

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31408; 812-14266]

Context Capital Advisers, LLC and Context Capital Funds; Notice of Application

January 6, 2015

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Context Capital Advisers, LLC (“Context Capital” or the “Adviser”) and Context Capital Funds (the “Trust” and collectively with Context Capital, the “Applicants”).

Filing Dates: The application was filed January 14, 2014 and amended on May 21, 2014 and September 19, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 2, 2015 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the

matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: Context Capital Funds, Three Canal Plaza, Suite 600, Portland, Maine 04101; Jason A. Myers, Context Capital Advisers, LLC, 401 City Avenue, Suite 800, Bala Cynwyd, PA 19004.

For Further Information Contact: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or James M. Curtis, Branch Chief, at (202) 551-6712 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Currently, the Trust is comprised of one series, the Context Alternative Strategies Fund ("Alternative Strategies Fund").<sup>1</sup> Each of the Trust's series will have its own investment objective, policies and restrictions.

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<sup>1</sup> Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included in the term "Adviser"); (b) uses the manager of managers structure ("Manager of Managers Structure") described in the application; and (c) complies with the terms and conditions of the application (together with the Alternative Strategies Fund, the "Funds" and each individually, a "Fund"). For purposes of the requested order, "successor" is limited to an entity that would result from a reorganization into another jurisdiction or a change in the type of business organization. The only existing registered open-end management investment company that currently intends to rely on the requested order is the Trust. If the name of any Fund contains the name of a

2. Context Capital, a Delaware limited liability company, is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940 (“Advisers Act”). Any future Adviser also will also be registered with the Commission as an investment adviser under the Advisers Act. Context Capital serves as the investment adviser of the Alternative Strategies Fund pursuant to an investment advisory agreement with the Trust (the “Advisory Agreement”).<sup>2</sup> The Advisory Agreement was approved by the board of trustees of the Trust (the “Board”), including a majority of the members of the board of trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust, the Fund, or of the Adviser (“Independent Trustees”) and was approved by the initial shareholder of the Alternative Strategies Fund, in the manner required by sections 15(a) and 15(c) of the Act and rule 18f-2 under the Act.<sup>3</sup> Applicants are not seeking any exemptions with respect to the Advisory Agreement or Future Advisory Agreements.

3. Under the terms of the Advisory Agreement, and subject to the oversight of the Board, Context Capital is responsible for the overall management of the Alternative Strategies Fund’s business affairs and selecting investments according to its investment objective, policies, and restrictions. For the investment management services that it provides to the Alternative

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Subadviser, the name of the Adviser will precede the name of the Subadviser. The term “Board” also includes the board of trustees or directors of a future Fund.

<sup>2</sup> The Adviser will enter into substantially similar investment advisory agreements to provide investment management services to future Funds (“Future Advisory Agreements”). The terms of Future Advisory Agreements will comply with section 15(a) of the Act, and Future Advisory Agreements will be approved by shareholders and by the Board, including a majority of the Independent Trustees, in the manner required by Sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. References to any Advisory Agreement(s) include Future Advisory Agreements as they pertain to future Funds.

<sup>3</sup> Context Asset Management, L.P. the parent company of the Adviser, is undergoing a reorganization resulting in the termination of the Fund’s current advisory agreement and subadvisory agreements. At a meeting held on June 16, 2014, the Fund’s Board unanimously approved a new advisory agreement and subadvisory agreements for the Fund. The new advisory agreement and subadvisory agreements become effective upon approval by the Fund’s shareholders.

