

## CHAPTER 90

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## GENERAL PROVISIONS

**90.011 Definitions.** As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 90.015 to 90.071, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)--(Substituted in revision for NAC 90.300)

**90.015 "Administrator" defined.** "Administrator" means the administrator of the division.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.020 "Affiliate of an issuer" defined.** "Affiliate of an issuer" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under the common control with that issuer.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.025 "Assistant sales representative" defined.** "Assistant sales representative" includes a natural person who is employed or under contract with a broker-dealer and accepts unsolicited customer orders for submission for execution by the broker-dealer. The term does not include a broker-dealer or sales representative.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.030 "Central registration depository" defined.** "Central registration depository" means the Central Registration Depository of the National Association of Securities Dealers and the North American Securities Administrators Association, 9513 Key West Avenue, Rockville, Maryland 20850, telephone: (301) 590-6500.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.035 "Control person" defined.** "Control person" includes a person who:

1. Owns or controls 10 percent or more of the voting stock of a corporation;
2. Is an officer or director of a corporation; or
3. Is in a position to influence the decision-making processes of a corporation.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.040 "Division" defined.** "Division" means the securities division of the office of the secretary of state.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.045 "Fiscal year" defined.** "Fiscal year" means an annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.051 "Insider" defined.** "Insider" includes a person who:

1. Owns or controls 10 percent or more of the voting stock of a corporation;
2. Is an officer or director of a corporation; or
3. Is a spouse or other member of an officer's or director's household.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.055 "Investment adviser representative" defined.** "Investment adviser representative" has the meaning ascribed to it in NRS 90.420.

(Added to NAC by Sec'y of State, eff. 11-19-92; A 9-15-94)

**90.061 "NASDAQ" defined.** "NASDAQ" means the National Association of Securities Dealers Automated Quotation System.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.065 "No-action letter" defined.** "No-action letter" means a written communication, issued pursuant to NAC 90.317, by which a person is advised that a transaction carried out under a set of assumed facts will not result in a recommendation by the staff of the division that an enforcement action be taken.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.071 "Office of the administrator" defined.** "Office of the administrator" means the Office of the Secretary of State, Securities Division, 1771 East Flamingo Road, Suite 212B, Las Vegas, Nevada 89158.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.090 "Investment contract" interpreted.** An "investment contract" as used in NRS 90.295, includes:

1. Any investment in a common enterprise with the expectation of profit to be derived substantially through the efforts of a promoter or other third party; or
2. Any investment by which:
  - (a) An offeree furnishes initial value to an offeror;
  - (b) A portion of this initial value is subjected to the risks of the enterprise;
  - (c) The furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and
  - (d) The offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.101 Severability of provisions.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Added to NAC by Sec'y of State, eff. 10-16-89)--(Substituted in revision for NAC 90.319)

## ADMINISTRATION

**90.301 Filing of documents with and payment of fees to administrator or central registration depository.** Except as otherwise provided in this section, all documents and fees required pursuant to this chapter or chapter 90 of NRS must be filed with or paid to the administrator. After the central registration depository becomes capable of accepting documentation and fees, any such documents or fees related to the licensure of investment advisers and investment adviser representatives who are members of the National Association of Securities Dealers must be filed with the central registration depository.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.305 Filing of documents with administrator: Location.** Any document required to be filed with the administrator pursuant to this chapter or chapter 90 of NRS must be filed at the office of the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.310 Payment of fees to administrator: Method.** Any fee required to be paid to the administrator under the provisions of this chapter or chapter 90 of NRS must be paid in the form of a check made payable to "Secretary of State, Securities Division."

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### **90.315 Availability of forms.**

1. Except as otherwise provided in this section, any form referred to in this chapter that pertains to the registration of securities or investment advisers may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 5th Street N.W., Washington, D.C. 20549. The uniform limited offering circular (Form U-7) may be obtained from the North American Securities Administrators Association, 555 New Jersey Avenue N.W., Suite 750, Washington, D.C. 20001. An informational packet concerning the Small Corporate Offering Registration which contains a uniform limited offering circular (Form U-7) may be obtained from the office of the administrator by submitting a check payable to the secretary of state in the amount of \$3.

