191—50.45(502) Registration exemption for investment advisers to private funds.

50.45(1) *Definitions.* For purposes of this rule, the following definitions shall apply:

"3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under the Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(1)).

"Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

"Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1 (17 CFR 275.203(m)-1).

"Value of primary residence" means the fair market value of a person's primary residence, less the amount of debt secured by the property up to its fair market value.

"Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1 (17 CFR 275.203(l)-1).

50.45(2) *Exemption for private fund advisers.* Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 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 disqualification as described in SEC Rule 262 of Regulation A (17 CFR 230.262).

b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4 (17 CFR 275.204-4).

c. The private fund adviser pays any applicable fees.

50.45(3) *Additional requirements for private fund advisers to certain 3(c)(1) funds.* In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3)*"b,"* comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3 (17 CFR 275.205-3) at the time the securities are purchased from the issuer.

b. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(1) All services, if any, to be provided to individual beneficial owners;

(2) All duties, if any, the private fund adviser owes to the beneficial owners; and

(3) Any other material information affecting the rights or responsibilities of the beneficial owners.

c. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

50.45(4) *Federal covered investment advisers.* If a private fund adviser is registered with the SEC, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers.

50.45(5) *Investment adviser representatives.* A person is exempt from the registration requirements if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to rule 191—50.45(502) and does not otherwise act as an investment adviser representative.

50.45(6) *Electronic filing.* The report filings described in paragraph 50.45(2)*"b"* shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required are filed and accepted by the IARD on the state's behalf.

50.45(7) *Transition.* An investment adviser that becomes ineligible for the exemption provided by rule 191—50.45(502) must comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser's eligibility for this exemption ceases.

50.45(8) *Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.* An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial

owners who are not qualified clients as described in paragraph 50.45(3)*"a"* is eligible for the exemption contained in subrule 50.45(2) if the following conditions are satisfied:

a. The subject fund existed prior to November 6, 2013;

b. As of November 6, 2013, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in paragraph 50.45(3)*"a"*;

c. The investment adviser discloses in writing the information described in paragraph 50.45(3)*"b"* to all beneficial owners of the fund; and

d. As of November 6, 2013, the investment adviser delivers audited financial statements as required by paragraph 50.43(3)*"c."*

This rule is intended to implement Iowa Code section 502.403.

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