

**REVISED PROPOSED REGULATION OF  
THE DIVISION OF FINANCIAL INSTITUTIONS  
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**LCB File No. R141-08**

August 10, 2010

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

AUTHORITY: §§1-6, 8, 14, 15, 17, 19-26, NRS 645G.100; §7, NRS 645G.100 and 645G.180; §§9 and 28, NRS 645G.100 and 658.055; §10, NRS 645G.100 and 645G.300; §11, NRS 645G.100 and 645G.310; §12, NRS 645G.100 and 645G.320; §13, NRS 645G.100 and 645G.350; §16, NRS 645G.100 and 645G.150; §18, NRS 645G.100 and 645G.170; §27, NRS 645G.100 and 645G.515; §29, NRS 645G.100 and section 53 of chapter 517, Statutes of Nevada 2007, at p. 3121.

A REGULATION relating to exchange facilitators; requiring certain information to be submitted with an application for a license; enacting provisions concerning the expiration and renewal of licenses; prescribing the conditions which must be met before a person conducts business as an exchange facilitator; enacting provisions concerning the assessment to cover the costs of certain audits and examinations; establishing certain fiduciary duties of a licensee; establishing procedures for the withdrawal of money maintained by a financial institution; requiring proof of a bond or deposit to be made available to clients; establishing appropriate designations for exchange funds deposited in a financial institution; authorizing the appointment of receiver licensees or successor licensees in the event of the death of a licensee; authorizing the appointment of receiver licensees or successor licensees in the event of the suspension, revocation or denial of the renewal of a license; providing for the maintenance of certain records; establishing provisions relating to exchange facilitator officers; requiring certain documents to be confidential; enacting provisions relating to disciplinary actions and contested hearings; repealing existing regulations governing qualified intermediaries; and providing other matters properly relating thereto.

**Section 1.** Chapter 645G of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Exchange fund” means all money, property and any other consideration or instrument received by a licensee from or on behalf of a client, except any money received by the licensee as compensation.*

**Sec. 4.** *“Publicly traded company” means a company which is publicly traded or a subsidiary of a company which is publicly traded.*

**Sec. 5.** *As defined in NRS 645G.040, the Division will interpret the term “exchange facilitator” not to include an entity in which an exchange facilitator has a 100-percent ownership interest that is used to facilitate exchanges or to take title to property located in this State as an exchange accommodation titleholder.*

**Sec. 6. 1.** *In addition to any other requirement set forth in this chapter or chapter 645G of NRS, an application for a license as an exchange facilitator must be submitted on a form prescribed by the Division and must:*

*(a) Be verified;*

*(b) State the locations of the principal office and each branch office, if any;*

*(c) State the name of the exchange facilitator officer responsible for the operation of the office and each branch office, if any;*

*(d) State the name under which the applicant proposes to conduct business; and*

*(e) Include, as an attachment:*

*(1) 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; and*

*(2) Proof of the fidelity bond or deposit required to be provided to the client pursuant to subsection 3 of NRS 645G.320.*

*2. In addition to the information required pursuant to subsection 1, an applicant must submit proof satisfactory to the Division that the applicant:*

*(a) Is a citizen of the United States or lawfully entitled to remain and work in the United States; and*

*(b) Has not made a false statement of material fact on the application.*

*3. If the exchange facilitator is not a publicly traded company, any person who owns at least 10 percent of the voting stock, partnership or member interests of the business of the applicant and who is doing business as an exchange facilitator in this State must provide a record of the personal history of the person. The record must be submitted in a manner prescribed by the Division.*

**Sec. 7. 1.** *Upon the expiration of a license issued to a person pursuant to this chapter and chapter 645G of NRS, the person is no longer licensed pursuant to this chapter and chapter 645G of NRS and shall not conduct any business for which a license is required pursuant to NRS 645G.100 unless the person has renewed the license or:*

*(a) Not later than 15 days after the date on which the license expired, the person submits to the Division a request for a grace period for the reinstatement of the license; and*

*(b) Not later than 30 days after the date on which the person submits the request for the grace period, the person submits to the Division all fees and documents required for the reinstatement of the license.*

*2. If a license issued to any person has expired and the person has failed to request a grace period pursuant to paragraph (a) of subsection 1 or has failed to submit all required fees*