2. Any form pertaining to the licensing of broker-dealers and sales representatives may be obtained from the National Association of Securities Dealers, Information Services, 9513 Key West Avenue, Rockville, Maryland 20850.

3. The forms prescribed and authorized by the administrator for use in Nevada are:

- (a) The application for licensing of a branch office (Nevada Form 360-2).
- (b) The request for withdrawal of a branch office (Nevada Form 360-2W).
- (c) The year-end securities sales report (Nevada Form 500-3).
- (d) The notice of withdrawal of registration (Nevada Form 500-12).
- (e) The claim of exempt security (Nevada Form 520).
- (f) The claim of exemption from securities registration (Nevada Form N-9).

Any of these forms may be obtained from the office of the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

### **90.316 Strict interpretation of provisions; waiver of enforcement.**

1. The division will interpret strictly the provisions of this chapter and chapter 90 of NRS and will not waive the enforcement of any such provision, except as otherwise provided in this section.

2. Subject to the provisions of NAC 90.318, any request for a waiver will be reviewed by the division and granted if the administrator determines, in his sole discretion, that the waiver is appropriate under the circumstances and is clearly within the authority of the division to grant.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.317 Issuance of written interpretations and no-action letters.**

1. The division will not render a written interpretation of any provision of this chapter or chapter 90 of NRS.

2. Subject to the provisions of NAC 90.318 and at the sole discretion of the administrator, the division may issue a no-action letter relating to a proposed transaction. Such a letter will not be issued in any case in which the issue presented may be resolved through a careful reading of the relevant provisions of this chapter and chapter 90 of NRS or through an interpretation of those provisions by competent counsel.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.318 Request for waiver or no-action letter; limitation on response; precedential value.**

1. A request for a waiver or no-action letter must be submitted in writing to the office of the administrator, accompanied by a fee of \$100.

2. Two copies of the request must be filed. The request must contain:

(a) A brief summary of the statutory and regulatory provisions to which it pertains;

(b) A detailed statement of the relevant facts;

(c) A detailed discussion and analysis of the law as it relates to the facts;

(d) A statement of the legal authority for granting the request;

(e) A statement of the reasons a waiver or no-action letter is appropriate;

(f) A statement explaining any adverse or beneficial effect upon the public interest resulting from the granting of the request;

(g) A certification that, within the knowledge of the person on whose behalf the request is made, the transaction described is not directly or indirectly the subject of any pending judicial or administrative proceeding or, if such a proceeding is pending, a description of the proceeding;

(h) A certification that the transaction in question has not been commenced or, if it has commenced, a statement concerning its status; and

(i) An acknowledgment by the person on whose behalf the request is made that the request, together with any documents or information submitted and any response from the division, is, except as otherwise provided in NRS 90.730, public information which may be released for publication.

3. A request must be limited to the particular situation involving the problem at hand and must not attempt to include every possible type of situation that may arise in the future.

4. Except under extraordinary circumstances, the division will not respond to any request:

(a) Involving the anti-fraud provisions of this chapter or chapter 90 of NRS; or

(b) Relating to a transaction that has been consummated.

5. Unless otherwise specified in writing by the division, a waiver or no-action letter is limited to the specific security, case, matter or transaction at hand and has no precedential value in any other context.

(Added to NAC by Sec'y of State, eff. 10-16-89)



# SECURITIES AGENTS

## General Provisions

### **90.323 Fee for inspection of records.**

1. For any inspection of records conducted pursuant to NRS 90.410, the administrator will impose a fee of not more than:

- (a) Five hundred dollars for an inspection within this state;
- (b) Two thousand five hundred dollars for an inspection in which any part of the inspection occurs outside this state; or
- (c) The actual cost to the division of performing the inspection, whichever is less.

2. The fee must be paid within 60 days after the receipt of a request for payment from the administrator.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.325 Availability of registration materials for uniform examinations.** Registration materials for the uniform securities agent state law examination (series 63) and the uniform investment adviser examination (series 65) may be obtained from the National Association of Securities Dealers, P.O. Box 9401, Gaithersburg, Maryland 20898-9401.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.326 Licensing of broker-dealers and sales representatives: Exemption of person gratuitously offering or selling certain exempt securities.** If no commission or other compensation is paid or given, directly or indirectly, to a person offering or selling a security which is exempt pursuant to the provisions of NAC 90.515, such a person is exempt from the licensing requirements of NRS 90.310.

