

LCB File No. R141-08

PROPOSED REGULATION OF THE DIVISION OF FINANCIAL INSTITUTIONS

(The sections relating to fees have been removed from this regulation for separate consideration; see LCB File No. R213-08)

Explanation: Material in *bold italics* is new material.

Purpose: To adopt regulations under chapter 645G of the Nevada Administrative Code relating to exchange facilitators, establishing standards and procedures for the licensing and regulation of exchange facilitators, exchange facilitator officer; establishing the amount of certain fees; and providing other matters properly relating thereto.

General Authority: NRS 645G.100, NRS 645G.110, NRS 645G.120, NRS 645G.170, NRS 645G.220, NRS 645.320, NRS 645G.330, NRS 645G.510

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Sec. 1. Chapter 645G of the NAC is hereby set forth as sections 2 through 16, inclusive, of this regulation.

Sec. 2. *Definitions. (NRS 645G.010)*

1. As used in NRS 645G, unless the context otherwise requires, the words and terms defined below have the meanings ascribed to them herein.

- a. *“Exchange funds” defined. “Exchange funds” means all money, property, and other consideration or instruments received by the licensee from, or on behalf of the client, except funds received as the licensee’s compensation.*
 - b. *“Publicly traded company” defined. “Publicly traded company” means a company which is publicly traded and a subsidiary of a company which is publicly traded.*
2. *As used in NRS 645G.040 (3) the term “Exchange facilitator” does not include an entity in which an exchange facilitator has a 100% ownership interest and uses such entity to facilitate exchanges or to take title to a property in this state as an exchange accommodation titleholder.*

Sec. 3. *License required; regulations; application; renewal of license. (NRS 645G.100(3)(a)(3))*

The requirement to provide names, residence and business addresses of officers of the licensee shall be satisfied by the provision of the names, residence and business addresses of all officers involved in the exchange facilitation business in the State of Nevada, and shall not be deemed to include the provision of information about officers not involved in the exchange facilitation business in the State of Nevada.

Sec. 4. *Duties of licensee: Principal place of business; notice of change of address or telephone number; notice of licensing changes to clients. (NRS 645G.130)*

A licensee who is a publicly traded company shall be exempt from the requirement to provide notice to clients under NRS 645G.130(3)(a) of a change in any of the officers, directors, employees or owners of the licensee who are required to obtain a license pursuant to NRS 645G.120 or 645G.170, as long as the licensee remains a publicly traded company after the change.

Sec. 5. *License nontransferable; business of licensee may only be sold or transferred to another licensee. (NRS 645G.140)*

In the event of the death of an owner or other person without whom the exchange facilitation business cannot be conducted, the Commissioner may appoint a receiver licensee or successor licensee for the purpose of winding up and completing existing open exchanges, but that receiver or successor licensee shall not have authority to accept any new exchange facilitation business.

Sec. 6. *Client’s money and property: Fiduciary duty of licensee. (NRS 645G.300)*

The requirement to act as a fiduciary for the money held shall be limited to all exchange funds, being money, property, other consideration or instruments received by the licensee from, or on behalf of the client, except funds received as the licensee’s compensation. Fiduciary responsibilities shall be limited to the licensee’s responsibilities to hold and handle the exchange funds, and shall not include any other duties which may commonly be considered to be fiduciary duties, except as expressly provided herein. The fiduciary standard shall be met if exchange funds are held and invested in investments which meet a “Prudent Person Standard” and satisfy investment goals of liquidity and preservation of principal. For purposes of this section, a “Prudent Person Standard” shall be violated if:

1. *Exchange funds are knowingly commingled by the Exchange Facilitator with the operating accounts of the Exchange Facilitator; or*
2. *Exchange Funds are loaned or otherwise transferred to any person or entity affiliated with or related to the Exchange Facilitator except that this subsection 2 shall not apply to a transfer made to a Financial Institution which is the parent of or related to the Exchange Facilitator; or*
3. *Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the Exchange Facilitator's contractual obligations to its clients or does not preserve the principal of the exchange funds.*

Sec. 7. *Money held for client: Written approval required for withdrawal. (NRS 645G.310)*

The requirement for approval of both the licensee and the client for all withdrawals from the exchange funds account may be met by any commercially reasonable method, including, but not limited to:

1. *client's delivery to licensee of client's approval to withdraw funds, and licensee's delivery to the depository of licensee's authorization to withdraw funds; or*
2. *delivery to the depository of both the client's and the licensee's authorizations to withdraw funds.*

Sec. 8. *Fidelity bond or deposit. (NRS 645G.320)*

Proof of the fidelity bond and other information required to be provided to the client may be accomplished by any commercially reasonable method, including, but not limited to,

1. *posting the evidence of coverage on the licensee's website, with separate written disclosure to the client of the licensee's website address and the ability to view the evidence of coverage thereon; or*
2. *physical delivery of a copy of the evidence of coverage to the client.*

