

Senate Bill No. 9—Committee on Judiciary

CHAPTER.....

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:

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

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

Existing law also exempts from the licensing requirements investment advisers who are registered or not required to be registered under the Investment Advisers Act of 1940 if: (1) the only clients of the investment adviser are other investment



advisers, broker-dealers or financial or institutional investors; (2) the investment adviser has no place of business in this State and directs business communications in this State to a person who is an existing client of the investment adviser and whose principal place of residence is not in this State; or (3) the investment adviser has no place of business in this State and during any 12 consecutive months it does not direct business communications in this State to more than five present or prospective clients under certain circumstances, whether or not the person or client to whom the communication is directed is present in this State. (NRS 90.340) **Section 6** of this bill provides that regardless of whether an investment adviser qualifies for an exemption from the licensing requirements under existing law, if the investment adviser advises a qualifying private fund, the investment adviser must also satisfy the requirements of **section 4** in order to qualify for an exemption.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(b) The investment adviser must:

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

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

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

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

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

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

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

5. As used in this section:

(a) "Eligible fund" means a qualifying private fund that:

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

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

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



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

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

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

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

2. The report must include, without limitation:

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

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

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

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

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

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

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

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

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

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

(2) The investment adviser has no place of business in this State and directs business communications in this State to a person



who is an existing client of the investment adviser and whose principal place of residence is not in this State; or

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

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

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

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

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

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

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

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

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

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

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

90.350 1. Except as otherwise provided in subsection 3, an applicant for licensing as a broker-dealer, sales representative, investment adviser, representative of an investment adviser or transfer agent must file with the Administrator an application for licensing and a consent to service of process pursuant to NRS 90.770 and pay the fee required by NRS 90.360. The application for



licensing must contain the social security number of the applicant and any other information the Administrator determines by regulation to be necessary and appropriate to facilitate the administration of this chapter.

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

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

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

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

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

90.560 The Administrator by regulation or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempt under NRS 90.520 or 90.530 or the investment adviser is exempt under NRS 90.340 ~~[(1)]~~ **or section 4 of this act.**

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

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



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

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

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

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

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

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

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

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

5. The Administrator by regulation or order may prescribe:

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

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

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

➔ Unless the Administrator by regulation or order provides otherwise, a financial statement required under this chapter must be prepared in accordance with generally accepted accounting principles or other accounting principles as are prescribed for the issuer of the financial statement by the Securities and Exchange Commission.

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

628A.040 1. Except as otherwise provided in subsection 2, a financial planner shall maintain insurance covering liability for errors or omissions, or a surety bond to compensate clients for



losses actionable pursuant to this chapter, in an amount of \$1,000,000 or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

