

NOTICE OF RULEMAKING ACTION  
TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner (Commissioner) proposes to amend Section 260.204.9 of Title 10 of the California Code of Regulations (hereinafter "Rule 260.204.9") relating to investment advisers who advise private funds.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Corporations  
Attn: Karen Fong, Office of Legislation and Policy  
1515 K Street, Suite 200  
Sacramento, CA 95814

Electronic Mail

[regulations@corp.ca.gov](mailto:regulations@corp.ca.gov)

Facsimile

(916) 322-5875

Comments may be submitted until 5:00 p.m., February 20, 2012. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Department licenses and regulates investment advisers under the Corporate Securities Law of 1968 (Corporations Code Section 25000 et seq., the "Corporate Securities Law"). Under the Corporate Securities Law, it is unlawful for an investment adviser to conduct business without first applying for and securing a certificate unless the adviser is specifically exempt from that requirement. Previously, the Department, by regulation, conferred an exemption set forth in Rule 260.204.9 from state registration for investment advisers that satisfied the exemption set forth in Section 203(b)(3) of the Investment Advisers Act of 1940. However, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank"), repealed that exemption. Public Law No. 111-

203. Accordingly, on July 21, 2011, the Department promulgated emergency regulations to preserve the existing exemption from state registration for investment advisers who relied on the expiring federal exemption.

In this rulemaking action, the Department proposes a successor exemption for advisers to private funds, provided they (1) have not violated securities laws, (2) file periodic reports with the Department, (3) pay the existing investment adviser registration and renewal fees, and (4) comply with additional safeguards when advising funds organized under Section 3(c)(1) of the Investment Company Act of 1940. The proposed exemption is based on the proposed North American Securities Administrators Association (NASAA) *Model Rule for Exempt Reporting Advisers* (available at: <http://www.nasaa.org/1787/proposed-model-rule-for-exempt-reporting-advisers/>). The exemption would also conform to federal law, when applicable, by referencing the definitions set forth in *Dodd-Frank*, and the administrative rules promulgated thereunder. In light of the changes to law made by *Dodd-Frank*, the objectives of this rulemaking action are to reduce regulatory burdens on advisers to private funds while ensuring minimum standards and oversight are instituted.

#### BUSINESS REPORTING REQUIREMENT

In accordance with Government Code section 11346.3, subdivision (c), the Commissioner finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation which requires a report apply to businesses.

#### AUTHORITY

Sections 25204 and 25610, Corporations Code.

#### REFERENCE

Section 25230, Corporations Code.

#### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation (with the changes clearly indicated), unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 02/11 - B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 02/11 - C. These documents are also available through the Department's website [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Legislation and Policy maintains the rulemaking file. The rulemaking

file is available for public inspection at the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### FISCAL IMPACT

- Cost or savings to any state agency: none.
- Direct or indirect costs or savings in federal funding to the state: none.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: none.
- Other nondiscretionary costs/savings imposed on local agencies: none.

#### DETERMINATION GOVERNMENT CODE SECTION 11346.5(a)(8)

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### EFFECT ON SMALL BUSINESS

The Commissioner has determined that the adoption of these regulations will not affect small business. Under Government Code Section 11342.610, "small business" does not include the professional or business activity of investment advisers.

## CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to Karen Fong at (916) 322-3553. The backup contact person is Tanya Bosch at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Ivan V. Griswold, Corporations Counsel at (415) 972-8937.

Dated: December 15, 2011  
Sacramento, California