

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. (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; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act created an exemption from the requirement that investment advisers to certain private funds register with the Securities and Exchange Commission. This exemption applies to investment advisers who: (1) manage less than \$150 million in assets; and (2) advise qualifying private funds. (15 U.S.C. § 80b-3(m), 17 C.F.R. 275.203(m)-1)

Existing state law makes it unlawful for a person to transact business in this State as an investment adviser unless the person is: (1) licensed; or (2) exempt from the licensing requirements of this State. (NRS 90.330) **Section 2-4** of this bill create a state-level exemption from the requirement for licensure for investment advisers to certain qualifying private funds.

Section 4 provides that the exemption applies to an investment adviser if: (1) the investment adviser solely advises one or more qualifying private funds; (2) the investment adviser is not required to register with the Securities and Exchange Commission; (3) neither the investment adviser nor any of its advisory affiliates have engaged in certain bad acts; (4) the investment adviser files certain reports with the Administrator, who is the Deputy of Securities appointed by the Secretary of State; and (5) the investment adviser pays a fee prescribed by the Administrator.

Section 4 also provides that if the investment adviser advises one or more eligible funds, in addition to the other requirements for the exemption, the investment adviser must: (1) advise only those eligible funds whose outstanding securities are beneficially owned entirely by qualified clients; (2) make certain



23 disclosures to the beneficial owners of the eligible fund; and (3) annually obtain an
24 audited financial statement of each eligible fund and deliver the statement to each
25 beneficial owner of the respective eligible fund. **Section 4** provides a grandfather
26 provision for an investment adviser to an eligible fund whose beneficial ownership
27 does not consist entirely of qualified clients if: (1) the eligible fund existed before
28 July 1, 2022; and (2) the investment adviser complies with certain minimum
29 requirements on and after July 1, 2022.

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

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

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

54 **Sections 5 and 7-11** of this bill make conforming changes to indicate the
55 appropriate placement of **sections 2-4** in the Nevada Revised Statutes.

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
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

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

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

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

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



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

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

6 (d) *The investment adviser files with the Administrator any*
7 *report and amendment thereto required to be filed with the*
8 *Securities and Exchange Commission pursuant to 17 C.F.R. §*
9 *275.204-4;*

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

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

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

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

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

25 (II) *Any duty owed by the investment adviser to the*
26 *beneficial owner; and*

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

29 (3) *Annually obtain an audited financial statement of each*
30 *eligible fund and deliver the statement to each beneficial owner of*
31 *the corresponding eligible fund.*

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

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

38 (b) *The investment adviser must:*

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

43 (2) *Deliver the financial statement described in*
44 *subparagraph (3) of paragraph (f) of subsection 1 to each*



1 *beneficial owner of the eligible fund, regardless of whether the*
2 *beneficial owner is a qualified client; and*

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

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

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

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

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

16 5. *As used in this section:*

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

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

20 (2) *Is not a venture capital fund, as defined in 17 C.F.R. §*
21 *275.203(l)-1.*

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

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

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

28 90.211 As used in this chapter, unless the context otherwise
29 requires, the words and terms defined in NRS 90.215 to 90.309,
30 inclusive, *and sections 2 and 3 of this act* have the meanings
31 ascribed to them in those sections.

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

33 90.340 1. The following persons are exempt from licensing
34 under NRS 90.330:

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

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

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



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

7 (b) A representative of an investment adviser who is employed
8 by an investment adviser who is exempt from licensing pursuant to
9 paragraph (a) ***H or section 4 of this act;***

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

11 (1) Has passed the following examinations administered by
12 the Financial Industry Regulatory Authority:

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

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

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

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

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

29 3. The Administrator may, by order or rule, waive the
30 examinations required by subparagraph (1) of paragraph (c) of
31 subsection 1 for an applicant or a class of applicants if the
32 Administrator determines that the examination is not necessary for
33 the protection of investors because of the training and experience of
34 the applicant or 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
37 applicant for licensing as a broker-dealer, sales representative,
38 investment adviser, representative of an investment adviser or
39 transfer agent must file with the Administrator an application for
40 licensing and a consent to service of process pursuant to NRS
41 90.770 and pay the fee required by NRS 90.360. The application for
42 licensing must contain the social security number of the applicant
43 and any other information the Administrator determines by
44 regulation to be necessary and appropriate to facilitate the
45 administration of this chapter.