Sec. 9. *Exchange funds to be kept separate. (NRS 645G.350)*

1. *Appropriate designations for deposited exchange funds, indicating that the money is not the money of the licensee, includes, but is not limited to:*
 - a. *"trust funds,"*
 - b. *"escrow accounts,"*
 - c. *"exchange funds,"*
 - d. *"exchange account,"*
 - e. *"for the benefit of" the named client*
2. *Exchange funds shall be deposited into a Qualified Trust or Qualified Escrow account as provided in NRS 205.960.*

Sec. 10. *Authorized disciplinary action; grounds; orders imposing discipline deemed public records; payment of costs incurred by Division. (NRS 645G.515)*

In the event that the Commissioner suspends or revokes a license under NRS 645G.515, the Commissioner may appoint a receiver licensee or successor licensee for the purpose of winding up existing open exchanges, but that receiver or successor licensee shall not have authority to accept any new exchange facilitation business.

Sec. 11. REMOVED (See LCB File No. R213-08)

Sec. 12. *Application for a license. (NRS 645G.100, NRS 645G.110, NRS 645G.120 and NRS 645G.170).*

- 1. In addition to any other requirements provided by chapter 645G of NRS, an application shall:
 - a. Be submitted in a form prescribed by the Commissioner;*
 - b. Be verified;*
 - c. State the location of the principal office and each branch office;*
 - d. State the name of the exchange facilitator officer responsible for the operation of the office and each branch office;*
 - e. The name under which the applicant proposes to conduct his business.**
- 2. An applicant must submit proof satisfactory to the Commissioner that he:
 - a. Is a citizen of the United States or lawfully entitled to remain and work in the United States.*
 - b. Has not made a false statement of material fact on the application.**
- 3. An application must be accompanied by a financial statement for the applicant's most recent fiscal year or a copy of the applicant's federal income tax return for each of the preceding 2 years, or both.*
- 4. Each person who owns at least 10 percent of the voting stock, partnership or member interests of the business of the applicant must provide a record of the personal history in a manner prescribed by the Commissioner.*
- 5. An applicant for a licensee shall provide the Division of Financial Institutions proof of the fidelity bond and liability insurance requirements pursuant to NRS 645G.320 and NRS 645G.330 at the time of application.*
- 6. A licensee will not conduct any business under his license unless:
 - a. He possesses each license and permit required by this State or a local government as a condition to conducting business;*
 - b. If the exchange facilitator is a corporation, that every officer, director and owner doing business as an exchange facilitator has applied and received a license pursuant to this chapter;*
 - c. If the exchange facilitator is not natural person or a publicly traded company, that every owner possessing 10 percent or more of voting stock, shares or other ownership interest of the exchange facilitator has applied and received a license pursuant to this chapter; and*
 - d. The business location complies with the provisions of all applicable planning and zoning ordinances.**

Sec. 13. *Filing and contents of application for license to operate a branch office. (NRS 645G.150)*

- 1. An application for a license to operate a branch office must be filed with the Commissioner of Financial Institutions on a form provided by the Commissioner.*
- 2. The application must contain proof that the exchange facilitator officer named in the application holds a current license pursuant to this chapter.*

Sec. 14. Maintenance of books and records: (NRS 645G.100 and 645G.230)

- 1. Except as otherwise provided, a licensee shall maintain for at least 7 years the original or a copy of each account, book, paper, written or electronic record or other document that concerns each loan or other transaction involving a customer in this State.*
- 2. Except as otherwise provided those records must be maintained at a place of business in this State designated by the licensee.*

Sec. 15. Designated Exchange Facilitator Officer. (NRS 645G.150)

- 1. The person who holds a valid license and who is the designated exchange facilitator officer must have direct supervisory responsibility for employees who engage in exchange facilitator activities in this State and must be required to devote a substantial portion of each business hour:*
 - a. In supervision of those employees engaging in exchange facilitator activities in this State; and*
 - b. In the actual management, operation and administration of the licensed exchange facilitator agency.*
- 2. The exchange facilitator officer must be available in person at the business address of the licensed exchange facilitator agency in order to perform his required functions and duties.*

Sec. 16. Confidentiality of Financial Records. (NRS 645G.100)

The application and financial records submitted by a person pursuant to the provision of NRS 645G.100 and any financial records or other documents submitted by a licensee pursuant to an audit conducted by the Division are confidential and may be disclosed only to:

- 1. The Division;*
- 2. An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter; or*
- 3. A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

Sec. 17. Failure to file verified answer to complaint; confidentiality of complaint and certain related information. (NRS 645G.510 and 645G.540)

- 1. If a person subject to disciplinary action under this chapter fails to file a verified answer to a complaint within the 30 days of service of the complaint, the person is deemed to have admitted to the allegations contained in the complaint and default may be entered against him.*
- 2. Except as otherwise provided in NRS 645G.510 or other specific statute, a complaint filed with the Division of Financial Institutions of the Department of Business and Industry, any documents filed with the complaint, and any report or information resulting from an investigation of a complaint are confidential.*