



ADMINISTRATIVE RULES OF MONTANA

6.10.309 PRIVATE FUND INVESTMENT ADVISOR REGISTRATION EXEMPTION

- (1) For purposes of this rule, the following definitions apply:
 - (a) "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise enjoys the benefits of ownership even though the title to the private fund is in another name.
 - (b) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private fund(s).
 - (c) "Qualifying private fund" means an issuer that qualifies for the exclusion from the definition of an investment company under one or more of sections 3(c)(1), 3(c)(5), and 3(c)(7) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-3(c)(1), (5) and (7)).
 - (d) "Retail buyer fund" means a qualifying private fund that is not a venture capital fund and that qualifies for the exclusion from the definition of an investment company under one or both of sections 3(c)(1) and 3(c)(5) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-3(c)(1) and (5)).
 - (e) "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.
 - (f) "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.
- (2) Subject to the additional requirements of (3), a private fund adviser shall be exempt from the registration requirements of 30-10-201, MCA, applicable to investment advisors if the private fund adviser satisfies each of the following conditions:
 - (a) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualifying event as described in 30-10-201(13), MCA, and/or Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);
 - (b) the private fund adviser makes available to the department upon written request:
 - (i) 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
 - (ii) if the private fund adviser is not required to submit such filings to the Securities and Exchange Commission, the private fund adviser prepares the reports and amendments referenced in (2)(b)(i) on or before the date(s) such report(s) would be required to be filed pursuant to SEC Rule 204-4;

- (c) the private fund adviser pays the fees specified in 30-10-209, MCA, for each calendar year in which it relies upon the exemption established by this rule. If the private fund adviser has paid an initial fee pursuant to this rule and it intends to rely on the exemption in a succeeding calendar year, it must pay the renewal fee specified by 30-10-209, MCA, before January 1 of the succeeding year.
- (3) In order to qualify for the exemption described in (2), a private fund adviser who advises at least one retail buyer fund shall, except as otherwise provided in (9) below, in addition to satisfying each of the conditions specified in (2), comply with the following requirements:
- (a) The private fund adviser shall advise only those retail buyer funds whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who:
 - (i) at the time the securities are purchased from the issuer, either:
 - (A) after deducting the value of the primary residence from the person's net worth, would each meet the definition of "accredited investor" in SEC Rule 501(a) of Regulation D, 17 C.F.R. § 230.501(a); or
 - (B) were employees, managers, directors, or officers of the private fund advisor; or
 - (ii) obtained the securities through a transfer not involving the sale of that security.
 - (b) The private fund adviser shall not enter into, perform, renew, or extend any investment advisory contract that provides for compensation to the investment adviser based on a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds of an investor in the private fund that is not a qualified client as defined in SEC Rule 205-3, 17 C.F.R. § 275.205-3.
 - (c) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a retail buyer fund:
 - (i) all services, if any, to be provided to individual beneficial owners, and to the fund itself;
 - (ii) all duties, if any, the investment adviser owes to the beneficial owners, and to the fund itself; and
 - (iii) any other material information affecting the rights or responsibilities of the beneficial owners that the private fund advisor is required to disclose under other state or federal law.
 - (d) The private fund adviser shall obtain on an annual basis and at liquidation financial statements of each retail buyer fund audited by an independent certified public accountant (CPA). A copy of the audited financial statements shall be delivered to each beneficial owner of the fund within 180 days after the end of each fiscal year and within 180 days of liquidation, and shall be made available to CSI on written request.
- (4) If a private fund adviser is registered with the Securities and Exchange Commission, the adviser is not eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in 30-10-201, MCA, and the fees found at 30-10-209, MCA.
- (5) A person is exempt from the registration requirements of 30-10-201, MCA, applicable to investment advisor representatives if the person is employed by or associated with an investment

adviser that is exempt from registration in this state pursuant to this rule and does not otherwise act as an investment adviser representative.

- (6) Upon a written request from the department, an investment adviser relying on an exemption provided by this rule shall make available the records set forth in (2)(b) or (3)(d). Failure to comply with the request will result in the loss of the exemption provided by this rule.
- (7) 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 90 days after the date the investment adviser's eligibility for this exemption ceases.
- (8) An investment advisor may request, pursuant to the process in 30-10-209(4), MCA, an exemption or exception to the requirements of (2)(a). The requirements of (2)(a) may be waived upon the commissioner's discretion after a determination is made that the waiver would be in the public interest.
- (9) An investment adviser to a retail buyer fund that has one or more beneficial owners who do not satisfy the conditions set forth in (3)(a) is eligible for the exemption contained in (2) if the following conditions are satisfied:
 - (a) the subject fund existed prior to the effective date of this rule;
 - (b) as of the effective date of this rule, the subject fund ceases to accept beneficial owners other than those described in (3)(a);
 - (c) the investment adviser discloses in writing the information described in (3)(c) to all beneficial owners of the fund; and
 - (d) as of the effective date of this rule, the investment adviser delivers audited financial statements as required by (3)(d).
- (10) Investment advisers to qualified private funds shall have 120 days from the effective date of this rule to establish compliance with this rule. CSI shall take no administrative action relating to registration failures during such grace period. However, the anti-fraud provisions of (11) remain in effect.
- (11) Nothing in this rule shall be construed to provide an exemption from the operation of the anti-fraud provisions of 30-10-301, MCA.

Authorizing statute(s): 30-10-105, 30-10-107, MCA

Implementing statute(s): 30-10-105, 30-10-201, MCA

History: NEW, 2024 MAR p. 1999, Eff. 8/10/24.