SPENCER J. COX
*Governor*

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*Lieutenant Governor*

Division of Securities
UTAH DEPARTMENT OF COMMERCE

MARGARET W. BUSSE
*Executive Director*

ROBERT B. CUMMINGS
*Division Director*

June 29, 2026

Mr. Stephen Sandberg, Esq.
Clark Business Law
199 N 290 W Ste.100
Lindon, UT 84042

***Via email:*** *stephen@clarkbusinesslaw.com*

Re: Element Investments Management, LLC – No-Action Request

Dear Mr. Sandberg:

The Utah Division of Securities ("Division") has reviewed your June 12, 2026 request for a no-action letter concerning Element Investments Management, LLC ("Element"), a Utah limited liability company headquartered in Provo, Utah. Your request for no-action relief from the Division is authorized by Section 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Utah Administrative Code ("UAC") Rule R164-25-5.

Your letter indicates Element intends to act as an investment adviser that will manage several private funds (the "Funds"). The Funds will each be a qualifying private fund as defined in Rule 203(m)-1 of the Investment Advisers Act of 1940 ("Advisers Act") and will be eligible for exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940. The Funds will be open solely to persons who qualify both as an "accredited investor" as defined in Rule 501(a) of Regulation D under the Securities Act of 1933 and as a "qualified client" as defined in Rule 205-3 of the Advisers Act.

Element does not qualify for an exemption from licensing contained in UAC Rule R164-4-9 for providing investment advice to private funds. However, Element does qualify for an exemption under the NASAA Model Rule[1] that provides a licensing exemption for advisers to certain private funds, as Element meets the required criteria of that rule as described in your letter. Neither Element nor any of its advisory affiliates are subject to a disqualifying event under Rule

[1] NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule, attached as Exhibit A to your request letter. We note Rule R164-4-9 was promulgated prior to the existence of the NASAA Model Rule, which as your letter indicates has been adopted in some form in more than 38 U.S. jurisdictions.

506(d)(1) of Regulation D, and Element will provide the required information regarding services, duties, rights and responsibilities to all beneficial owners of the Funds at the time of purchase, and will provide audited financial statements to each beneficial owner of the Funds on an annual basis. Element further will file with the Division each report and amendment thereto that is required to be filed with the United States Securities & Exchange Commission and pay any filing fee established in the future by the Division for such advisers.

Based upon the representations in your letter, we will not recommend any enforcement or administrative action should Element proceed with its business in Utah as an exempt reporting adviser as set forth in your request letter. As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, the relief granted herein is expressly limited to Element and will have no precedential effect whatsoever for any other party. This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or administrative actions. Finally, the issuance of a no-action letter does not absolve any party from complying with the antifraud provisions contained in Section 61-1-1 of the Act.

Very truly yours,

UTAH DIVISION OF SECURITIES

Charles M. Lyons

Charles M. Lyons
Legal Analyst

cc: Jeff Teichert, Chief of Compliance
Bryan Cowley, Chief of Licensing and Corporate Finance

CLARK BUSINESS LAW

**Stephen Sandberg**
stephen@clarkbusinesslaw.com

June 12, 2026

Mr. Robert B. Cummings
Securities Director
Department of Commerce
Utah Division of Securities
PO Box 146760
Salt Lake City, UT 84114-6760
rcummings@utah.gov

**VIA E-MAIL**

Re: Element Investments Management, LLC – No-Action Request Letter

Dear Director Cummings:

On behalf of Element Investments Management, LLC, a Utah limited liability company ("**Element**"), we respectfully request a No Action Letter from the Utah Division of Securities (the "**Division**") that would allow Element, which is contemplated to be an investment adviser to a private fund that qualifies for a registration exemption based on the North American Securities Administrators Association ("**NASAA**") Registration Exemption for Investment Advisers to Private Funds Model Rule (the "**Model Rule**"), to file as an exempt reporting adviser in Utah. As described further herein, when it commences operations as an investment adviser, Element will meet the investment adviser licensing exemption requirements under the Model Rule, as well as under Rule 203(m)-1 of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"). Therefore, exempting Element from investment adviser licensing is in the public interest.

**Background Information**

Element intends to become an investment adviser that will manage qualifying, but yet undetermined, private funds as defined in Rule 203(m)-1 of the Investment Advisers Act (the "**Funds**"). The Funds will be eligible for exclusion from the definition of an investment company under sections 3(c)(1) of the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Funds will be open soley to persons who qualify as both an "accredited investor", as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "**Securities Act**"), and a "qualified client", as defined in Rule 205-3 under the Advisers Act. Element is currently headquartered in Utah, and it is contemplated that investors in the Funds will be located in the State of Utah.