(Added to NAC by Sec'y of State, eff. 11-19-92)

### **90.327 Broker-dealers and sales representatives: Unethical and dishonest practices.**

1. A broker-dealer or sales representative who engages in any of the following acts or practices shall be deemed to have engaged in an unethical or dishonest practice within the meaning of paragraph (h) of subsection 1 of NRS 90.420:

- (a) Engaging in any act or practice enumerated in NAC 90.328.
- (b) In connection with any solicitation of the sale or purchase of a security that is not included in the NASDAQ or listed or approved for listing on a securities exchange described in paragraph (g) of subsection 2 of NRS 90.520, failing promptly to provide information requested by a customer, such as:
  - (1) The current prospectus concerning an offering;
  - (2) The most recently filed periodic report filed pursuant to section 13 of the Securities Exchange Act of 1934; or
  - (3) Any information required by Rule 15c2-11 of the Securities and Exchange Commission.
- (c) Marking any order ticket or confirmation as unsolicited if the transaction is solicited.
- (d) Failing to comply with any applicable provision of:
  - (1) The Rules of Fair Practice of the National Association of Securities Dealers; or
  - (2) Any applicable rule of fair practice or ethical standard promulgated by:
    - (I) The Securities and Exchange Commission; or
    - (II) A self-regulatory organization approved by the Securities and Exchange Commission.

(e) Receiving compensation in connection with referring a customer to an unlicensed investment adviser who is required to be licensed in this state.

2. The provisions of this section are not all-inclusive; any act or practice not enumerated in subsection 1 may also be deemed an unethical or dishonest practice within the meaning of NRS 90.420.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92)

**90.328 Broker-dealers and sales representatives: Fraudulent practices.**

1. A broker-dealer or sales representative who engages in any of the following acts or practices shall be deemed to have engaged in an act, practice or course of business which operates or would operate as a fraud within the meaning of NRS 90.570:

(a) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security.

(b) Receiving an unreasonable commission or profit in a transaction with a customer in any security.

(c) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with the intent to deceive or mislead another person.

(d) Using any advertising or sales presentation in a deceptive or misleading manner.

(e) In connection with the offer, sale or purchase of a security, falsely leading a customer to believe that the broker-dealer or sales representative is in possession of material information, not available to the public, which would affect the value of the security.

(f) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations concerning the sale or purchase to different investors with similar investment objectives, if the recommendations:

(1) Are made at or about the same time; and

(2) Are not justified by the particular circumstances of each investor.

(g) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other acts:

(1) Transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that the securities will be returned to the broker-dealer or his nominee; or

(2) Parking or withholding securities.

(h) In connection with the solicitation of the purchase or sale of any equity security traded over the counter, other than a security included in the National Market System or the NASDAQ:

(1) Recommending any speculative low-priced security to a customer without attempting to obtain information about:

(I) The other securities held by the customer;

(II) The financial situation of the customer; and

(III) Other data necessary to determine the suitability of the investment for the customer;

(2) Failing to disclose the firm's bid and ask price of a particular security:

(I) At the time of solicitation; and

(II) At the time of execution on the confirmation;

(3) If the firm is a market maker at the time of the solicitation, failing to disclose, both at the time of solicitation and on the confirmation in connection with a principal transaction, a short inventory position in the firm's account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer;

- (4) Conducting any sale contests in a security;
- (5) Failing or refusing, in connection with a principal transaction, to promptly execute a sell order after a solicited purchase by a customer;
- (6) Soliciting a secondary market transaction if the broker-dealer or sales representative knows or should know that there has not been a bona fide distribution in the primary market;
- (7) Effecting any transaction in or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, without limitation, the use of boiler room tactics or a fictitious or nominee account; or
- (8) Failing to comply with any requirement for delivery of a prospectus promulgated under state or federal law.