*and documents within the period set forth in paragraph (b) of subsection 1, the person may not renew or reinstate the license. If the person wishes to engage in a business for which a license is required pursuant to NRS 645G.100, the person must apply for and be issued a new license pursuant to the provisions of this chapter and chapter 645G of NRS.*

**Sec. 8.** *A licensee may not conduct any business as an exchange facilitator unless:*

- 1. The licensee possesses each license and permit required by this State or a local government as a condition to conducting business;*
- 2. The business location complies with the provisions of all applicable planning and zoning ordinances;*
- 3. If the exchange facilitator is a corporation, every officer, director and exchange facilitator officer designated pursuant to NRS 645G.170 doing business as an exchange facilitator has applied for and obtained a license pursuant to the provisions of this chapter and chapter 645G of NRS; and*
- 4. If the exchange facilitator is not a natural person or a publicly traded company, each shareholder, member or other owner who owns 10 percent or more of the voting stock, shares or other ownership interest of the exchange facilitator and who is doing business as an exchange facilitator in this State has applied for and obtained a license pursuant to the provisions of this chapter and chapter 645G of NRS.*

**Sec. 9.** *1. For the purposes of NRS 658.055, each licensee is a licensed financial institution. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.*

*2. The Division will bill each licensee for the assessment described in subsection 1. The assessment must be paid within 30 days after the date on which the licensee receives the bill.*

*3. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.*

*4. The failure of a licensee to pay the assessment described in subsection 1 constitutes grounds for the revocation of the license of the licensee.*

**Sec. 10.** *1. For the purposes of NRS 645G.300, the required fiduciary duty of a licensee is limited to the licensee's obligations to manage the exchange funds, excluding any other duty which may otherwise be deemed a fiduciary duty, except as otherwise expressly provided in this chapter.*

*2. A licensee's fiduciary duty is satisfied if the licensee manages and invests the exchange funds for which the licensee is responsible in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances and pursuant to investment goals of liquidity and the preservation of principal.*

*3. A licensee breaches the licensee's fiduciary duty if any exchange funds for which the licensee is responsible are:*

*(a) Knowingly commingled with the operating account of the licensee by the licensee.*

*(b) Except as otherwise provided in this paragraph, loaned or otherwise transferred to any person affiliated with or related to the licensee within the third degree of consanguinity or to any entity in which ownership of more than 50 percent of the entity is common to the licensee or in which more than 50 percent of the ownership is held, in the aggregate, by persons affiliated with or related to the licensee within the third degree of consanguinity. This paragraph does not apply to any transfer to an exchange accommodation titleholder as*

*required by an exchange contract or to any transfer to a financial institution that is the parent company of or otherwise related to the licensee.*

*(c) Invested in a manner that does not allow sufficient liquidity to satisfy the licensee's contractual obligations to the clients of the licensee or does not preserve the principal amount of the exchange fund.*

**Sec. 11.** *The withdrawal of money from an account maintained by a financial institution may be authorized in any commercially reasonable manner so long as the authorization contains written approval by both the licensee and the client, including, without limitation:*

*1. The client's delivery of his or her written authorization to the licensee to withdraw money, followed by the licensee's delivery of the licensee's written authorization to the financial institution; or*

*2. Receipt by the financial institution of written authorization in any other manner.*

**Sec. 12.** *Proof of the fidelity bond or deposit required to be provided to a client pursuant to subsection 3 of NRS 645G.320 may be made in any commercially reasonable manner, including, without limitation:*

*1. Posting proof of the fidelity bond or deposit on an Internet website maintained by the licensee, if the licensee maintains an Internet website, so long as the licensee sends each client a written notice:*

*(a) Stating that proof of the bond or deposit may be viewed on the website; and*

*(b) Providing the Internet address of the website; or*

*2. Delivering a copy of the licensee's proof of fidelity bond or deposit to each client.*

**Sec. 13.** *1. For the purposes of NRS 645G.350, in addition to "trust funds" or "escrow accounts," other appropriate designations for exchange funds deposited in a financial*

*institution indicating that the money is not the money of the licensee may include, without limitation:*