1 2. The requirements of subsection 1 are satisfied by an
2 applicant who has filed and maintains a completed and current
3 registration with the Securities and Exchange Commission or a self-
4 regulatory organization if the information contained in that
5 registration is readily available to the Administrator through the
6 Investment Adviser Registration Depository, the Central
7 Registration Depository or another depository for registrations that
8 has been approved by the Administrator by regulation or order.
9 Except as otherwise provided in subsection 3, such an applicant
10 must also file a notice with the Administrator in the form and
11 content determined by the Administrator by regulation and a consent
12 to service of process pursuant to NRS 90.770 and the fee required
13 by NRS 90.360. The Administrator, by order, may require the
14 submission of additional information by an applicant.

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

17 4. As used in this section, ~~§~~
18 ~~—(a) “Central Registration Depository” means the Central~~
19 ~~Registration Depository of the Financial Industry Regulatory~~
20 ~~Authority, or its successor, and the North American Securities~~
21 ~~Administrators Association or its successor.~~

22 ~~[(b) “Investment Adviser Registration Depository” means the~~
23 ~~Investment Adviser Registration Depository of the Financial~~
24 ~~Industry Regulatory Authority, or its successor, and the North~~
25 ~~American Securities Administrators Association or its successor.]~~

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

27 90.560 The Administrator by regulation or order may require
28 the filing of any prospectus, pamphlet, circular, form letter,
29 advertisement or other sales literature or advertising communication
30 addressed or intended for distribution to prospective investors,
31 including clients or prospective clients of an investment adviser
32 unless the security or transaction is exempt under NRS 90.520 or
33 90.530 or the investment adviser is exempt under NRS 90.340 ~~§~~ *or*
34 *section 4 of this act.*

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

36 628A.040 1. Except as otherwise provided in subsection 2, a
37 financial planner shall maintain insurance covering liability for
38 errors or omissions, or a surety bond to compensate clients for
39 losses actionable pursuant to this chapter, in an amount of
40 \$1,000,000 or more.

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

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



1 (b) An investment adviser licensed pursuant to NRS 90.330 or
2 exempt under NRS 90.340 ~~§~~ *or section 4 of this act.*

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

4 645B.093 1. A mortgage company who is a broker-dealer or
5 a sales representative licensed pursuant to NRS 90.310 or who is
6 exempt from licensure pursuant to NRS 90.320:

7 (a) Shall not commingle money received for mortgage
8 transactions and money received for securities transactions; and

9 (b) Shall ensure that all money received for mortgage
10 transactions is accounted for separately from all money received for
11 securities transactions.

12 2. A mortgage company who is an investment adviser or a
13 representative of an investment adviser licensed pursuant to NRS
14 90.330 or exempt from licensure pursuant to NRS 90.340 ~~§~~ *or*
15 *section 4 of this act:*

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

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

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

22 688C.212 1. A financial planner who, on behalf of a viator
23 and for a fee, commission or other valuable consideration not paid
24 by a provider or purchaser of viatical settlements, offers or attempts
25 to negotiate a viatical settlement between the viator and one or more
26 providers or brokers of viatical settlements must be licensed as an
27 insurance consultant pursuant to NRS 683C.020.

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

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

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

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

39 (d) An investment adviser licensed pursuant to NRS 90.330 or
40 exempt under NRS 90.340 ~~§~~ *or section 4 of this act;* or

41 (e) A producer of insurance licensed pursuant to chapter 683A
42 of NRS or an insurance consultant licensed pursuant to chapter
43 683C of NRS,



1 ↳ whose advice upon investment or provision of future income is
2 incidental to the practice of his or her profession or business.

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