Nothing in this paragraph shall be deemed to preclude application of the general anti-fraud provisions of chapter 90 of NRS against any person for any practice similar in nature to the practices described in this paragraph.

2. The provisions of this section are not all-inclusive; any act or practice not enumerated in subsection 1 may also be deemed an act, practice or course of business which operates or would operate as a fraud within the meaning of NRS 90.570.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92)

**90.329 Broker-dealers and sales representatives: Notification of customer before assessing new charges for services performed.** A broker-dealer or sales representative shall notify a customer in writing at least 30 days before assessing any new charges for services performed. The notice must be placed on the front of the account statement or other document containing the notice. The notice must be printed in a type size which is equal to the type used to print any statement of charges or fees sent to the customer.

(Added to NAC by Sec'y of State, eff. 11-19-92)

## Broker-Dealers

### **90.330 Applicant for licensing: Filing of documents and fee.**

1. An applicant for licensing as a broker-dealer shall include in his application:

- (a) The uniform application for broker-dealer registration (Form BD);
- (b) The uniform consent to service of process (Form U-2);
- (c) A balance sheet, prepared as required by NAC 90.335; and
- (d) A certificate that he has qualified to do business in this state, if qualification is required by NRS 80.010.

The original signature of the applicant must be used on the uniform application and consent to service required by paragraphs (a) and (b), respectively.

2. In addition to the documents required by subsection 1, an applicant who is not registered with the National Association of Securities Dealers, or who is not registered under the Securities Exchange Act of 1934, shall file:

(a) A fidelity bond in the amount of \$10,000, issued by a corporate surety qualified to do business in this state, or proof of membership in the Securities Investor Protection Corporation;

(b) The uniform application for securities industry registration or transfer (Form U-4) for a designated official of the applicant; and

(c) Proof of successful completion by one or more designated employees of the applicant of the uniform securities agent state law examination and any principal

examination required by the National Association of Securities Dealers for registration of the applicant.

3. The documents required by this section and the fee required by NRS 90.360 must be filed with and paid to the administrator, regardless of whether the applicant is a member of the National Association of Securities Dealers.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.335 Filing of balance sheet.** The balance sheet filed pursuant to NAC 90.330 by an applicant for licensing as a broker-dealer:

1. Must be prepared in accordance with generally accepted accounting principles;

2. Must be accompanied by a report of audit containing the unqualified opinion of an independent certified public accountant;

3. In the case of an applicant who is not acting as a broker-dealer in another state, must be prepared as of a date not earlier than 60 days before the date of filing; and

4. In the case of an applicant who is acting as a broker-dealer in another state, must consist of:

(a) The most recent audited financial statement relating to the applicant; and

(b) An interim unaudited financial statement, prepared as of a date not earlier than 60 days before the date of filing.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.338 Registry of market makers of initial public offerings and secondary trading involving small businesses.**

1. The division shall maintain a registry of the licensed broker-dealers who are market makers of initial public offerings and secondary trading involving small businesses.

2. The division shall include a market maker on the registry if he sends a letter to the division requesting inclusion on the registry. The letter must set forth his:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Central registration depository number, if applicable.

3. A copy of the registry will be made available to any person upon written request and payment to the secretary of state, securities division, of a fee in the amount of \$1 per page of the registry, not to exceed \$10.

4. As used in this section, "market maker" means a licensed broker-dealer who, with respect to a particular security:

(a) Regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or

(b) Furnishes bona fide competitive bid and offer quotations on request and is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other broker-dealers.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.340 Failure to comply with Rule 15c3-1: Disciplinary proceedings.** Disciplinary proceedings may be commenced pursuant to NRS 90.420 against a broker-dealer who fails to comply with the provisions of Rule 15c3-1 of the Securities and Exchange Commission, relating to capital requirements.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.345 Renewal of license: Filing of required documents; fees.**

1. A broker-dealer shall renew his license annually by paying the fee required by NRS 90.360 and, if the provisions of subsection 2 are applicable to him, by filing the documents required by that subsection. Except as otherwise provided in subsection 3, the fee must be paid to the administrator and the documents filed with him on or before December 31.

