definition is much more complex than the NASAA model rule definition by defining a venture capital fund to include a fund that represents to investors that it: (1) pursues a venture capital strategy; (2) holds no more than 20% of its assets in securities of qualifying companies; (3) does not issue excessive debt; (4) does not issue redeemable securities; and (5) is not registered under 1940 Act Section 8 and does not define itself as a business development company. These divergences by two of the eight promulgating states, adding complexity to the venture capital fund definition, clear the way for other states to deviate from the model rule.

- "A*ssets under management" definition adopted in California's private fund adviser exemption.* The "assets under management" (AUM) definition in California's private fund adviser exemption is likely to encourage other states to include AUM provisions

even though California currently does not have any AUM provisions other than the definition, and none of the other promulgating states even have an AUM definition. The calculation of an investment adviser's AUM is now of prime importance because it is the basis for the process currently underway in which investment advisers must determine whether they are required to switch their status from a federal to state adviser and be subject to SEC or state registration and post-registration requirements. Even after the switch process ends on June 28, 2012, the AUM calculation will remain integral for investment advisers because they will need to know their AUM at any given time to determine whether they must again switch their advisory status and, if so, what the different requirements are for complying with the switch. The importance of AUM growing out of the switch process combined with the emphasis the SEC puts on AUM in SEC Rule 203(m)-1 strongly suggests that at least some of the additional states adopting a private fund adviser exemption will, like California, include pivotal AUM provisions in their respective exemptions.

- *Additional requirements for private fund advisers to certain 3(c)(1) funds.* The eight promulgating states uniformly exclude venture capital funds from the 3(c)(1) fund requirements that investment advisers must comply with under subsection (c) of the NASAA model rule, by virtue of the exemption for venture capital funds under SEC Rule 203(l)-1. However, Massachusetts goes further by excluding 3(c)(7) funds as well as venture capital funds from the 3(c)(1) fund requirements for investment advisers. This Massachusetts variation opens the door for other states, in their private fund adviser exemptions, to diverge in the types of funds they exclude from 3(c)(1) requirements, with the excluded funds in those state exemptions possibly being 3(c)(7) funds and/or other types of 3(c)(1) funds in addition to the already excluded venture capital funds.

  Another divergence in this provision concerns the definition that beneficial owners of 3(c)(1) funds must meet at the time they purchase an issuer's securities. The NASAA model rule and four of the eight promulgating states require beneficial owners to meet the "qualified client" definition in Advisers Act Rule 205-3, while three states, California, Indiana and Wisconsin, require beneficial owners to meet the "accredited investor" definition in Rule 501(a) of Regulation D. Michigan incorporates both definitions. This divergence among the states is substantive because qualified clients and accredited investors are two separate entity types comprising different statutory characteristics. Therefore, the non-uniform adoption of this definition by the eight promulgating states will, as additional states diverge on the particular definition they choose for investors to meet, have ramifications for advisers by making compliance dependent on the state in which they attempt to claim the exemption.

- *Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients.* Two instances of non-uniformity in the above "additional requirements" provision at subsection (c) of the NASAA model rule also appear in this grandfathering provision at subsection (h). The model rule allows investment advisers to 3(c)(1) funds to qualify for the private fund adviser exemption even though their beneficial owner-investors are not qualified clients. Massachusetts again excludes 3(c)(7) funds and venture capital funds from the 3(c)(1) fund requirements for investment advisers

whose beneficial owner-investors are non-qualified clients. And the NASAA model rule's requiring the "qualified client" definition from subsection (c) to apply to the grandfathering provision at subsection (h) as well, to determine whether a beneficial owner-investor is a *qualified* or *non-qualified* client, raises the second instance of non-uniformity, as some states will not follow the model rule's suggestion that the funds' beneficial owner-investors must meet the same definition in the states' grandfathering provision—whether "qualified client" or "accredited investor"—that they are required to meet in the states' additional requirements provision. ❐

About the Author

Jay Fishman is an Associate Managing Editor at Wolters Kluwer Law & Business, a leading provider of corporate and securities information. Jay contributes regularly to the industry-standard *Blue Sky Law Reporter* and regularly posts state securities updates and other articles on Jim Hamilton's World of Securities blog at http://jimhamiltonblogspot.com. Fishman has been tracking, analyzing and writing about state securities laws, regulations, policy statements and interpretive opinions for over 20 years. He developed the *Blue Sky Smart Charts*, a tool for creating custom charts that compare the requirements of 54 jurisdictions on multiple topics. Fishman has spoken publicly on various state securities law topics. He received a law degree from the John Marshall School of Law in Chicago and is licensed to practice law in Illinois.

