

Amendment No. 501

Assembly Amendment to Senate Bill No. 9	(BDR 7-423)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 9 (§ 4).
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ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.





SENATE BILL NO. 9—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LIEUTENANT GOVERNOR)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY— ~~[Creates an exemption from licensing requirements for investment advisers to certain private funds.]~~ Makes certain changes relating to securities. (BDR 7-423)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to securities; creating an exemption from licensing requirements for investment advisers to certain private funds; requiring the Administrator of the Securities Division of the Office of the Secretary of State, who is the Deputy of Securities, to submit a biennial report relating to securities to the Legislative Commission and publish the report by certain other means; revising provisions relating to the adoption of regulations by the Administrator; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The federal Dodd-Frank Wall Street Reform and Consumer Protection Act created an  
2 exemption from the requirement that investment advisers to certain private funds register with  
3 the Securities and Exchange Commission. This exemption applies to investment advisers who:  
4 (1) manage less than \$150 million in assets; and (2) advise qualifying private funds. (15  
5 U.S.C. § 80b-3(m); 17 C.F.R. 275.203(m)-1)  
6 Existing state law makes it unlawful for a person to transact business in this State as an  
7 investment adviser unless the person is: (1) licensed; or (2) exempt from the licensing  
8 requirements of this State. (NRS 90.330) **Section 2-4** of this bill create a state-level exemption  
9 from the requirement for licensure for investment advisers to certain qualifying private funds.  
10 **Section 4** provides that the exemption applies to an investment adviser if: (1) the  
11 investment adviser solely advises one or more qualifying private funds; (2) the investment  
12 adviser is not required to register with the Securities and Exchange Commission; (3) neither  
13 the investment adviser nor any of its advisory affiliates have engaged in certain bad acts; (4)  
14 the investment adviser files certain reports with the Administrator, who is the Deputy of  
15 Securities appointed by the Secretary of State; and (5) the investment adviser pays a fee  
16 prescribed by the Administrator.  
17 **Section 4** also provides that if the investment adviser advises one or more eligible funds,  
18 in addition to the other requirements for the exemption, the investment adviser must: (1)  
19 advise only those eligible funds whose outstanding securities are beneficially owned entirely  
20 by qualified clients; (2) make certain disclosures to the beneficial owners of the eligible fund;  
21 and (3) annually obtain an audited financial statement of each eligible fund and deliver the

22 statement to each beneficial owner of the respective eligible fund. **Section 4** provides a  
23 grandfather provision for an investment adviser to an eligible fund whose beneficial  
24 ownership does not consist entirely of qualified clients if: (1) the eligible fund existed before  
25 July 1, 2022; and (2) the investment adviser complies with certain minimum requirements on  
26 or after July 1, 2022.

27 **Section 4** also provides that if an investment adviser becomes ineligible for the  
28 exemption, the investment adviser has 90 days after the date of ineligibility to become  
29 compliant with any applicable laws for licensing.

30 Existing law also exempts from the licensing requirements investment advisers who are  
31 registered or not required to be registered under the Investment Advisers Act of 1940 if: (1)  
32 the only clients of the investment adviser are other investment advisers, broker-dealers or  
33 financial or institutional investors; (2) the investment adviser has no place of business in this  
34 State and directs business communications in this State to a person who is an existing client of  
35 the investment adviser and whose principal place of residence is not in this State; or (3) the  
36 investment adviser has no place of business in this State and during any 12 consecutive  
37 months it does not direct business communications in this State to more than five present or  
38 prospective clients under certain circumstances, whether or not the person or client to whom  
39 the communication is directed is present in this State. (NRS 90.340) **Section 6** of this bill  
40 provides that regardless of whether an investment adviser qualifies for an exemption from the  
41 licensing requirements under existing law, if the investment adviser advises a qualifying  
42 private fund, the investment adviser must also satisfy the requirements of **section 4** in order to  
43 qualify for an exemption.

44 Existing law also requires a representative of an investment adviser to be licensed or  
45 exempt from the licensing requirements before transacting business in this State. (NRS  
46 90.330) **Section 6** provides that if a representative of an investment adviser is employed by an  
47 investment adviser who is exempt from the licensing requirements pursuant to **section 4**, then  
48 the representative of the investment adviser is also exempt from his or her respective licensing  
49 requirements.

