THE STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE
SECURITIES DIVISION

IN THE MATTER OF: **NEXUS CAPITAL INC** **(CRD No. 291866)** **Respondent.**	**FINAL ORDER** **File No: 19SEC081**

The Secretary of State of the State of North Carolina (the "Administrator"), as Administrator of the North Carolina Investment Advisers Act (N.C. Gen. Stat. Chapter 78C, the "Act"), has considered the evidence in this matter and finds that it is appropriate and in the public interest to resolve it on the terms set forth in this Final Order ("Order") by consent. With the consent of **NEXUS CAPITAL INC** ("NEXUS" or "Respondent"), who neither admits nor denies the Findings of Fact or Conclusions of Law, the Administrator enters this Order.

I. FINDINGS OF FACT

1. Respondent NEXUS (CRD No. 291866) is a North Carolina registered investment adviser with a principal place of business in Matthews, NC.

2. NEXUS was incorporated in North Carolina on December 5, 2017.

3. NEXUS was initially registered as an investment adviser in North Carolina on May 23, 2018.

BOOKS AND RECORDS

4. Pursuant to the Administrator's authority under N.C. Gen. Stat. §78C-18(e), in February 2019, the North Carolina Department of the Secretary of State, Securities Division ("Division") conducted a routine books and records examination of NEXUS.

5. N.C. Gen. Stat. §78C-18(a) requires an investment adviser to make and keep accounts, correspondence, memoranda, papers, books, and records as the rule shall require. 18 NCAC 06A .1706(a)(7) provides investment advisers shall keep originals of all written

communications received and copies of all written communications sent relating to any recommendation made or proposed to be made or any advice given or proposed to be given.

6. N.C. Gen. Stat. §78C-18(a) and 18 NCAC 06A .1706(a)(7) also require books and records to be kept for suitability determinations made by investment advisers.

7. NEXUS provided the Division with its "Policies and Procedures Manual" effective January 2018, which provides that "investment adviser representatives must gather information on a client's age, investment experience, time horizon, liquidity needs, risk tolerance, financial history, goals, objectives, and financial concerns in order to assist the client in developing an asset allocation strategy."

8. As part of its examination the Division reviewed NEXUS' client files from on or about September 2018 through on or about April 2019.

9. NEXUS' client files appear to be inconsistent or incomplete related to its suitability review. NEXUS' client account records contained no references to suitability or risk tolerance, which is inconsistent with the firm's policies and procedures.

10. For three North Carolina clients, NEXUS also failed to include adequate suitability language in its client files necessary to support its recommendation of risky options trading for its clients.

11. Specifically, from on or about September 2018 through on or about April 2019, NEXUS recommended risky options trading to three North Carolina clients and failed to maintain adequate documentation related to its suitability review.

12. On the advice of NEXUS, three North Carolina clients were exclusively trading high-risk options.

13. NEXUS also has a series of affiliated businesses organized as limited liability companies for the purpose of investment in and the solicitation of investments in various real estate projects and other private equity. These affiliated business are collectively referred to in the Order as "Nexus Ventures."

14. Pursuant to N.C. Gen. Stat. §§ 78C-18(b), 78C-18(d), and 18 NCAC 06A .1707(a),(b) and (e), investment advisers are required to furnish, disseminate, and timely update certain information disclosed to its clients and prospective clients, including additional businesses that may cause a conflict of interest.

15. From on or about November 2021 through on or about July 2022, NEXUS failed

to disclose in its filings its management, control, and affiliation with Nexus Ventures to its clients and prospective clients.

16. NEXUS failed to properly and timely disclose its oversight and control of Nexus Ventures as an outside business activity.

FAILURE TO SUPERVISE

17. N.C. Gen. Stat. §78C-19(a)(2)(j) and 18 NCAC 06A .1808(a) and (b) requires an investment adviser to reasonably supervise investment adviser representatives and employees.

18. As an investment adviser, NEXUS is required to create and maintain books and records related to advice or recommendations made or proposed to be made to clients, as required by N.C. Gen. Stat. §78C-18(a) and 18 NCAC 06A .1706(a)(7)(A).

19. NEXUS is required to retain records as to each client's investment objectives, financial situation and needs in order to determine suitable investments for that client.

20. As an investment adviser, NEXUS is also required to make, keep and timely amend certain information required to be disclosed to its clients and prospective clients, per N.C. Gen. Stat. 78C-18(a), (b) and (d); 18 NCAC 06A .1706(a)(14); and 18 NCAC 06A .1707(a), (b), and (e).

21. NEXUS' failure to supervise caused its representatives to:

(a) fail to maintain proper books and records;.

(b) fail to timely make disclosure of its affiliation and control of Nexus Ventures;

(c) fail to timely amend its filings with the Administrator; and

(d) in its Form ADV Part 2A and Form ADV Part 2B, fail to disclose to its clients and potential clients the possible conflict of interest associated with Nexus' management, affiliation and control of Nexus Ventures.

II. CONCLUSIONS OF LAW

22. The Administrator has jurisdiction over NEXUS and over the subject matter of this Order.

23. At all relevant times herein, NEXUS was an investment adviser under North

Carolina law as defined under N.C. Gen. Stat. §78C-2(1).

24. As an investment adviser registered in North Carolina, NEXUS is required to comply with the Act and its administrative rules, and submit itself to the jurisdiction and oversight of the Administrator.

25. N.C. Gen. Stat. §78C-28(b)(1) grants the Administrator, after giving notice of an opportunity for a hearing, that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of the Act, she may order such person to cease and desist from such unlawful act or practice.

26. N.C. Gen. Stat. §78C-18(a) requires an investment adviser to make and keep accounts, correspondence, memoranda, papers, books and other records as the Administrator by rule shall require.