Utah Administrative Code Section R164-4-9(A)(2) "provides exemptions from the licensing requirements of the Utah Uniform Securities Act for investment advisers and investment adviser representatives who meet specified criteria." The exemption under Utah Administrative Code Section R164-4-9(D) only applies to "a private fund that regularly makes equity investments in companies" when certain specified conditions are met. These specified conditions are designed for venture capital funds that usually take an active role with the companies in which those venture capital funds invest. However, this exemption does not apply to the Funds, which may not meet each of the specified conditions even though one or more of such Funds may pursue an overall venture capital strategy. Therefore, Element would not qualify for the exemption for investment advice to certain private funds who pursue a venture capital strategy.

While Element does not qualify for the narrow exemption outlined in Utah Administrative Code Section R164-4-9(D), which is designed specifically for venture capital funds that take an active management role in the target companies, Element would qualify for the much broader exemption under the Model Rule, which was adopted on December 16, 2011, and amended on October 8, 2013, attached hereto as Exhibit A. The Model Rule gives a licensing exemption for advisers to Section 3(c)(1) private funds if the private fund adviser satisfies each of the following conditions:

1. Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

2. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

3. The private fund adviser pays the fees specified in Section XXX [410 of USA 2002].

*See* Exhibit A, at (I)(b).

Neither Element nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1). Element will file the reports required to be filed by exempt reporting advisers and pay any filing fee established by the Division pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4.

Under the Model Rule, in addition to the requirements listed above, a private fund adviser who advises at least one Section 3(c)(1) fund that is not a venture capital fund must also comply with the following requirements:

1. 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 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

2. 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:

    a. all services, if any, to be provided to individual beneficial owners;

    b. all duties, if any, the investment adviser owes to the beneficial owners; and

    c. any other material information affecting the rights or responsibilities of the beneficial owners.

3. 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.

*See* Exhibit A, at (I)(c).

Element has not yet established an advisory relationship with any Funds. However, upon establishing such a relationship, Element will ensure that all new and existing investors in the Funds are limited to those who meet the who meet the definition of an "accredited investor", as defined in Rule 501(a) of Regulation D under the Securities Act, and a "qualified client", as defined in Rule 205-3 under the Advisers Act. Element will provide to all investors the required information regarding services, duties, rights and responsibilities to the beneficial owners of the Funds at the time of purchase. Element will provide audited financial statements to each beneficial owner of the Funds on an annual basis. Accordingly, Element will meet all the requirements of the registration exemption for private fund advisers under the Model Rule.

Element does not presently intend to compensate companies, entities, or individuals to introduce potential investors to the Funds. If Element decides that it is in the best interest of the Funds to engage such companies, entities, or individuals, it will seek the advice of counsel with respect to complying with regulations for broker-dealers or issuer agents, including but not limited to, raising capital and compensation.

**Basis for Relief**

Element qualifies for the registration exemption for private fund advisers under the Model Rule. The Model Rule, or a variation thereof which grants a similar exemption for a private fund adviser, has been adopted in at least 38 U.S. jurisdictions, meaning that private fund advisers similar or identical to Element are exempt from the registration requirements in a clear majority of jurisdictions in the United States. Further, the Division has granted similar relief to similarly-situated advisers before (see, e.g., AFA Fund Management, LLC, Division of Securities No Action Letter, May 13, 2026; Headwaters Capital, LLC, Utah Division of Securities No Action Letter, March 23, 2026; tZERO Capital Partners, LLC, Utah Division of Securities No

Action Letter, February 24, 2026; Creto Capital Management, LLC, Utah Division of Securities No Action Letter, August 1, 2025; Tintic Partners, LLC, Utah Division of Securities No Action Letter, April 22, 2025; Diligence Capital Investment Advisors, LLC, Utah Division of Securities No Action Letter, March 19, 2025; Bristol Capital Advisors, LLC, Utah Division of Securities No Action Letter, July 17, 2024; Blue Summit Capital Investments Management, LLC, Utah Division of Securities No Action Letter, January 25, 2024; Orchard Income Management, LLC, Utah Division of Securities No Action Letter, July 20, 2023; Hunter Search Management, LLC, Utah Division of Securities No Action Letter, April 28, 2023; OLO Capital Investment Manager, LLC, Utah Division of Securities No Action Letter, March 30, 2022; and Pinwheel Capital Management LLC, Utah Division of Securities No Action Letter, March 25, 2022).

Finally, we believe that exempting Element from the registration requirements would pose no risk to the beneficial owners of the Funds. Those beneficial owners will meet the SEC standards for investment sophistication and experience as both qualified clients and accredited investors. Element will provide the beneficial owners of the Funds with all of the material information necessary to evaluate the risks and merits of investing in the Funds, will provide any required annual filings to the SEC, the Division and any other state where annual filings are required. Given these facts, Element respectfully requests that the Division exempt Element from the investment adviser licensing requirements of Utah Uniform Securities Act.

If you have questions regarding this request or require additional information, please do not hesitate to contact me. I look forward to your response.