50 **Section 4.5 of this bill requires the Administrator to submit a written report**  
51 **biennially to the Director of the Legislative Counsel Bureau for submission to the**  
52 **Legislative Commission and to publish the report on an Internet website of the Secretary**  
53 **of State or by similar means. Section 4.5 requires the report to include, without**  
54 **limitation: (1) a summary of the states that adopted a model rule, regulation, exemption**  
55 **or like provision of the North American Securities Administrators Association within the**  
56 **5 years immediately preceding the publication of the report; (2) a summary of the states**  
57 **that did not adopt any such model rule, regulation, exemption or like provision within**  
58 **the 5 years immediately preceding the publication of the report and a description of why**  
59 **each state did not adopt any such rule, regulation, exemption or like provision; (3) a**  
60 **determination of whether the Securities Division of the Office of the Secretary of State**  
61 **has the resources necessary to achieve its objectives; and (4) any recommendations for**  
62 **legislation relating to the protection of investors in this State.**

63 **Existing law authorizes the Administrator to adopt certain regulations and requires**  
64 **the Administrator to take into consideration: (1) the regulations adopted by the**  
65 **Securities and Exchange Commission; and (2) the regulations of securities agencies and**  
66 **administrators in other states. (NRS 90.750) Section 8.5 of this bill additionally requires**  
67 **the Administrator to consider any model rule, regulation, exemption or like provision**  
68 **adopted by the North American Securities Administrators Association.**

69 ~~Sections~~ **Section 5** ~~and 7-11~~ of this bill ~~make~~ **makes a conforming** ~~changes~~  
70 **change** to indicate the appropriate placement of ~~sections 2-4~~ **sections 2 and 3 of this bill** in the  
71 **Nevada Revised Statutes. Sections 7, 8 and 9-11 of this bill make conforming changes**  
72 **relating to the exemption from the licensing requirements for investment advisers**  
73 **pursuant to section 4.**

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 90 of NRS is hereby amended by adding thereto the  
2 provisions set forth as sections ~~2, 3 and 4~~ **to 4.5, inclusive**, of this act.

3       **Sec. 2.** *“Investment Adviser Registration Depository” means the*  
4 *Investment Adviser Registration Depository of the Financial Industry Regulatory*  
5 *Authority, or its successor, and the North American Securities Administrators*  
6 *Association or its successor.*

7       **Sec. 3.** *“Qualifying private fund” has the meaning ascribed to it in 17*  
8 *C.F.R. 275.203(m)-1.*

9       **Sec. 4. 1.** *An investment adviser is exempt from the licensing*  
10 *requirements under NRS 90.330 if:*

11       *(a) The investment adviser provides advice solely to one or more qualifying*  
12 *private funds;*

13       *(b) The investment adviser is not required to register with the Securities and*  
14 *Exchange Commission;*

15       *(c) Neither the investment adviser nor any of the advisory affiliates of the*  
16 *investment adviser are subject to an event that would disqualify an issuer*  
17 *pursuant to 17 C.F.R. § 230.506(d)(1);*

18       *(d) The investment adviser files with the Administrator any report and*  
19 *amendment thereto required to be filed with the Securities and Exchange*  
20 *Commission pursuant to 17 C.F.R. § 275.204-4;*

21       *(e) The investment adviser pays a fee prescribed by the Administrator; and*

22       *(f) Except as otherwise provided in subsection 2, if the investment adviser*  
23 *advises at least one eligible fund, the investment adviser must:*

24       *(1) Advise only those eligible funds whose outstanding securities are*  
25 *beneficially owned entirely by persons who, after deducting the value of the*  
26 *primary residence from the net worth of the person, would each be a qualified*  
27 *client at the time the securities are purchased from the issuer;*

28       *(2) Disclose in writing, at the time of purchase, the following information*  
29 *to each beneficial owner of the eligible fund:*

30       *(I) All services, if any, to be provided to the beneficial owner;*

31       *(II) Any duty owed by the investment adviser to the beneficial owner;*

32 *and*

33       *(III) Any other material information affecting the rights and*  
34 *responsibilities of the beneficial owner; and*

35       *(3) Annually obtain an audited financial statement of each eligible fund*  
36 *and deliver the statement to each beneficial owner of the corresponding eligible*  
37 *fund.*

38       **2.** *If an investment adviser advises an eligible fund that has one or more*  
39 *beneficial owners who are not qualified clients and the eligible fund existed*  
40 *before July 1, 2022, then on or after July 1, 2022:*

41       *(a) The eligible fund is prohibited from accepting additional beneficial*  
42 *owners who are not qualified clients;*

43       *(b) The investment adviser must:*

44       *(1) Make the disclosure described in subparagraph (2) of paragraph (f)*  
45 *of subsection 1 to all beneficial owners of the eligible fund, regardless of whether*  
46 *the beneficial owner is a qualified client;*