2. A broker-dealer who is not registered with the National Association of Securities Dealers, or who is not registered under the Securities Exchange Act of 1934, shall file:

(a) A written request for renewal of his license; and

(b) A fidelity bond, in a form acceptable to the administrator, or proof of membership in the Securities Investor Protection Corporation.

3. A broker-dealer who is a member of the National Association of Securities Dealers shall pay the fee required by NRS 90.360 to the central registration depository on or before December 31.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.350 Withdrawal from licensing.**

1. Except as otherwise provided in subsection 2, a broker-dealer who withdraws from licensing in this state shall file with the administrator the uniform request for withdrawal from registration as a broker-dealer (Form BDW).

2. If a broker-dealer who withdraws from licensing is a member of the National Association of Securities Dealers and is withdrawing from licensing in all states in which he is licensed, he shall file the request for withdrawal with the central registration depository.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.352 Adoption by reference of certain rules and policies governing practices of broker-dealers and investment advisers.** For the purposes of subsection 5 of NRS 90.390, the administrator hereby adopts by reference:

1. The rules adopted by the National Association of Securities Dealers for the maintenance of books and records, as set forth in section 21 of Article III of that association's Rules of Fair Practice, as the rules in that section existed on December 7, 1993. Each licensed broker-dealer shall comply with the provisions of those rules, regardless of whether he is a member of that association.

2. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted on April 5, 1985, and published in paragraph 1301 of the Commerce Clearing House NASAA Reports.

3. The provisions of 17 C.F.R. § 275.204-2, as adopted by the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, as those provisions existed on October 20, 1988.

4. The provisions of 17 C.F.R. § 275.204-3, as adopted by the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, as those provisions existed on May 25, 1982.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 9-15-94)

**90.353 Materials adopted by reference: Availability.**

1. The Rules of Fair Practice adopted by the National Association of Securities Dealers are contained in the manual of that association. The manual is available for the price of \$110 from the National Association of Securities Dealers, Information, Membership Kit and Book Order Department, 9513 Key West Avenue, Rockville, Maryland 20850.

2. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted by reference in subsection 2 of NAC 90.352, is available from the North American Securities Administrators Association, One Massachusetts Avenue, N.W., Suite 310, Washington, D.C. 20001, at no charge.

3. The provisions of 17 C.F.R. § 275.204-2 and 17 C.F.R. § 275.204-3, as adopted by reference in subsections 3 and 4 of NAC 90.352, are available from the Securities and Exchange Commission, Public Reference Branch, 450 Seventh Street, N.W., Washington, D.C. 20549, for the price of 24 cents per page, plus tax and postage.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92; 9-15-94)

**90.354 Materials adopted by reference: Review of changes.** The administrator will periodically review:

1. The Rules of Fair Practice, as adopted by reference in subsection 1 of NAC 90.352;

2. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted by reference in subsection 2 of NAC 90.352;

3. The provisions of 17 C.F.R. § 275.204-2, as adopted by reference in subsection 3 of NAC 90.352; and

4. The provisions of 17 C.F.R. § 275.204-3, as adopted by reference in subsection 4 of NAC 90.352,

and determine within 30 days after the review whether any change made to the rules or statement is appropriate for application in this state. If the administrator does not disapprove a change to an adopted rule or statement within 30 days after the review, the change is deemed to be approved by the administrator.

(Added to NAC by Sec'y of State, eff. 9-15-94)

### Sales Representatives

**90.355 Applicant for licensing: Filing of documents and fee; required examinations.**

1. Except as otherwise provided in this section, an applicant for licensing as a sales representative shall include in his application the uniform application for securities industry registration or transfer (Form U-4) with his original signature and:

(a) Proof of successful completion of:

(1) The uniform securities agent state law examination (series 63); and

(2) Any applicable qualifying examination required by the Securities and Exchange Commission or the National Association of Securities Dealers for sales representatives; or

(b) Proof of waiver of those examinations.

2. If an applicant is to be licensed for a broker-dealer who is a member of the National Association of Securities Dealers, the documents required by this section and the fee required by NRS 90.360 must be filed with and paid to the central registration depository. In any other case, the documents and the fee must be filed with and paid to the administrator.

