

# 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](http://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 6: The Northeast

*This is the sixth and final post 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](#), [Midwest](#), [Southwest](#), and [Northwest](#). As the sixth installment, I have summarized below the rules as they exist as of September 11, 2011 in the twelve states in the Northeastern portion of the United States (which includes the District of Columbia).

1. [Connecticut](#). Prior to the passage of the Dodd-Frank Act, the Connecticut Commissioner of Banking had issued [an Order dated October 14, 1997](#), which exempted private fund managers from investment adviser registration if they met the federal 15-client exemption. On July 11, 2011, the Commissioner of Banking issued [a new Order](#), which rescinded the previous order. The new Order exempts from investment adviser registration any fund manager who meets the federal venture capital fund exemption and the federal private fund adviser exemption (which exempts investment advisers who solely advise private funds and have assets under management of less than \$150 million). The order also requires such fund managers to submit a copy of the abbreviated Form ADV that they are required to file with the SEC as “exempt reporting advisers” to the Connecticut Commissioner of Banking. The Connecticut Commissioner of

Banking also issued [an additional Order on July 11, 2011](#), which established a timetable for the transition. Under this timetable, fund managers who do not meet the new federal exemptions but manage under \$25 million in assets (and are thus ineligible to register with the SEC) must register with Connecticut by March 30, 2012. Fund managers who do meet the new federal exemptions will be required to begin submitting the abbreviated Form ADV on March 30, 2012 (the same time they must begin to do so with the SEC).

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

3. District of Columbia. There is no exemption for private fund managers, as confirmed by a [Bulletin dated July 21, 2011](#) issued by the District of Columbia Department of Insurance, Securities and Banking. The Bulletin gave private fund managers in the District of Columbia which are not registered with the SEC until February 28, 2012 to submit an application for an investment adviser license to the District of Columbia Department of Insurance, Securities and Banking. In addition, fund managers in the District of Columbia registered with the SEC must make a notice filing with the District of Columbia Department of Insurance, Securities and Banking.

4. Maine. There is no exemption for private fund managers. Any private fund manager in the state of Maine must register with the Maine Office of Securities unless it is

registered with the SEC. In addition, fund managers in Maine registered with the SEC must make a notice filing with the Maine Office of Securities.

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

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

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

8. New Jersey. N.J. Stat. Ann. § 49:3-56(g)(1) exempts from investment adviser registration any person that “has a place of business in [New Jersey] and during any period of 12 consecutive months that person does not have more than five clients, who are residents of [New Jersey].” Therefore, if a fund manager manages five or fewer funds, it is exempt from registration. The exemption is statutory; therefore it will require an act of the state legislature to repeal it. A fund manager in

New Jersey registered with the SEC as an investment adviser does not need to make a notice filing with the New Jersey Bureau of Securities if it meets the five client exemption, per N.J. Stat. Ann. § 49:3-56(g).

9. New York. N.Y. Gen. Bus. Law § 359-eee(a)(5) exempts from investment adviser registration any person that has “sold, during the preceding twelve month period, investment advisory services to fewer than six persons residing in [the state of New York].” Therefore, if a fund manager manages five or fewer funds, it is exempt from registration. The exemption is statutory; therefore it will require an act of the state legislature to repeal it. A fund manager in New York registered with the SEC as an investment adviser does not need to make a notice filing with the New Jersey Bureau of Securities if it meets the five client exemption, per N.Y. Gen. Bus. Law § 359-eee(c).

10. Pennsylvania. 70 P.S. § 1-102(j)(vii) exempts from investment adviser registration any person that “has a place of business in [Pennsylvania] and during the preceding twelve-month period has had not more than five clients in or out of [Pennsylvania] and does not hold himself out generally to the public as an investment adviser.” Therefore, if a fund manager manages five or fewer funds, it is exempt from registration. The exemption is statutory; therefore it will require an act of the state legislature to repeal it. A fund manager in Pennsylvania

registered with the SEC as an investment adviser does not need to make a notice filing with the Pennsylvania Securities Commissioner if it meets the five client exemption, per 70 P.S. § 1-303(a)(iii)(C).

11. Rhode Island. There is no exemption for private fund managers. Any private fund manager in the state of Rhode Island must register with the Rhode Island Department of Business Regulation unless it is registered with the SEC. In addition, fund managers in Rhode Island registered with the SEC must make a notice filing with the Rhode Island Department of Business Regulation.

12. Vermont. There is no exemption for private fund managers. Any private fund manager in the state of Vermont must register with the Vermont Commissioner of Banking, Insurance, Securities, and Health Care Administration unless it is registered with the SEC. In addition, fund managers in Vermont registered with the SEC must make a notice filing with the Vermont Commissioner of Banking, Insurance, Securities, and Health Care Administration.

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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