47       *(2) Deliver the financial statement described in subparagraph (3) of*  
48 *paragraph (f) of subsection 1 to each beneficial owner of the eligible fund,*  
49 *regardless of whether the beneficial owner is a qualified client; and*

1 (3) *Otherwise satisfy the requirements for exemption set forth in*  
 2 *subsection 1.*

3 3. *The filings described in paragraph (d) of subsection 1:*

4 (a) *Must be filed electronically through the Investment Adviser Registration*  
 5 *Depository; and*

6 (b) *Shall be deemed to be filed on the date that the filing and fee described in*  
 7 *paragraph (e) of subsection 1 are filed and accepted on behalf of the State by the*  
 8 *Investment Adviser Registration Depository.*

9 4. *If an investment adviser becomes ineligible for the exemption described in*  
 10 *this section, the investment adviser must comply with any applicable laws for*  
 11 *licensure within 90 days after the date of ineligibility.*

12 5. *As used in this section:*

13 (a) *“Eligible fund” means a qualifying private fund that:*

14 (1) *Is eligible for the exclusion from the definition of an investment*  
 15 *company under 15 U.S.C. 80a-3(c)(1); and*

16 (2) *Is not a venture capital fund, as defined in 17 C.F.R. § 275.203(l)-1.*

17 (b) *“Qualified client” has the meaning ascribed to it in 17 C.F.R. § 275.205-*  
 18 *3.*

19 (c) *“Value of the primary residence” means the fair market value of the*  
 20 *primary residence of a person, subtracted by the amount of debt secured by the*  
 21 *property up to its fair market value.*

22 Sec. 4.5. 1. On or before August 15 of each even-numbered year, the  
 23 Administrator shall:

24 (a) Submit a written report to the Director of the Legislative Counsel Bureau  
 25 for submission to the Legislative Commission; and

26 (b) Publish the report described in paragraph (a) on an Internet website of  
 27 the Secretary of State or by similar means.

28 2. The report must include, without limitation:

29 (a) A summary of the states that adopted a model rule, regulation, exemption  
 30 or like provision of the North American Securities Administrators Association  
 31 within the 5 years immediately preceding the publication of the report described  
 32 in subsection 1;

33 (b) A summary of the states that did not adopt a model rule, regulation,  
 34 exemption or like provision of the North American Securities Administrators  
 35 Association within the 5 years immediately preceding the publication of the  
 36 report described in subsection 1, and the reasoning why each state did not adopt  
 37 any such model rule, regulation, exemption or like provision;

38 (c) A determination of whether the Division has the resources necessary to  
 39 achieve its objectives; and

40 (d) Any recommendations for legislation relating to the protection of  
 41 investors in this State.

42 **Sec. 5.** NRS 90.211 is hereby amended to read as follows:

43 90.211 As used in this chapter, unless the context otherwise requires, the  
 44 words and terms defined in NRS 90.215 to 90.309, inclusive, **and sections 2 and 3**  
 45 **of this act** have the meanings ascribed to them in those sections.

46 **Sec. 6.** NRS 90.340 is hereby amended to read as follows:

47 90.340 1. The following persons are exempt from licensing under NRS  
 48 90.330:

49 (a) ~~[An]~~ **Except as otherwise provided in subsection 2, an** investment adviser  
 50 who is registered or is not required to be registered as an investment adviser under  
 51 the Investment Advisers Act of 1940 if:

52 (1) Its only clients in this State are other investment advisers, broker-  
 53 dealers or financial or institutional investors;

1 (2) The investment adviser has no place of business in this State and  
2 directs business communications in this State to a person who is an existing client  
3 of the investment adviser and whose principal place of residence is not in this State;  
4 or

5 (3) The investment adviser has no place of business in this State and during  
6 any 12 consecutive months it does not direct business communications in this State  
7 to more than five present or prospective clients other than those specified in  
8 subparagraph (1), whether or not the person or client to whom the communication  
9 is directed is present in this State;

10 (b) A representative of an investment adviser who is employed by an  
11 investment adviser who is exempt from licensing pursuant to paragraph (a) ~~or~~ **or**  
12 **section 4 of this act;**

13 (c) A sales representative licensed pursuant to NRS 90.310 who:

14 (1) Has passed the following examinations administered by the Financial  
15 Industry Regulatory Authority:

16 (I) The Uniform Investment Adviser Law Examination, designated as  
17 the Series 65 examination; or

18 (II) The Uniform Combined State Law Examination designated as the  
19 Series 66 examination and the General Securities Registered Representative  
20 Examination, designated as the Series 7 examination; or

21 (2) On January 1, 1996, has been continuously licensed in this State as a  
22 sales representative for 5 years or more; and

23 (d) Other investment advisers and representatives of investment advisers the  
24 Administrator by regulation or order exempts.