27. 18 NCAC 06A .1706(a) requires that every investment adviser registered or required to be registered keep true and accurate books, ledgers and records.

28. NEXUS violated N.G. Gen. Stat. §78C-18(a) and 18 NCAC 06A .1706(a)(7) with its failure to maintain records concerning the suitability and risk tolerance for their clients in their client files.

29. N.C. Gen. Stat. §78C-18(b) requires investment advisers to furnish or disseminate certain information as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

30. 18 NCAC 06A .1706(a)(14) requires investment advisers to make and keep true, accurate and current books and records pertaining to the investment adviser's brochure and supplements, including those provisions of 18 NCAC 06A .1707.

31. 18 NCAC 06A .1707(a) requires that the brochure and supplement(s) contain all information required by Part 2 of Form ADV [CFR279.1] and such other information as the Administrator may require.

32. 18 NCAC 06A .1707(e) requires that investment advisers amend their brochure and any brochure supplement(s) and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement(s) becomes materially inaccurate. An amendment is considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

33. N.C. Gen. Stat. §78C-18(d) requires that investment advisers promptly file

correcting amendments if the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect.

34. NEXUS violated N.G. Gen. Stat. §78C-18(a), (b), and (d); 18 NCAC 06A .1706; and 18 NCAC 06A .1707 with its failure to make and keep certain Form ADV Part 2A and Form ADV Part 2B records. NEXUS violated 18 NCAC 06A .1707(a) and (e) by not ensuring that all required information was promptly included in its Form ADV Part 2A and Form ADV Part 2Bs and by not promptly amending and not promptly delivering the forms to its clients and prospective clients.

35. Investment advisers are required to supervise their investment adviser representatives and employees under N.C. Gen. Stat. §78C-19(a)(2)(j) and 18 NCAC 06A .1808(a) and (b).

36. NEXUS failed to ensure proper supervision of its investment adviser representatives, culminating in the investment adviser's failure to maintain appropriate books and records of related suitability and investment risk tolerance in violation of N.C. Gen. Stat §78C-19(a)(2)(j) and 18 NCAC 06A .1808(a) and (b).

37. N.C. Gen. Stat §78C-19(a)(2)(j) requires investment advisers to supervise their investment adviser representatives and employees and to establish, maintain and enforce written procedures as a part of its supervision responsibilities.

38. NEXUS violated N.C. Gen. Stat. §78C-19(a)(2)(j) and 18 NCAC 06A .1808(a) and (b) by failing to ensure proper supervision of its investment adviser representatives in that it failed to enforce written procedures.

39. This Order and the assessment of a civil penalty and costs is necessary or appropriate in the public interest, is for the protection of investors and clients, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

40. The Administrator has the authority to enter this Order pursuant to the Act and the Administrative rules adopted thereunder.

III. JURISDICTION, CONSENT, AND WAIVER

NEXUS CAPITAL INC affirmatively states and agrees that:

41. The Administrator has jurisdiction over NEXUS and the subject matter of this Order.

42. NEXUS has read the contents of this Order and had the opportunity to consult with an attorney prior to the signing of this Order.

43. NEXUS freely consents to the entry of this Order. No threats, promises, or offers of any kind, other than as stated in this document, have been made by the Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the North Carolina Department of the Secretary of State in connection with the signing of this Order.

44. NEXUS permanently waives any and all rights under the North Carolina Investment Adviser's Act, the North Carolina Administrative Procedure Act (N.C. Gen. Stat. Chapter 150B), and any other law, to a *Notice of Hearing*, a hearing, and any other proceedings before the Administrator or other entity to which they may be entitled related to the subject of this Order, including any court of competent jurisdiction. NEXUS also permanently waives its right to seek judicial review of this Order under N.C. Gen. Stat. Chapter 150B, to appeal this Order, or to otherwise challenge either the validity or entry of this Order in any court or administrative agency. This Order resolves this matter without further administrative proceedings.

45. This Order contains the entire agreement between the undersigned, and NEXUS understands its effect.

46. This Order is governed by the Laws of the State of North Carolina and is a public record pursuant to those laws.

47. The presentation of this Order to the Administrator and any subsequent discussion of the Order prior to its entry without NEXUS or its counsel being present shall not constitute an improper *ex parte* communication between the Administrator and the Securities Division or counsel for the Securities Division.

NOW, THEREFORE, the Administrator, pursuant to and under all authority granted by the North Carolina Investment Advisers Act based upon the foregoing Findings of Fact, Conclusions of Law, and Jurisdiction, Consent and Waiver, and with NEXUS' express written Consent to Entry of Final Order, orders the following:

IV. ORDER

1. NEXUS shall immediately and permanently cease and desist from violating any provisions of the North Carolina Investment Advisers Act and any administrative rules promulgated under the Act.

2. NEXUS shall pay to the N.C. Department of the Secretary of State a civil penalty in the amount of $5,000.00 (five thousand dollars).

3. NEXUS shall pay to the N.C. Department of the Secretary of State reimbursement of the costs of investigation in the amount of $8,000.00 (eight thousand dollars).

4. NEXUS shall not take any action, or make, or permit to be made, any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis.

5. This Order shall become final upon entry and shall be binding upon NEXUS and its successors and assigns as well as affiliates and their successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events and conditions.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the Secretary of State, this the 19th day of March 2024.

Time of entry: 935 A.M.

ELAINE F. MARSHALL
SECRETARY OF STATE OF NORTH CAROLINA and
SECURITIES ADMINISTRATOR, by

SHERRELL FORBES
DEPUTY SECURITIES ADMINISTRATOR