

## Massachusetts Securities Division Sending Letters Requiring Documentation from MA Exempt Reporting Advisers

Written by Jeffrey D. Collins, Meredith A. Haviland

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The Massachusetts Securities Division ("the Division") is currently sending letters to exempt reporting advisers in Massachusetts ("MA ERAs") who manage private funds which rely on the exclusion from the definition of "Investment Company" set forth in Section 3(c)(1) of the Investment Company Act of 1940, as amended.

The letters require the MA ERA to provide certain representations and documentation to demonstrate that the MA ERA is operating in compliance with the requirements of the MA ERA exemption. MA ERAs should be on the lookout for such a letter from the Division (we expect that every MA ERA advising 3(c)(1) funds will receive one and likely should have already) and respond promptly.

As a reminder, MA ERA filers must make an annual filing by completing portions of Form ADV, paying a filing fee at year-end, and must not be subject to certain statutory disqualifications under Rule 262 of Regulation A promulgated under the Securities Act of 1933, as amended. MA ERAs who advise 3(c)(1) funds must comply with certain additional requirements, as follows:

- All investors in a 3(c)(1) fund managed by a MA ERA must be "qualified clients" as defined in Rule 205-3 under the Investment Advisers Act of 1940, as amended;
- MA ERAs must disclose to each investor at the time of purchase of an interest in the fund (a) the services provided to investors (if any), (b) the duties owed to investors (if any), and (c) any other material information affecting the rights or responsibilities of investors; and
- MA ERAs must annually deliver audited financial statements of the 3(c)(1) fund to investors.

In connection with its current inquiry, the Division is requesting documentation from MA ERAs who advise 3(c)(1) funds to verify compliance with the above requirements.

MA ERAs should consult with their counsel in connection with preparing a response.

### RELATED INDUSTRIES

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### RELATED PRACTICES

- [Business Counseling](#)
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