*(a) "Exchange funds."*

*(b) Descriptions indicating that the fund is held "for the benefit of" the named client.*

*2. Exchange funds must be deposited in such a manner as not to violate the provisions of subsection 1 of NRS 205.960.*

**Sec. 14.** *1. In the event of the death of a licensee without whom an existing open exchange cannot be conducted, the Commissioner may appoint a receiver licensee or successor licensee for the purpose of winding up and completing any existing open exchanges.*

*2. A receiver licensee or successor licensee appointed pursuant to subsection 1 may not accept new exchange facilitation business during the receivership or successorship, or the winding up and completion period.*

**Sec. 15.** *1. If the Commissioner suspends, revokes or denies the renewal of a license pursuant to NRS 645G.515, the Commissioner may appoint a receiver licensee or successor licensee for the purpose of winding up and completing any existing open exchanges.*

*2. A receiver licensee or successor licensee appointed pursuant to subsection 1 may not accept new exchange facilitation business during the receivership or successorship, or the winding up and completion period.*

**Sec. 16.** *The written notice required pursuant to NRS 645G.150 to inform the Division of a licensee's establishment of a branch office must:*

*1. Be filed with the Division on a form prescribed by the Division; and*

*2. Contain proof that the exchange facilitator named in the application holds a current license pursuant to the provisions of this chapter and chapter 645G of NRS.*

**Sec. 17. 1.** *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 exchange or other transaction involving a customer in this State.*

*2. Except as otherwise provided in this chapter, such records must be maintained at a place of business in this State designated by the licensee or provided upon request.*

**Sec. 18. 1.** *The person who holds a valid license and who is the designated exchange facilitator officer pursuant to NRS 645G.170 must have direct supervisory responsibility for employees who engage in the business of an exchange facilitator in this State and must devote a substantial portion of each business day to:*

*(a) The supervision of employees who engage in the business of an exchange facilitator;*  
*and*

*(b) The actual management, operation and administration of the licensed exchange facilitator.*

*2. The exchange facilitator officer must be available in person at the business address of the licensed exchanged facilitator to perform his or her required functions and duties.*

**Sec. 19.** *An application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 645G of NRS, financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division and any report of examination made by the Division are confidential and may be disclosed only to:*

*1. The Division, an authorized employee of the Division or an agency of this State, any other state or the Federal Government that is investigating the activities of an applicant for a license or a licensee; or*

2. *Any person if the Commissioner determines, in the Commissioner's sole discretion, that the public interest in disclosure of the information outweighs the interest of the applicant or licensee.*

**Sec. 20.** 1. *If a licensee that is subject to disciplinary action pursuant to the provisions of this chapter and chapter 645G of NRS fails to file a verified answer to a complaint within 30 days after the date of service of the complaint, the licensee is deemed to have admitted to the allegations contained in the complaint and a default may be entered against him or her.*

2. *Except as otherwise provided in NRS 645G.510 or other specific statute, a complaint filed with the Division, any documents filed with the complaint and any report or information resulting from an investigation of a complaint are confidential.*

**Sec. 21.** 1. *If a person engages in an activity in violation of the provisions of this chapter or chapter 645G of NRS, the Commissioner may issue an order to the person imposing an administrative fine pursuant to NRS 645G.515, directing the person to cease and desist from engaging in the activity or both imposing an administrative fine and directing the person to cease and desist.*

2. *An order issued pursuant to subsection 1 must:*

(a) *Be in writing.*

(b) *Be served by certified mail on the person to whom the order is issued. For the purposes of this paragraph, proof of attempted service by certified mail to the last known address of the person is sufficient to establish that service was complete.*

(c) *State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time.*

*(d) State that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(1) For which the person has not received a license as required by chapter 645G of NRS; or*

*(2) In a manner that violates the provisions of this chapter or chapter 645G of NRS.*

*3. A person who is served with an order pursuant to this section shall not engage in any activity prohibited by the order after the person is served with the order unless the order is suspended or rescinded.*

*4. If a verified petition for a hearing is received by the Division within the prescribed time, the Commissioner or the designee of the Commissioner shall hold a contested hearing.*

*5. An order issued pursuant to this section may be amended or rescinded at any time before or during the contested hearing. Subject to the discretion of the Commissioner or the designee of the Commissioner, the hearing may be continued if an amendment to the order materially alters the facts or legal issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.*

