

REVISED PROPOSED REGULATION OF

THE STATE TREASURER

LCB File No. R128-11

January 30, 2013

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

AUTHORITY: §§1-16, NRS 355.285.

A REGULATION relating to public financial administration; adopting provisions governing the program to invest in private equity a certain amount of money from the State Permanent School Fund; and providing other matters properly relating thereto.

Section 1. Chapter 355 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 16, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Board” means the Board of Directors of the Corporation.*

Sec. 4. *“Corporation” means the Nevada Capital Investment Corporation formed by the State Treasurer pursuant to subsection 1 of NRS 355.270.*

Sec. 5. *“Fund of Funds Manager” means the person selected by the Board pursuant to section 13 of this regulation to assist the Corporation in making investments.*

Sec. 6. 1. *The name of the corporation for public benefit formed by the State Treasurer pursuant to subsection 1 of NRS 355.270 is the Nevada Capital Investment Corporation.*

2. *The Corporation must be governed by the Board appointed pursuant to subsection 2 of NRS 355.270. The Chair of the Board is the State Treasurer, and the Vice Chair is the*

member appointed by the Governor pursuant to subparagraph (1) of paragraph (a) of subsection 2 of NRS 355.270.

3. A majority of the members of the Board who are currently serving constitutes a quorum for the transaction of business at a meeting of the Board.

4. The affirmative vote of a majority of the members of the Board present at a meeting at which a quorum is present, with the State Treasurer voting with the majority, is necessary to exercise a power or function of the Board.

Sec. 7. 1. *Pursuant to subsection 4 of NRS 355.285, the Business Leadership Council is hereby established.*

2. The Board may appoint to the Business Leadership Council leaders of businesses located in this State and representatives of business development groups in this State. The Board may appoint as many members of the Council as it deems appropriate.

3. The Business Leadership Council may:

(a) Provide strategic advice and guidance to the Fund of Funds Manager and the Board.

(b) Nurture and mentor businesses seeking or receiving an investment from the Corporation.

(c) Provide businesses seeking or receiving an investment from the Corporation with access to the local and international business relationships of the members of the Council.

(d) Collaborate with the Nevada System of Higher Education and other educational institutions, the Board and the Fund of Funds Manager to develop internship programs pursuant to which students are partnered with businesses in which the Corporation invests.

(e) Provide any other support requested by the Board or the officers of the Corporation to further the goals of the Corporation.

Sec. 8. *A member of the Board or an officer, employee or agent of the Corporation shall not disclose financial or proprietary information of a business seeking or receiving an investment from the Corporation, or otherwise related to the investments of the Corporation, without the consent of the person or entity that submitted the information, unless:*

1. The information is disclosed to:

(a) A member of the Board or the Fund of Funds Manager; or

(b) An officer, employee or agent of the Corporation who needs to know the information to carry out his or her duties; or

2. The disclosure of the information is required by chapter 239 or 241 of NRS or other applicable law.

Sec. 9. *The Board shall:*

1. Adopt a policy concerning the appropriate training of workers and the payment of fair wages and benefits by contractors retained by a business in which the Corporation directly invests. The officers of the Corporation shall prepare and submit to the Board a draft of such a policy. In drafting the policy, the officers of the Corporation shall:

(a) Define “appropriate training of workers” and “fair wages and benefits” in such a manner that recognizes the practicalities of all markets.

(b) Define “fair wages and benefits” based upon the following criteria:

(1) The nature of a project;

(2) The nature of the jobs or trades required for a project and comparable job or trade classifications;

(3) The scope and complexity of the work; and

(4) Any other factors affecting the relevant markets in the locality in which the business receiving an investment is located.

(c) Consider local practices concerning specific trades and types of projects to determine a practical standard for determining fair wages in lieu of the standard wage paid for such trade and projects. In addition, the policy may require a business in which the Corporation invests to engage in broad outreach and a competitive bidding process which invites local trades to suggest contractors whom the local trades believe to be responsible and qualified for a specific project.

2. Establish policies and procedures for the Corporation, including, without limitation, policies and procedures for:

(a) The conduct of meetings of the Board.

(b) Legal representation of the Corporation, the members of the Board and the officers of the Corporation.

(c) The allocation of the returns on investments, including, without limitation, allocations to the State Permanent School Fund.

(d) The return of the corpus of investments to investors after a defined investment period of not more than 10 years following the capital drawdown by the manager of a private equity fund, plus any extensions authorized by the partnership agreement of the private equity fund or a majority of the limited partners in the private equity fund.