Strategies Fund, Context Capital receives the fee specified in the Advisory Agreement based on average daily net assets. In addition, under the Advisory Agreement, Context Capital may retain one or more subadvisers, at Context Capital’s own cost and expense, subject to approval of the Board, including approval by a majority of the Independent Trustees and the shareholders of the Fund (if required by applicable law), for the purpose of managing the investment of all or a portion of the assets of the Alternative Strategies Fund. Context Capital has entered into subadvisory agreements with eight subadvisers to provide investment advisory services to the Alternative Strategies Fund.<sup>4</sup> Each subadviser is an “investment adviser” as defined in section 2(a)(20) of the Act and registered as an investment adviser under the Advisers Act. The Adviser selects subadvisers based on the Adviser’s evaluation of the subadviser’s skills in managing assets pursuant to particular investment styles that are consistent with the investment objective of each Fund and recommends their hiring to the Board. For the investment advisory services subadvisers provide to the Funds, each subadviser receives annual fees from the Adviser calculated at an annual rate based on the average daily net assets of the respective Fund. The Adviser compensates each subadviser out of the fees that are paid to the Adviser under the Advisory Agreement.<sup>5</sup>

4. Applicants request an order to permit the Adviser, subject to approval of the Board, including a majority of the Independent Trustees, to do the following without obtaining shareholder approval: (a) select an unaffiliated investment subadviser or subadvisers (each a “Subadviser”) to manage all or a portion of the assets of the Alternative Strategies Fund or any other Fund pursuant to an investment subadvisory agreement with a Subadviser (each a

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<sup>4</sup> All existing subadvisory agreements comply with sections 15(a) and (c) of the Act and rule 18f-2 thereunder.

<sup>5</sup> The reorganization will result in new subadvisory agreements that will become effective upon approval by the Fund’s shareholders.

“Subadvisory Agreement”), and (b) materially amend Subadvisory Agreements. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (“Affiliated Subadviser”).

5. If a new Subadviser is hired, the Fund will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (“Modified Notice and Access Procedures”): (a) within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;<sup>6</sup> and (b) the Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days. Applicants assert that a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Subadvisory Agreements.

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<sup>6</sup> A “Multi-manager Notice” will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the 1934 Act, and specifically will, among other things: (a) summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds. A “Multi-manager Information Statement” will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

6. Applicants also request an order exempting the Fund from certain disclosure provisions described below that may require the Applicants to disclose fees paid to each Subadviser by the Adviser. Applicants seek an order to permit each Fund to disclose (both as a dollar amount and a percentage of a Fund’s net assets): (a) aggregate fees paid to the Adviser and Affiliated Subadvisers; and (b) aggregate fees paid to Subadvisers other than Affiliated Subadvisers (“Aggregate Fee Disclosure”). For any Fund that employs Affiliated Subadvisers, the Fund will provide separate disclosure of any fees paid to such Affiliated Subadvisers.

Applicants’ Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company’s outstanding voting securities of such registered company. Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser’s compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (“1934 Act”). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the “rate of compensation of the investment adviser,” the “aggregate amount of the investment adviser’s fees,” a description of the “terms of the contract to be acted

upon,” and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S-X sets forth the requirements for financial statements required to be included as part of a registered investment company’s registration statement and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b) and (c) of Regulation S-X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Subadvisers who are best suited to achieve each Fund’s investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Adviser and Board consider it appropriate to hire Subadvisers or amend Subadvisory Agreements. Applicants note that the Advisory Agreements and Subadvisory Agreements with

Affiliated Subadvisers (if any) will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

7. Applicants assert that the requested disclosure relief will benefit shareholders to the extent that it will facilitate lower overall investment advisory fees. Applicants state that if the Adviser is not required to disclose the Subadvisers' fees to the public, the Adviser may be able to negotiate rates that are below a Subadviser's "posted" amounts. Applicants state that the requested relief will encourage Subadvisers to negotiate lower advisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the Application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the Application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser, pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval of the Board, will: (a) set each Fund's overall

investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or a portion of the each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust or a Fund, or director, manager or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

12. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

13. Each Fund will disclose the Aggregate Fee Disclosure in its registration statement.

14. Any new Subadvisory Agreement or any amendment to a Fund's existing Advisory Agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory rate payable by the Fund will be submitted to the Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill  
Deputy Secretary