*6. The decision of the Commissioner or the designee of the Commissioner is final for the purposes of judicial review.*

**Sec. 22.** *1. A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the designee of the Commissioner and designating the name and address of the person to be served with a subpoena.*

*2. A witness required to appear at a hearing before the Commissioner or the designee of the Commissioner is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 23. 1.** *At a contested hearing, the person contesting an order of the Commissioner or the designee of the Commissioner has the burden of showing that the order was not based upon substantial evidence.*

**2.** *The Commissioner or the designee of the Commissioner is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

**3.** *A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

**Sec. 24.** *The Commissioner or the designee of the Commissioner may:*

**1.** *Conduct hearings;*

**2.** *Question witnesses;*

**3.** *Make rulings on motions and objections; and*

**4.** *Issue findings of fact or conclusions of law at the conclusion of the case.*

**Sec. 25.** *If a party fails to appear at a hearing scheduled by the Commissioner or the designee of the Commissioner and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commissioner or the designee of the Commissioner that proper notice was given, the Commissioner or the designee of the Commissioner may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before the Commissioner or the designee of the Commissioner. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.*

**Sec. 26.** *1. A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.*

*2. Any party who is surprised by the testimony of a witness, called in good faith as a witness on the party's behalf, may question the witness as if conducting a cross-examination.*

**Sec. 27.** *1. If, after any notice or hearing required by law, the Commissioner or the designee of the Commissioner determines that a licensee or an applicant for a license as an exchange facilitator has committed any of the acts set forth in subsection 1 of NRS 645G.515, the Commissioner or the designee of the Commissioner may require the applicant or licensee to pay the costs incurred by the Division to conduct any investigation or hearing related to the act committed by the applicant or licensee, including, without limitation, the costs incurred by the Division for any legal services provided by the Office of the Attorney General.*

*2. If the Commissioner or the designee of the Commissioner requires a licensee or an applicant for a license as an exchange facilitator to pay the costs set forth in subsection 1, the licensee must pay those costs within 30 days after the date on which the action taken by the Commissioner or the designee of the Commissioner becomes final.*

*3. The Division will impose a charge of 10 percent of the costs which the Commissioner or the designee of the Commissioner requires a licensee or an applicant for a license as an exchange facilitator to pay if the required amount is received by the Division after the date on which the amount is due.*

*4. The failure of a licensee or an applicant for a license as an exchange facilitator to pay any costs imposed pursuant to this section constitutes grounds for the revocation of the license of the licensee.*

**Sec. 28.** NAC 658.040 is hereby amended to read as follows:

658.040 The Commissioner of Financial Institutions interprets the term “financial ~~[institution”]~~ *institution,*” as used in NRS 658.055 , to have the meaning ascribed to it in NRS 232.545 ~~[ ]~~, *except that the term also includes a person required to be licensed as an exchange facilitator pursuant to the provisions of chapter 645G of NRS.*

**Sec. 29.** NAC 645.772, 645.774, 645.776, 645.778, 645.780, 645.782, 645.784, 645.786, 645.788, 645.790, 645.792, 645.794, 645.796 and 645.798 are hereby repealed.

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### TEXT OF REPEALED SECTIONS

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**645.772 Definitions. (NRS 645.6065)** As used in NAC 645.772 to 645.798, inclusive, unless the context otherwise requires:

1. “Agreement” means a written agreement between a qualified intermediary and a client in which the qualified intermediary agrees to act as an intermediary in an exchange of real property for the benefit of the client.

2. “Person” has the meaning ascribed to it in NRS 0.039.

**645.774 “Act as a qualified intermediary” interpreted. (NRS 645.6065)** As used in subsection 1 of NRS 645.6065, the Division will interpret “act as a qualified intermediary” to include:

1. Entering into an agreement with a client who wishes to:

(a) Relinquish real property located in Nevada in exchange for other real property in a tax-deferred exchange; or

(b) Acquire real property located in Nevada that the client identifies to replace relinquished property in a tax-deferred exchange.

2. Maintaining an office in Nevada to solicit or conduct business as a qualified intermediary, regardless of where the real property which is the subject of the exchange is located or where the client resides.