3. Establish investment guidelines for the Fund of Funds Manager, for private equity funds in which the Corporation invests and for direct investments and co-investments by the Corporation, including, without limitation, guidelines for:

(a) The diversification of investments that consider the stage of investment, industry sectors, size of investment and vintage years;

(b) Negotiating and including in each agreement governing a venture capital co-investment made by the Corporation a provision specifying the requirements of the agreement for which a penalty may be imposed and requiring a penalty to be paid to the Corporation if such a requirement is not met;

(c) The fees and other compensation to be paid to the managers of private equity funds in which the Corporation invests;

(d) Contract terms to be negotiated with the managers of private equity funds in which the Corporation invests; and

(e) The selection of investments to be made by the Corporation.

4. Establish investment performance benchmarks and objectives.

5. Establish the roles and responsibilities of the Board, the officers of the Corporation, the Office of the State Treasurer, investment consultants retained by the Corporation, the Office of the Attorney General, the Fund of Funds Manager and the managers of private equity funds in which the Corporation invests.

6. Establish reporting requirements for the Fund of Funds Manager and for the investments made by the Corporation.

7. Retain an independent audit firm to conduct audits of the Corporation.

8. Collaborate with the Nevada System of Higher Education and other educational institutions, the Business Leadership Council established by section 7 of this regulation and the Fund of Funds Manager to develop an internship program pursuant to which students are partnered with businesses in which the Corporation invests.

Sec. 10. *The officers of the Corporation shall:*

1. Maintain custody of all funds, securities, contracts, bills of exchange and promissory notes of the Corporation, and any assignments of property or money, stocks, bonds, certificates, vouchers, deeds, evidences of indebtedness, indentures and any other property belonging to, or owed by, the Corporation.

2. Carry out the investments of the Corporation by transferring money from the State Permanent School Fund to the Fund of Funds Manager or other external asset managers with whom the Corporation is placing investments.

3. On behalf of the Corporation, sign all papers required by law, the bylaws of the Corporation or the Board, or designate a signatory to sign such papers.

4. On behalf of the Corporation, endorse for collection checks, notes and other obligations.

5. Deposit all money to the credit of the Corporation in the banks or depository institutions designated by the Board.

6. Sign all receipts and vouchers for payment made by the Corporation.

7. Enter regularly into the books of the Corporation full and accurate accounts of all money received and paid by the Corporation and, whenever requested by the Board, render a statement of the cash account of the Corporation.

8. Upon reasonable notice and during business hours, provide access to the books of account of the Corporation to a member of the Board who requests such access.

9. If required by the Board, give bond to the Corporation conditioned on the faithful performance of the officer's duties in such a sum, and with such security, as required by the Board. The Corporation shall bear the expense of such a bond.

10. Keep the minutes of all meetings of the Board in accordance with chapter 241 of NRS.

11. If designated by the Board, attend, act and vote at a meeting of the stockholders of a corporation in which the Corporation holds stock. At such a meeting, the officer designated by the Board possesses and may exercise any rights and powers incident to the ownership of such stock.

12. Perform any other duties established by the bylaws of the Corporation.

Sec. 11. 1. *Members of the Board and officers, employees and agents of the Corporation shall discharge the duties of their respective positions in a nonpartisan manner, in good faith and with the degree of diligence, care and skill which an ordinarily prudent person would exercise in a similar position under similar circumstances. In discharging their duties, members of the Board and officers, employees and agents of the Corporation may rely on:*

(a) An opinion of legal counsel for the Corporation concerning matters reasonably believed to be within the professional competence of the legal counsel.

(b) A report of an independent auditor selected by the Board who provides a report on matters reasonably believed to be within the professional competence of the auditor.

(c) Financial statements of the Corporation which the officer of the Corporation having charge of the books or accounts of the Corporation represents to be correct or which a certified public accountant has certified in writing to reflect fairly the financial condition of the Corporation.

2. *In making decisions concerning the investments of the Corporation, the members of the Board shall exercise the care, skill and caution that an investor of ordinary prudence, discretion and intelligence would exercise under similar circumstances in a similar position.*

3. *A member of the Board:*

(a) *Shall not vote, abstain from voting or otherwise act upon a matter;*

(b) *Shall not participate in the discussions or deliberations of a matter;*

(c) *Must not be present for the portion of a meeting during which the Board discusses or deliberates a matter or votes upon a matter; or*

(d) *Shall not discuss a matter with another member of the Board,*

↪ if the action or opinion of the member of the Board would reasonably be affected by his or her commitment in a private capacity to the interest of another person. If a member of the Board is prohibited from discussing or taking action on a matter pursuant to this subsection, immediately before the Board discusses the matter at a meeting, the member of the Board shall disclose the conflict of interest. The disclosure must be included in the record of the meeting.