3. An applicant who is in good standing as a sales representative with the Securities Association of the United Kingdom, may provide proof of successful completion of the Series 17 Limited Registered Representative Examination of the National Association of Securities Dealers in lieu of the Series 7 General Securities Representative Examination, if required pursuant to the provisions of subparagraph (2) of paragraph (a) of subsection 1. However, if that applicant engages in the solicitation, purchase or sale of municipal securities as that phrase is defined in Section 3(a)(29) of the Securities Exchange Act of 1934, he must also apply for registration as a Municipal Securities Representative with the National Association of Securities Dealers and successfully pass the Series 52 Municipal Securities Representative Examination.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.360 Cessation of employment or contractual relationship with broker-dealer.**

1. The license of a sales representative terminates upon the withdrawal, cancellation or termination of his employment or contractual relationship with a broker-dealer. Except as otherwise provided in subsection 2, the sales representative, broker-dealer or issuer shall file with the office of the administrator the uniform termination notice for securities industry registration (Form U-5).

2. In the case of the termination, cancellation or withdrawal of a sales representative who is a member of the National Association of Securities Dealers, the notice referred to in subsection 1 must be submitted by the broker-dealer to the central registration depository.

3. A sales representative whose employment or contractual relationship with a broker-dealer ceases and who intends to continue to transact business in this state as a sales representative must file a new application for a license, together with the required fee. If the sales representative is applying for a license with a broker-dealer who is a member of the National Association of Securities Dealers, the application and fee may be processed through the temporary agent transfer program of the North American Securities Administrators Association and the central registration depository.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.365 Renewal of license: Filing of written request; fees.**

1. Except as otherwise provided in subsection 2, a sales representative shall renew his license annually by paying to the administrator the fee required by NRS 90.360 and filing with the administrator a written request for renewal of his license. The fee must be paid and the request for renewal filed on or before December 31.

2. If the sales representative is licensed for a broker-dealer who is a member of the National Association of Securities Dealers, no request for renewal is required and the fee required by NRS 90.360 must be paid to the central registration depository on or before December 31.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.368 Exemption from requirements for licensing under certain circumstances.**

1. A sales representative who is:

(a) Licensed pursuant to NRS 90.310;

(b) Not employed in the offer or sale of investment advice unless as part of a wrap fee program; and

(c) Employed by:

(1) A broker-dealer licensed pursuant to NRS 90.310 and 90.330; or

(2) A broker-dealer licensed pursuant to NRS 90.310 who offers investment advice provided by an investment adviser licensed pursuant to NRS 90.330,

is exempt from licensing under NRS 90.330.

2. As used in this section:

(a) "Sales representative" has the meaning ascribed to it in NRS 90.285.

(b) "Wrap fee program" means a program that charges a client a fee which is not directly based upon transactions in the client's account for:

(1) Investment advisory services, including portfolio management and advice concerning the selection of other investment advisers, and the execution of transactions; or

(2) Advice relating to the allocation of the assets of a client among investment companies or to investments within an investment company, if the adviser or a related person serves as an investment adviser, administrator or a principal underwriter for an investment company. As used in this subsection, "related person" means any officer, director or partner of an adviser or any person directly or indirectly controlling, controlled by or under common control with the adviser.

(Added to NAC by Sec'y of State, eff. 9-15-94)

### Assistant Sales Representatives

#### **90.371 Licensing: Application; required documents and annual fee.**

1. A person desiring to transact business as an assistant sales representative must apply to the administrator for licensure.

2. An applicant for licensure as an assistant sales representative must include in his application the uniform application for securities industry registration or transfer (Form U-4) with his original signature and:

(a) Proof of successful completion of the National Association of Securities Dealers Qualification Examination for Assistant Representatives-Order Processing (series 11); or

(b) Proof of waiver of that examination.