**645.776 “Advertises or holds himself out as prepared to facilitate a tax-deferred exchange of property in this State by acting as the custodian of money or other property” interpreted. (NRS 645.606, 645.6065)**

1. As used in subsection 2 of NRS 645.606, except as otherwise provided in subsection 2 of this section, the Division will interpret “advertises or holds himself out as prepared to facilitate a tax-deferred exchange of property in this State by acting as the custodian of money or other property” to include a person making a statement that he is ready, willing, and able to act as a qualified intermediary, an escrow holder of a qualified escrow account, a trustee of a qualified trust, as those terms are defined in 26 C.F.R. § 1.1031(k)-1(g), or as a custodian of property in a tax-deferred exchange of real property as a part of:

(a) Advertising in printed publications which are published in Nevada, including telephone directories for locations in Nevada;

(b) Advertising by direct mail or circulating material to residents of Nevada;

(c) Telephone calls, electronic or telephonic transmissions to a facsimile machine or other electronic communications directed as solicitations to residents or other persons located in Nevada; or

(d) Advertising with a broadcast medium that initiates its broadcasts in Nevada.

2. The interpretation set forth in subsection 1 does not include:

(a) Advertising for and teaching seminars or classes, or giving presentations to attorneys, accountants, real estate licensees, persons who offer tax advice, or other persons where the primary purpose is to teach the persons about tax-deferred exchanges of real property or about acting as a qualified intermediary, an escrow holder of a qualified escrow account, or a trustee of a qualified trust;

(b) Advertising in regional or national publications which are published outside Nevada, even if the publications are distributed to residents of Nevada as well as residents of other states, unless the text of the advertisement specifically refers to Nevada or any location in Nevada; or

(c) Advertising with a broadcast medium which initiates its broadcasts outside Nevada, even if the broadcasts are received by persons in Nevada as well as persons in other states, unless the advertisement specifically refers to Nevada or any location in Nevada.

**645.778 “Officer” interpreted. (NRS 645.6065, 645.607)** As used in NRS 645.607, the Division will interpret “officer” to include the president and any vice president, secretary, or treasurer of the corporation.

**645.780 Registration: Application; effective date; expiration; notice of denial. (NRS 645.6065)**

1. An application for registration submitted pursuant to NRS 645.6065 is not effective until the application is accepted by the Division. Within 10 days after receipt of an application for registration, the Division will accept or deny the application.

2. In addition to the information required by NRS 645.6065, an application for registration must include:

(a) A list of all judgments that have been entered against the applicant by a court or administrative agency for which the applicant is liable, including judgments which are under appeal but for which enforcement has been stayed.

(b) A description of any litigation or matters referred to alternative methods of resolving disputes which involve the applicant and which could result in a judgment against the applicant. The description does not need to include a prediction of the possible outcome of the litigation or other matters.

(c) The name and address of the financial institution and current balance of all accounts in which the applicant is holding money for clients at the time the application is completed. The applicant does not need to identify the clients or the specific amounts being held for any client.

(d) A statement of whether the applicant or any of its owners, directors, officers, or employees have been convicted of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, and, if so, a certified copy of the record of conviction must be provided.

(e) A statement of whether the applicant or any of its owners, directors, officers, or employees have had entered against them a final judgment or order, including a stipulated judgment or order, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, misappropriation of property, the use of any untrue or misleading representation in an attempt to sell property or services, or the use of any unfair, unlawful, or deceptive trade practice, and, if so, a certified copy of each judgment or order, including the findings of fact and conclusions of law, must be provided.

(f) A statement of whether a receiver has been appointed to take control of any of the assets of the applicant or whether the applicant is in the process of corporate dissolution, reorganization, merger, sale of assets, or any other business combination.

3. If the Division accepts an application for registration, it will issue a certificate of registration to the applicant. The certificate of registration will state the date the registration becomes effective and the date upon which the registration expires. In no case will the registration expire on a date later than the date on which the bond or other deposit posted by the qualified intermediary expires.

4. If the Division denies an application for registration, it will send a notice to the applicant which informs the applicant of the reasons for denial.

5. The Division will not withhold acceptance of an application pending the outcome of an investigation conducted by the Federal Bureau of Investigation pursuant to NRS 645.6065 on the background of the applicant.