4. *An officer, employee or agent of the Corporation shall not take any action with respect to his or her work for the Corporation which would reasonably be affected by his or her commitment in a private capacity to the interest of another person and shall disclose to the Board in writing the existence and nature of such a conflict of interest.*

5. *The Corporation may not make expenditures or investments to finance or influence political activities. In making decisions concerning expenditures or investments by the Corporation, the members of the Board shall not consider whether the recipient of the expenditure or investment has made a contribution or expenditure which is subject to the requirements of chapter 294A of NRS.*

Sec. 12. 1. *The Corporation may obtain money from:*

(a) The State Permanent School Fund which is transferred to the Corporation by the State Treasurer pursuant to NRS 355.280.

(b) Subject to the requirements of subsections 2 and 3, investments from the Nevada System of Higher Education and other public entities and investments from private individuals, organizations and businesses.

(c) Gifts, grants and donations from any source.

2. *If the Corporation obtains an investment from a public or private investor pursuant to subsection 1, the Corporation must enter into an agreement with the investor which states:*

(a) The amount of the investment;

(b) Any restrictions on the liquidity of the investment;

(c) The manner in which distributions from investments will be made; and

(d) The management fees and expenses to be paid by the investor.

3. *Before entering into an agreement pursuant to subsection 2, the Corporation must consult with legal counsel concerning whether the agreement would cause the Corporation to lose its exemption from the federal income tax. The Corporation may not accept an investment from a public or private investor pursuant to paragraph (b) of subsection 1 if the acceptance of the investment will cause the Corporation to lose its exemption from the federal income tax.*

4. *The Corporation shall maintain a record of each agreement entered into pursuant to subsection 2 and make the record available to a member of the public upon request.*

Sec. 13. 1. *In accordance with chapter 333 of NRS and chapter 333 of NAC, the officers of the Corporation shall prepare a request for proposals for the selection of the Fund of Funds Manager and coordinate any activities necessary to present to the Board the*

proposals submitted in response to the request for proposals. The request for proposals must require that a person submitting a proposal disclose:

(a) Any conflict of interest;

(b) All criminal convictions of the person and the principal personnel of the person;

(c) Any investigations of the person and the principal personnel of the person by the Internal Revenue Service, the Securities and Exchange Commission and any other state or federal agency charged by law with investigating violations of laws relating to taxation or securities; and

(d) All litigation involving the person and the principal personnel of the person relating to the financial affairs of the person or the principal personnel.

2. The Board shall evaluate proposals submitted in response to the request for proposals prepared pursuant to subsection 1 and select the Fund of Funds Manager based on the criteria established by the Board. The contract between the Corporation and the Fund of Funds Manager selected by the Board must contain termination and performance clauses which authorize the Board to terminate the contract based on legal, performance and qualitative criteria and any other criteria agreed to by the Board and the Fund of Funds Manager.

3. The Fund of Funds Manager shall:

(a) Establish an office within this State which, at a minimum, is staffed by a part-time employee who actively seeks opportunities to invest in businesses located in this State.

(b) Establish an investment plan for the Corporation which provides for an asset allocation that:

(1) Invests not more than \$7.5 million of the Corporation's capital in a single business and invests not more than \$10 million or 20 percent of the capital invested by the Corporation in a single private equity fund;

(2) Establishes a diversified portfolio of private equity investments that may include, without limitation, venture capital, growth capital, buyout investments, mezzanine financing, distressed debt or secondary investments in private equity; and

(3) Promotes investments in qualified businesses that pursue the primary goal of providing greater investment returns for the State Permanent School Fund and the secondary goal of promoting economic development and employment in this State.

(c) Select private equity funds in which to invest the Corporation's money and co-investments and direct investments for the Corporation in accordance with the guidelines, policies and procedures established by the Board.

(d) On behalf of the Corporation, negotiate and execute partnership agreements with private equity funds in which the money of the Corporation will be invested and to effectuate co-investments and direct investments for the Corporation.

(e) Manage daily activities associated with the investments of the Corporation.

(f) Develop relationships with important constituencies in this State, including, without limitation, governments, educational institutions, corporations, entrepreneurs, and private equity and venture capital organizations, and foster cooperation among these institutions and organizations.

(g) Work with venture capital and entrepreneurial organizations to organize regional forums and conferences.

(h) In accordance with industry standards for due diligence with respect to private equity funds, perform regular due diligence of private equity funds in which the Corporation is invested.

(i) Provide an annual report to the Board concerning the performance and activities of each private equity fund in which the Corporation is invested and each co-investment and direct investment of the Corporation.

(j) Review the performance of all investments made by the Corporation pursuant to NRS 355.250 to 355.285, inclusive, and sections 2 to 16, inclusive, of this regulation.

