

**State of California
Office of Administrative Law**

In re:
Department of Corporations

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections:

Amend sections: 260.204.9

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2012-0105-02 EE

This emergency rulemaking action readopts, for 90 days, the effectiveness of an expired federal-law Securities and Exchange Commission registration exemption for investment advisers who continue to rely upon and meet the criteria of that expired federal exemption.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/18/2012 and will expire on 4/17/2012. The Certificate of Compliance for this action is due no later than 4/16/2012.

Date: 1/11/2012



Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: Preston Dufauchard
Copy: Karen Fong

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

Clear Print

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2012-0105-02EE
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California
SV
JAN 11 2012 1:16pm
DEBRA BOWEN
Secretary of State

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Department of Corporations	AGENCY FILE NUMBER (If any) PRO 02/11
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Private Fund Adviser Exemption	TITLE(S) 10	FIRST SECTION AFFECTED 260.204.9	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Karen Fong	TELEPHONE NUMBER (916) 322-3553	FAX NUMBER (Optional) (916) 322-5875
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Private Fund Adviser Exemption	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2011-0628-01 E, Z-2011-1215-01
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 260.204.9
TITLE(S) 10	REPEAL

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) January 18, 2012, see attached
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____
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7. CONTACT PERSON Karen Fong or Tanya Bosch	TELEPHONE NUMBER (916) 322-3553	FAX NUMBER (Optional) (916) 322-5875	E-MAIL ADDRESS (Optional) kfong@corp.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Colleen E. Monahan</i>	DATE 1/5/12
TYPED NAME AND TITLE OF SIGNATORY Colleen E. Monahan, Deputy Commissioner	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
JAN 11 2012
Office of Administrative Law

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968
EFFECTIVE: JANUARY 18, 2012

1. Section 260.204.9 is amended to read:

§ 260.204.9. Exemption for Certain Investment Advisers with Fewer than 15 Clients.

(a) 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 (1) does not hold itself out generally to the public as an investment adviser, (2) during the course of the preceding twelve months has had fewer than 15 clients, (3) 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 that 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 (4) either (i) has assets under management, as defined in subsection (b)(2), of not less than \$25,000,000 or (ii) provides investment advice to only venture capital companies, as defined in subsection (b)(3).

(b) For purposes of this rule, the following definitions shall apply:

(1) Client shall have the same meaning as defined by the Securities and Exchange Commission under the rule adopted pursuant to Section 222(d) of the federal Investment Advisers Act of 1940, as amended.

(2) "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.

(3) 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 (b)(4) or derivative investments described in subsection (b)(5).

(4) 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 (b)(6).

(5) 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.

(6) “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 capital investment is made.

(7) 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.

(8) “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.

Note: Authority cited: Sections 25204 and 25610, Corporations Code. Reference: Section 25230, Corporations Code.