**645.782 Rejection of application. (NRS 645.190, 645.6065)**

1. The Division will reject an application which:
  - (a) Does not conform with the requirements of NRS 645.6065;
  - (b) Does not include information sufficient for the Division to determine the minimum amount of the bond or other deposit to be posted pursuant to NRS 645.608; or
  - (c) Contains information which is false, misleading or incomplete.
2. The Division will not refund the fee for the application for registration.

**645.784 Renewal of registration. (NRS 645.6065)**

1. A registrant must file annually with the Division an application for the renewal of his registration on forms supplied by the Division. For renewal of his registration, a registrant must

submit any information or fingerprint cards necessary to make current the information contained in his original application for registration.

2. To avoid a lapse in registration, the Division must receive a registrant's application for the renewal of registration accompanied by the appropriate fee required by NRS 645.6065 at least 10 days before expiration of the registration.

**645.786 Revocation of registration; procedure. (NRS 645.6065)**

1. After acceptance of a registration, the Division may revoke a registration if:

(a) The Division discovers that a registrant supplied information in his application for registration which is false, materially misleading or incomplete;

(b) Any portion of the amount of the bond or deposit that the registrant posted pursuant to NRS 645.608 has been drawn upon, terminated or is otherwise no longer available;

(c) The Division demands an increase in the minimum amount of the bond or other deposit pursuant to NAC 645.788 during the period of registration and the registrant fails to post the additional amount; or

(d) A registrant fails to inform the Division of a change of address or telephone number as required by NRS 645.6075.

2. To revoke a registration, the Division will notify the registrant of the revocation and provide a 30-day notice of a hearing to be conducted by an administrative hearing officer of the department of business and industry pursuant to the provisions of chapter 233B of NRS.

**645.788 Bond or deposit: Minimum amount; increase of minimum amount; objection by applicant; procedural requirements. (NRS 645.6065, 645.608)**

1. Except as otherwise provided in subsection 2, the minimum amount of a bond or other deposit required by NRS 645.608 must be \$50,000.

2. The Division may, as appropriate, increase the minimum amount of the bond or other deposit to not more than:

- (a) The amount of any outstanding judgments or tax assessments against the applicant;
- (b) Fifty percent of the amount in controversy reported to the Division in accordance with paragraph (b) of subsection 2 of NAC 645.780; or
- (c) The amount specified in paragraph (c) of subsection 2 of NAC 645.780 if the information supplied pursuant to paragraph (d), (e), or (f) of subsection 2 of NAC 645.780 is in the affirmative.

3. If an applicant objects to an increase in the minimum amount of the bond or other deposit required by the Division pursuant to subsection 2, he may appeal the decision by requesting a hearing before the Commission. The request must be in writing and received by the Division within 30 days after the date on which the Division informed the applicant of the increase.

4. If an applicant appeals a decision of the Division pursuant to subsection 3, the hearing will be held in the manner set forth in NRS 645.440. At the hearing, the applicant has the burden of proving that the increase in the minimum amount of the bond or other deposit required by the Division is unreasonable.

**645.790 Purposes and restrictions of bond. (NRS 645.6065, 645.608)**

1. Except as otherwise provided in subsection 2, a bond posted pursuant to NRS 645.608, must, to the satisfaction of the Division:

- (a) Assure payment to all clients up to the amount of the bond in all covered transactions for losses suffered by clients because the principal misappropriates, embezzles, converts, wrongfully encumbers, loses, or fails to convey or cause to be conveyed to the intended party any property which comes into the principal's possession or control;

(b) Cover losses incurred as a result of actions or inactions by the principal during the period of the bond; and

(c) Be effective for a period not less than 18 months after the date of the application for registration or the renewal of registration.

2. The bond:

(a) Need only cover losses in transactions in which the principal acts as a qualified intermediary in Nevada;

(b) May limit payment of losses to the actual cash value or fair market value of the property lost by the client and may expressly exclude attorney's fees, costs of collection and special, consequential, and exemplary damages;

(c) May limit the time for filing claims against the bond to 180 days after the expiration of the bond; and

(d) Need not assure that the qualified intermediary will carry out his obligations in such a way as to assure that the transaction will qualify as a nontaxable deferred exchange of real property.