Sincerely,

Stephen Sandberg

Enclosure: Exhibit A – NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule

**EXHIBIT A**

**(see attached)**

**NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule**

*Adopted December 16, 2011; Amended October 08, 2013**

## I. TEXT OF MODEL RULE

***Rule XXX. Registration exemption for investment advisers to private funds.***

(a) ***Definitions***. For purposes of this regulation, the following definitions shall apply:

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

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

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

(4) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

(5) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

(b) ***Exemption for private fund advisers.*** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of Section XXX [403 of USA 2002] if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

(2) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(3) the private fund adviser pays the fees specified in Section XXX [410 of USA 2002].

(c) ***Additional requirements for private fund advisers to certain 3(c)(1) funds***. In order to qualify for the exemption described in paragraph (b) of this regulation, 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 paragraphs (b)(1) through (b)(3), comply with the following requirements:

* Amendments Adopted at NASAA's Annual Conference (Salt Lake City, UT)

(1) 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 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(2) 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:

(A) all services, if any, to be provided to individual beneficial owners;

(B) all duties, if any, the investment adviser owes to the beneficial owners; and

(C) any other material information affecting the rights or responsibilities of the beneficial owners.

(3) 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.

(d) ***Federal covered investment advisers***. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section XXX [405 of USA 2002].

(e) ***Investment adviser representatives***. A person is exempt from the registration requirements of Section XXX [404 of USA 2002] if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

(f) ***Electronic filing***. The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section XXX [410 of USA 2002] are filed and accepted by the IARD on the state's behalf.

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

(h) *Waiver Authority with Respect to Statutory Disqualification*. Paragraph (b)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the [state securities regulator], if the [Administrator] determines that it is not necessary under the circumstances that an exemption be denied.

*[(i) **Grandfathering for investment advisers to 3(c)(1) funds with non-qualified 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 subparagraph (c)(1) is eligible*

*for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:*

(1) the subject fund existed prior to the effective date of this regulation;

(2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation;

(3) the investment adviser discloses in writing the information described in paragraph (c)(2) to all beneficial owners of the fund; and

(4) as of the effective date of this regulation, the investment adviser delivers audited financial statements as required by paragraph (c)(3).]

## **II**. **COMMENTARY**

1. Section (a). Section (a) defines key terms in the model rule. The definitions are structured such that the types of private funds covered under the rule will include funds excluded from the definition of investment company under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, along with other private funds that would satisfy the statutory requirements found in these exclusions.

2. Section (b). Section (b) explains that in order to claim the exemption from registration, the adviser and its affiliates must not be subject to a "bad boy" disqualification. This section of the rule also explains that the exemption is contingent upon the adviser filing a report with the state securities administrator. This report is identical to the one required by the SEC for advisers to venture capital funds and private funds with less than $150 million in assets under management. Changes to Form ADV and to IARD have been implemented that will accommodate the filing of the report with state regulators. The report will consist of the following items on Part 1A of Form ADV: Items 1 (Identifying Information), 2.B. (SEC Reporting by Exempt Reporting Advisers), 3 (Form of Organization), 6 (Other Business Activities), 7 (Financial Industry Affiliations and Private Fund Reporting), 10 (Control Persons), and 11 (Disclosure Information). In addition, the corresponding sections of Schedules A, B, C, and D must be completed.

3. Section (c). Section (c) and its subparts place additional conditions upon advisers to 3(c)(1) funds. Specifically, in order to qualify for the exemption from investment adviser registration, the 3(c)(1) fund must be comprised entirely of "qualified clients" under SEC Rule 205-3. This means that individual investors must have either $1 million in investments managed by the adviser or at least $2 million in net worth. The model rule states that the value of the primary residence is not included in calculating net worth. The value of the primary residence will be an estimate of the fair market value made at the time the net worth calculation is conducted. Section (c) also requires the adviser to deliver annual audited financial statements to the investors in the fund, and it requires the adviser to make other specific disclosures to those investors.

4. Section (d). This section simply notes that advisers registered with the SEC are not eligible for the exemption. They are treated the same as other federal covered advisers.

5. Section (e). The rule establishes an exemption from registration for investment advisers. Therefore, this section explains that the investment adviser representatives employed by the advisers would not be required to register.

6. Section (f). Section (f) requires the reports filed by the advisers to be filed with the state through IARD. The rule recognizes that a state may charge a fee for this report, but in most instances a statutory change would likely be required to implement the fee.

7. Section (g). When an exempt reporting adviser loses the exemption by, for instance, adding a client that does not meet the financial requirements under the rule, the adviser would be required to register. This paragraph gives the adviser 90 days in which to complete that registration.

8. Section (h). Section (h) is an optional "grandfathering" provision that would allow advisers to private funds currently exempt under state law to remain exempt provided that the adviser files the reports required under the rule, does not accept new investors that will not meet the financial requirements imposed by the rule, and provides the required disclosures to the investors.