(k) Execute investment decisions based on the following criteria:

(1) Primarily, the probability that a business will succeed and the expected investment return; and

(2) Secondarily, the diversification of the economic base of this State and the generation and retention of jobs and investment in this State.

(l) Ensure that 100 percent of the venture capital co-investments and direct investments of the Corporation are made in businesses that meet the criteria set forth in subsection 6 of NRS 355.285.

(m) Ensure that a business relocating to this State and receiving a venture capital co-investment or direct investment is required:

(1) To maintain a presence in this State, as evidenced by the criteria set forth in subsection 6 of NRS 355.285, for a minimum period; and

(2) To pay back any investment made by the Corporation if the business fails to maintain such a presence for the minimum period.

(n) Ensure that at least 70 percent of the private equity funding provided by the Corporation, after the payment of fees to investment managers, is provided to businesses that meet the criteria set forth in subsection 2 of NRS 355.280.

(o) Prepare a draft of the annual report required by paragraph (d) of subsection 7 of NRS 355.270 and submit the draft to the officers of the Corporation for review. The officers of the Corporation shall review the draft of the report and submit it to the Board for approval. The report must provide:

(1) An accounting of all money received and expended by the Corporation, including, without limitation, any grants, gifts and donations received by the Corporation; and

(2) The name and a brief description of all funds receiving an investment from the Corporation.

(p) Perform any other duties established by the contract between the Corporation and the Fund of Funds Manager.

4. The fee structure for the Fund of Funds Manager may consist of only a management fee and a performance fee. The management fee may not exceed 1 percent of the committed capital. The performance fee may not exceed 10 percent of the profits generated by the Corporation's investments.

Sec. 14. To defray any administrative or management fees charged by the Fund of Funds Manager pursuant to the contract between the Corporation and the Fund of Funds Manager, the Corporation may place money in a fixed income mutual fund or common trust fund approved by the Board. Upon Board approval, the Corporation may use the earnings of the mutual fund or common trust fund to pay the administrative or management fees of the Fund of Funds Manager.

Sec. 15. 1. *Private equity funds in which the Corporation invests:*

(a) May include qualified private equity funds with an emphasis in venture capital, growth capital, buyout investments, mezzanine financing, distressed debt or secondary investments in private equity.

(b) Must be managed by persons who have at least 10 years of experience in commercial banking, private equity investing, mezzanine funding or venture capital.

2. The managers of a private equity fund in which the Corporation invests have a fiduciary duty to the Corporation with respect to the Corporation's investment in the fund.

3. The fee structure of a private equity fund in which the Corporation invests may consist of only a management fee and a performance fee. The management fee may not exceed 2.5 percent of committed capital. The performance fee may not exceed 20 percent of the net profits of the fund and must be distributed in a manner which aligns the interests of the general partner of the private equity fund and the limited partners of the fund.

4. A private equity fund in which the Corporation invests must provide to the Fund of Funds Manager an annual financial statement prepared by an accredited audit firm.

5. The Corporation must not be a general partner in a private equity fund in which the Corporation invests.

Sec. 16. 1. *Subject to the requirements of this section, upon the approval of a two-thirds majority of the members of the Board currently serving, with the State Treasurer being in the majority, the Corporation may:*

(a) Place direct investments and co-investments with strategic investors.

(b) Commit money for unique private equity investment opportunities in this State.

2. The Board shall adopt policies and procedures governing investments made pursuant to this section. Any investment made pursuant to this section must comply with the policies and procedures adopted pursuant to this subsection. At a minimum, the policies and procedures must establish due diligence controls that provide reasonable assurance that any investments pursuant to this section are likely to meet the investment performance objectives of the Corporation. The due diligence controls may include, without limitation:

(a) Entering into a contract with an investment advisor, investment consultant or any other person to evaluate an opportunity for an investment pursuant to this section. The Corporation may not enter into such a contract with an investment advisor, investment consultant or other person who has a business or familial relationship with a member of the Board or the management of a fund or business being evaluated or whose independence of judgment may reasonably be affected by a commitment to the interests of another person.

(b) Entering into a partnership with an institutional investor that has invested in the opportunity pursuant to which the Corporation and the institutional investor share analytical resources.

(c) Establishing requirements for the due diligence efforts of the State Treasurer's staff and any subcommittees of the Board that perform due diligence for investments made pursuant to this section.

3. The Corporation may place investments pursuant to this section with an external asset manager other than the Fund of Funds Manager or through the Fund of Funds Manager in accordance with the agreement between the Corporation and the Fund of Funds Manager.

4. The Corporation may not invest more than \$10 million pursuant to this section.