25 **2. *Regardless of whether an investment adviser qualifies for an exemption***  
26 ***pursuant to paragraph (a) of subsection 1, if the investment adviser advises one***  
27 ***or more qualifying private funds, the investment adviser must additionally satisfy***  
28 ***all of the requirements set forth in section 4 of this act in order to qualify for an***  
29 ***exemption from licensing under NRS 90.330.***

30 **3.** The Administrator may, by order or rule, waive the examinations required  
31 by subparagraph (1) of paragraph (c) of subsection 1 for an applicant or a class of  
32 applicants if the Administrator determines that the examination is not necessary for  
33 the protection of investors because of the training and experience of the applicant or  
34 class of applicants.

35 **Sec. 7.** NRS 90.350 is hereby amended to read as follows:

36 90.350 1. Except as otherwise provided in subsection 3, an applicant for  
37 licensing as a broker-dealer, sales representative, investment adviser, representative  
38 of an investment adviser or transfer agent must file with the Administrator an  
39 application for licensing and a consent to service of process pursuant to NRS  
40 90.770 and pay the fee required by NRS 90.360. The application for licensing must  
41 contain the social security number of the applicant and any other information the  
42 Administrator determines by regulation to be necessary and appropriate to facilitate  
43 the administration of this chapter.

44 2. The requirements of subsection 1 are satisfied by an applicant who has  
45 filed and maintains a completed and current registration with the Securities and  
46 Exchange Commission or a self-regulatory organization if the information  
47 contained in that registration is readily available to the Administrator through the  
48 Investment Adviser Registration Depository, the Central Registration Depository or  
49 another depository for registrations that has been approved by the Administrator by  
50 regulation or order. Except as otherwise provided in subsection 3, such an applicant  
51 must also file a notice with the Administrator in the form and content determined  
52 by the Administrator by regulation and a consent to service of process pursuant to

1 NRS 90.770 and the fee required by NRS 90.360. The Administrator, by order, may  
2 require the submission of additional information by an applicant.

3 3. An applicant for licensing as a transfer agent is not required to pay the fee  
4 required by NRS 90.360.

5 4. As used in this section, ~~the~~  
6 ~~—(a)~~ “Central Registration Depository” means the Central Registration  
7 Depository of the Financial Industry Regulatory Authority, or its successor, and the  
8 North American Securities Administrators Association or its successor.

9 ~~[(b) “Investment Adviser Registration Depository” means the Investment~~  
10 ~~Adviser Registration Depository of the Financial Industry Regulatory Authority, or~~  
11 ~~its successor, and the North American Securities Administrators Association or its~~  
12 ~~successor.]~~

13 **Sec. 8.** NRS 90.560 is hereby amended to read as follows:

14 90.560 The Administrator by regulation or order may require the filing of any  
15 prospectus, pamphlet, circular, form letter, advertisement or other sales literature or  
16 advertising communication addressed or intended for distribution to prospective  
17 investors, including clients or prospective clients of an investment adviser unless  
18 the security or transaction is exempt under NRS 90.520 or 90.530 or the investment  
19 adviser is exempt under NRS 90.340 ~~the~~ **or section 4 of this act.**

20 **Sec. 8.5.** **NRS 90.750 is hereby amended to read as follows:**

21 90.750 1. The Administrator may adopt regulations further defining such  
22 words and terms as are necessary for an understanding of the provisions of this  
23 chapter and any regulations adopted pursuant thereto.

24 2. To keep regulations adopted by the Administrator in harmony with the  
25 regulations adopted by the Securities and Exchange Commission under the federal  
26 securities laws and to encourage uniformity with the regulations of securities  
27 agencies and administrators in other states, the Administrator, so far as is consistent  
28 with this chapter, shall take into consideration ~~the~~ **;**

29 ~~the~~ **(a) The** regulations adopted by the Securities and Exchange Commission ~~and~~  
30 ~~the~~ **;**

31 ~~the~~ **(b) The** regulations of securities agencies and administrators in other states that  
32 enact a law comparable to this chapter ~~the~~ **;** **and**

33 **(c) Any model rule, regulation, exemption or like provision adopted by the**  
34 **North American Securities Administrators Association.**

35 3. Unless other criteria are specifically provided in this chapter or special  
36 provision is made for an emergency, a regulation or order may not be adopted or  
37 entered unless the Administrator determines from evidence adduced at a public  
38 hearing and entered in the record, showing specifically how the applicable criteria  
39 are satisfied, that the action is:

40 (a) In the public interest and appropriate for the protection of investors; and

41 (b) Consistent with the purposes fairly intended by the provisions of this  
42 chapter.

