

Strictly Business

A Business Law Blog for Entrepreneurs, Emerging Companies, and the Investment Management Industry.



ABOUT THE AUTHOR

Alexander J. Davie is an attorney based in the Nashville, TN area. His practice focuses on corporate, finance, and real estate transactions. He works mainly with emerging companies, venture funds, entrepreneurs, and startups. His firm's website can be found at www.alexanderdavie.com.

In his corporate practice, Mr. Davie has worked extensively with his clients on all aspects of their businesses, including company formation, business planning, mergers and acquisitions, vendor and customer contracts, corporate governance, debt and equity financings, and securities offerings. In addition, he has represented investment advisors, securities brokers, hedge funds, private equity funds, and real estate partnership syndicators in numerous private offerings of securities and in ongoing compliance. Prior to returning to private practice, Mr. Davie served as the general counsel to a private investment fund manager.

In his real estate practice, he has participated in property acquisitions, mortgage financings, and commercial leasing matters throughout the United States. He has represented developers, governmental entities, life insurance companies, banks, and owners of malls, shopping centers, industrial parks, and office towers. He has worked on a number of transactions involving the syndication of real estate partnerships, advising sponsors on both real estate and securities issues.

State Investment Adviser Registration Requirements for Private Fund Managers Part 4: The Southwest

This post is the fourth in a series discussing the issues private fund managers face with state investment adviser registration requirements and how those requirements interact with federal law.

Previously, in the first installment of this series, [I have written](#) about the fact that even when a private fund manager may be exempt from SEC registration, it still may be subject to a registration requirement with its own home state. The rules vary greatly from state to state. In further installments, I summarized the state rules regarding investment adviser registration for private fund managers in the [Southeast](#) and [Midwest](#). As the fourth installment, I have summarized below the rules as they exist as of August 31, 2011 in the nine states in the Southwestern portion of the United States. Future posts will focus on states in other regions of the United States.

1. [Arizona](#). There is no exemption for private fund managers. Any private fund manager in the state of Arizona must register with the Arizona Securities Division unless it is registered with the SEC. In addition, fund managers in Arizona registered with the SEC must make a notice filing with the Arizona Securities Division.

2. [Colorado](#). There is no exemption for private fund managers. Any private fund manager in the state of Colorado must register with the Colorado Division of Securities unless it is registered with the SEC. In addition, fund managers in Colorado registered with the SEC must make a notice filing with the Colorado Division of Securities.

3. [Kansas](#). Previously, private fund managers in Kansas who would be exempt under the federal 203(b)(3) exemption (i.e. the 15 client exemption) were exempt under [Interpretive Opinion No. 2009-003](#) issued by the Kansas Securities Commissioner on November 4, 2008. Presumably, since the 15 client exemption has been repealed, this Interpretive Opinion would no longer be effective. It appears that the Kansas Securities Commissioner has issued a new "special order" extending the old Interpretive Opinion until March 30, 2012. I have been unable to find a copy of the "special order," but a press release

describing it can be found [here](#). According to the press release, "Before [March 30, 2012], the Commissioner will consider adopting a proposed model exemption for advisers to private funds." Therefore, it appears that private fund managers in Kansas will not be required to register until March 30, 2012 or until the Kansas Securities Commissioner issues further guidance.

4. Nebraska. There is no exemption for private fund managers. Any private fund manager in the state of Nebraska must register with the Nebraska Director of Banking and Finance unless it is registered with the SEC. In addition, fund managers in Nebraska registered with the SEC must make a notice filing with the Nebraska Director of Banking and Finance.

5. Nevada. There is no exemption for private fund managers. Any private fund manager in the state of Nevada must register with the Nevada Securities Division unless it is registered with the SEC. In addition, fund managers in Nevada registered with the SEC must make a notice filing with the Nevada Securities Division.

6. New Mexico. There is no exemption for private fund managers. Any private fund manager in the state of New Mexico must register with the New Mexico Securities Division unless it is registered with the SEC. In addition, fund managers in New Mexico registered with the SEC must make a notice filing with the New Mexico Securities Division.

7. Oklahoma. There is no exemption for private fund managers. Any private fund manager in the state of Oklahoma must register with the Oklahoma Department of Securities unless it is registered with the SEC. In addition, fund managers in Oklahoma registered with the SEC

must make a notice filing with the Oklahoma Department of Securities.

8. Texas. There is no exemption for private fund managers. Any private fund manager in the state of Texas must register with the Texas State Securities Board unless it is registered with the SEC. In addition, fund managers in Texas registered with the SEC must make a notice filing with the Texas State Securities Board.

9. Utah. Generally, there is no exemption for private fund managers. However, the Division of Securities has issued a [No Action Letter](#) on February 28, 2008, which exempted the manager of a private fund which used its investors' cash investment proceeds to make loans to be used in real estate development. The Division relied on the reasoning that the managing member of the fund was not advising the fund on securities, because there was no discretion to trade or hold the loans after they were made. Given that most private funds do make investment decisions on an ongoing basis, this no action letter is likely to be of limited value to most private fund managers. Therefore, in most cases, a private fund manager in the state of Utah must register with the Utah Division of Securities unless it is registered with the SEC. In addition, fund managers in Utah registered with the SEC must make a notice filing with the Utah Division of Securities.

As always, you should consult an attorney who is familiar with securities regulatory issues in assessing whether your particular fund management business is required to register under state law.

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