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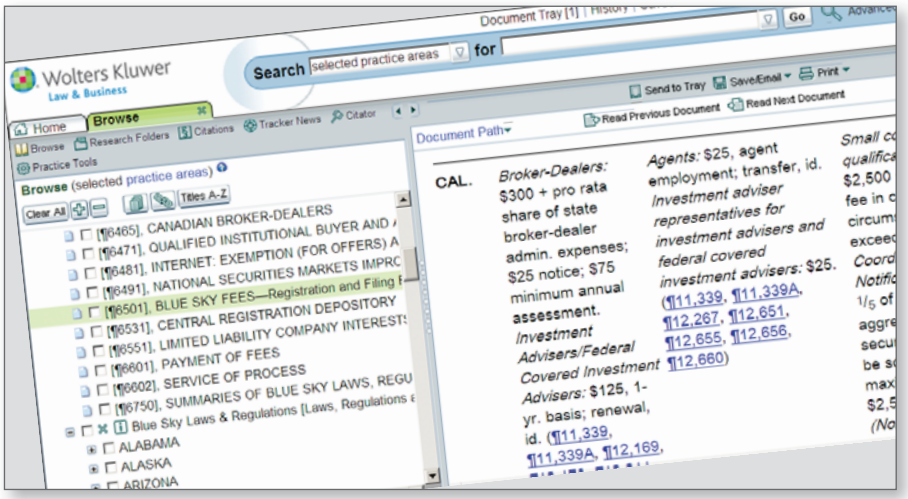

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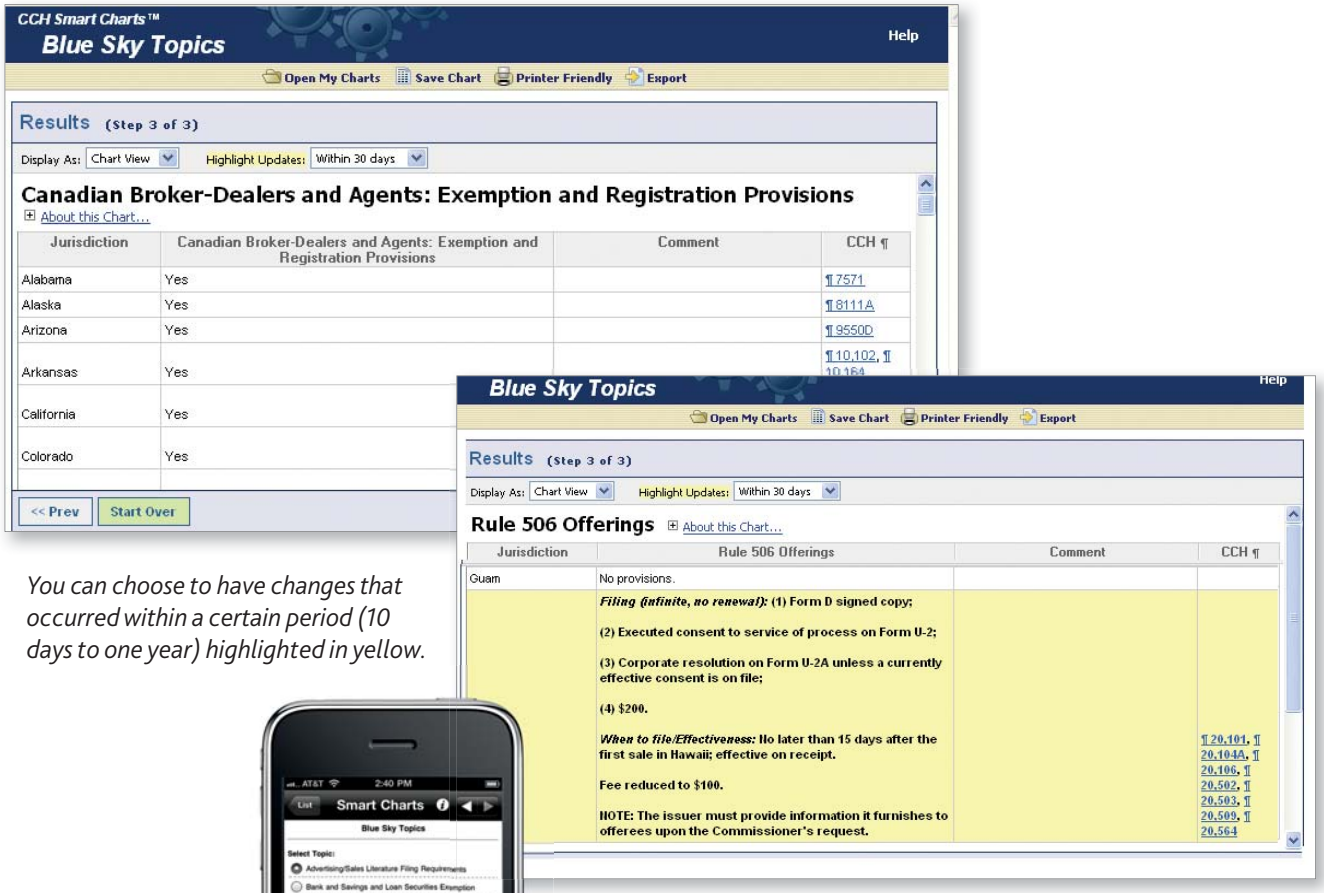

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