**645.792 Deposit of security in lieu of bond. (NRS 645.6065, 645.608)**

1. If, in accordance with subsection 2 of NRS 645.608, an applicant posts a letter of credit with the Division, the letter of credit must:

(a) Be irrevocable and be effective for a period not less than 18 months after the date of the application for registration or renewal of registration.

(b) State that the issuer will honor multiple drafts for payment upon compliance with the terms of the credit;

(c) Be in a form acceptable to the Division; and

(d) Name the Division as the beneficiary for the benefit of the clients of the qualified intermediary.

2. If, in accordance with subsection 2 of NRS 645.608, an applicant posts a savings certificate, certificate of deposit, or investment certificate, the certificate must comply with the requirements of subsection 2 of NRS 645.608. Interest earned on a certificate may accrue to the account of the qualified intermediary.

**645.794 Claim for reimbursement of financial losses caused by qualified intermediary; exceptions. (NRS 645.6065, 645.6085)**

1. To obtain reimbursement for financial losses caused by the illegal conduct of a qualified intermediary pursuant to NRS 645.6085, a person must file a claim with the Division in writing on forms supplied by the Division. The claimant must provide information satisfactory to the Division to demonstrate that his loss is properly recoverable.

2. The Division will approve a claim if:

(a) The claimant was a resident of Nevada at the time of the loss;

(b) The loss was caused by a qualified intermediary, regardless of whether the qualified intermediary was registered in Nevada;

(c) The loss to the claimant was caused by:

(1) The misappropriation, embezzlement, conversion, wrongful encumbrance, or failure by the qualified intermediary to convey any property to the claimant or to the party intended by the claimant;

(2) The permanent loss of possession of the property by the qualified intermediary as a result of:

(I) A bankruptcy proceeding involving the qualified intermediary or the property which was the subject of the exchange; or

(II) A foreclosure of a judgment lien, tax lien, or other lien against the qualified intermediary; or

(3) The payment by the claimant to creditors of the qualified intermediary to relieve liens against the property placed by creditors of the qualified intermediary;

(d) The claimant made a claim against the bond or other deposit, unless the Division determines that making such a claim was impracticable under the circumstances; and

(e) If the loss was a result of a voluntary act of the qualified intermediary, the claimant obtained a judgment against the qualified intermediary. As used in this paragraph, “a voluntary act of the qualified intermediary” includes willful misappropriation, embezzlement or conversion and wrongful encumbrance and conveyance of property to a person other than its intended beneficiary.

3. The Division will approve claims only in the amount of the actual amount of cash lost by the claimant or the fair market value of the property that was misappropriated or lost by the qualified intermediary.

4. The Division will not approve payment of:

(a) Attorney’s fees;

(b) Costs of collection;

(c) Special, consequential, and exemplary damages; or

(d) Interest.

5. A claimant may not recover his losses if an exchange of property does not qualify for nontaxable deferred status.

**645.796 Approval and payment of claim. (NRS 645.6065, 645.6085)**

1. If the Division approves a claim, it will inform the claimant of the amount of the claim approved, and will explain the procedures for payment of claims set forth in subsection 2.
2. If the Division allows a claim, it will hold the claim for 2 years and pay against the claim as money becomes available pursuant to NRS 645.6085. As money becomes available, the Division will pay claims on a pro rata and equal priority basis.
3. Payments on a claim will cease when the claim has been satisfied or 2 years after the date on which the Division made the first payment on the claim, whichever occurs first.

**645.798 Denial of claim; appeal. (NRS 645.6065, 645.6085)**

1. If the Division denies a claim, it will inform the claimant of its decision in writing and explain the claimant's rights of appeal set forth in subsection 2.
2. If a claimant is not satisfied with the amount of a claim approved by the Division or if the Division denies a claim, the claimant may appeal the decision to the Commission. The appeal must be in writing and received by the Division within 30 days after the claimant is notified of the Division's decision. The Division will schedule a hearing with the Commission within 90 days after receipt of the request for a hearing from the claimant. At the hearing, the claimant has the burden of proving to the satisfaction of the Commission that he qualifies for reimbursement in the amount of his claim.