43 4. The Administrator may use his or her own experience, technical  
44 competence, specialized knowledge, and judgment in the adoption of a regulation.

45 5. The Administrator by regulation or order may prescribe:

46 (a) The form and content of financial statements required under this chapter;

47 (b) The circumstances under which consolidated financial statements must be  
48 filed; and

49 (c) Whether a required financial statement must be certified and by whom.

50 **↳** Unless the Administrator by regulation or order provides otherwise, a financial  
51 statement required under this chapter must be prepared in accordance with  
52 generally accepted accounting principles or other accounting principles as are



1 prescribed for the issuer of the financial statement by the Securities and Exchange  
 2 Commission.

3 **Sec. 9.** NRS 628A.040 is hereby amended to read as follows:

4 628A.040 1. Except as otherwise provided in subsection 2, a financial  
 5 planner shall maintain insurance covering liability for errors or omissions, or a  
 6 surety bond to compensate clients for losses actionable pursuant to this chapter, in  
 7 an amount of \$1,000,000 or more.

8 2. The provisions of subsection 1 do not apply to:

9 (a) A broker-dealer or sales representative licensed pursuant to NRS 90.310 or  
 10 exempt under NRS 90.320; or

11 (b) An investment adviser licensed pursuant to NRS 90.330 or exempt under  
 12 NRS 90.340 **or section 4 of this act.**

13 **Sec. 10.** NRS 645B.093 is hereby amended to read as follows:

14 645B.093 1. A mortgage company who is a broker-dealer or a sales  
 15 representative licensed pursuant to NRS 90.310 or who is exempt from licensure  
 16 pursuant to NRS 90.320:

17 (a) Shall not commingle money received for mortgage transactions and money  
 18 received for securities transactions; and

19 (b) Shall ensure that all money received for mortgage transactions is accounted  
 20 for separately from all money received for securities transactions.

21 2. A mortgage company who is an investment adviser or a representative of  
 22 an investment adviser licensed pursuant to NRS 90.330 or exempt from licensure  
 23 pursuant to NRS 90.340 **or section 4 of this act:**

24 (a) Shall not commingle money received for mortgage transactions and money  
 25 received for securities transactions; and

26 (b) Shall ensure that all money received for mortgage transactions is accounted  
 27 for separately from all money received for securities transactions.

28 **Sec. 11.** NRS 688C.212 is hereby amended to read as follows:

29 688C.212 1. A financial planner who, on behalf of a viator and for a fee,  
 30 commission or other valuable consideration not paid by a provider or purchaser of  
 31 viatical settlements, offers or attempts to negotiate a viatical settlement between the  
 32 viator and one or more providers or brokers of viatical settlements must be licensed  
 33 as an insurance consultant pursuant to NRS 683C.020.

34 2. As used in this section, "financial planner" means a person who for  
 35 compensation advises others upon the investment of money or upon provision for  
 36 income to be needed in the future, or who holds himself or herself out as qualified  
 37 to perform either of these functions, but does not include:

38 (a) An attorney and counselor at law admitted by the Supreme Court of this  
 39 State;

40 (b) A certified public accountant or a public accountant pursuant to NRS  
 41 628.190 to 628.310, inclusive;

42 (c) A broker-dealer or sales representative licensed pursuant to NRS 90.310 or  
 43 exempt under NRS 90.320;

44 (d) An investment adviser licensed pursuant to NRS 90.330 or exempt under  
 45 NRS 90.340 **or section 4 of this act;** or

46 (e) A producer of insurance licensed pursuant to chapter 683A of NRS or an  
 47 insurance consultant licensed pursuant to chapter 683C of NRS,

48 whose advice upon investment or provision of future income is incidental to the  
 49 practice of his or her profession or business.

50 **Sec. 11.5. The provisions of subsection 1 of NRS 218D.380 do not apply**  
 51 **to any provision of this act which adds or revises a requirement to submit a**  
 52 **report to the Legislature.**

1        **Sec. 12.** This act becomes effective on July 1, 2022.