3. Such an applicant must pay an annual licensing fee of \$55.

4. If an applicant is to be licensed for a broker-dealer who is a member of the National Association of Securities Dealers, the documents and fee required by this section must be filed with and paid to the central registration depository. In any other case, the documents and the fee must be filed with and paid to the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

#### **90.373 Restrictions on activities and compensation.**

1. An assistant sales representative shall not:

(a) Solicit a transaction or a new account on behalf of a broker-dealer;

(b) Render investment advice;

(c) Make recommendations to customers regarding the appropriateness of a securities transaction;

(d) Effect transactions in a securities market on behalf of a broker-dealer; or

(e) Act as an assistant sales representative for more than one broker-dealer at any one time.

2. The activities of an assistant sales representative may only be conducted at a business location of the broker-dealer which is under the direct supervision of an appropriately registered principal of the broker-dealer.



3. A broker-dealer may only compensate an assistant sales representative on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate his compensation to the number or size of the transactions effected for customers. This provision does not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit-sharing plan or similar arrangement.

(Added to NAC by Sec'y of State, eff. 11-19-92)

## Investment Advisers

**90.375 Applicant for licensing: Filing of documents and fee.** An applicant for licensing as an investment adviser shall include in his application:

1. The uniform application for investment adviser registration (Form ADV), including:

(a) The names of all investment adviser representatives employed by the investment adviser; and

(b) All other information and exhibits required for that application.

2. The uniform consent to service of process (Form U-2).

3. Proof of successful completion of the uniform investment adviser law examination (series 65) by the applicant, if he is a natural person, or by an owner, officer or director of the applicant in any other case.

4. The uniform application for securities industry registration or transfer (Form U-4) which is signed by the person submitting proof of successful completion of the series 65 examination required pursuant to subsection 1.

5. A certificate that he has qualified to do business in this state, if qualification is required by NRS 80.010.

The original signature of the applicant must be used on the uniform application and consent to service required by subsections 1 and 2, respectively. The documents required by this section and the fee required by NRS 90.360 must be filed with and paid to the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.380 Renewal of license: Filing of annual report; fees.** An investment adviser shall renew his license annually by paying the fee required by NRS 90.360 and by filing with the administrator a copy of his most recent annual report (Form ADV-S). The fee must be paid to the administrator and the report filed with him on or before December 31.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.385 Withdrawal from licensing.** An investment adviser who withdraws from licensing shall file with the administrator the uniform notice of withdrawal from registration as an investment adviser (Form ADV-W).

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.390 Required net capital or tangible net worth.**

1. Unless he is exempt from registration under the Investment Advisers Act of 1940, an investment adviser who is not registered under that Act, and who takes or retains custody of securities or money of a client, shall maintain net capital of not less than \$20,000 or a tangible net worth of not less than \$35,000.

2. As used in subsection 1, "tangible net worth" means the net worth of the investment adviser, reduced by the total of:

- (a) Prepaid expenses, except items properly classified as current assets under generally accepted accounting principles;
  - (b) Deferred charges;
  - (c) The value of his intangible assets, including goodwill, franchises, organizational expenses, and unamortized debt discount and expense;
  - (d) In the case of a natural person, the value of his personal property which is not readily marketable and the fair market value of his homes, furnishings and automobiles, less any indebtedness secured by such property, to the extent that the indebtedness is not greater than the carrying value of the property;
  - (e) In the case of a corporation, advances or loans to stockholders or officers; and
  - (f) In the case of a partnership, advances or loans to partners.
- (Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### Investment Adviser Representatives

#### **90.391 Licensing: Application; required documents and fees; renewal.**

1. A person desiring to transact business as an investment adviser representative must apply to the administrator for licensure.
  2. Except as otherwise provided in subsection 4, an applicant for a license as an investment adviser representative must include in his application:
    - (a) The uniform application for securities industry registration or transfer (Form U-4); and
    - (b) Proof of successful completion by the applicant of the uniform investment adviser law examination (series 65).
  3. An applicant for such a license shall pay to the administrator:
    - (a) An initial fee of \$55; and
    - (b) Thereafter, an annual renewal fee of \$55 on or before December 31.
  4. A person registered as a sales representative of a registered broker-dealer that is also a registered investment adviser in this state or is the affiliate of such a registered investment adviser, must file an application for initial registration as an investment adviser representative with the division which must contain the name and central registration depository number of the applicant. The applicant for such a license shall pay to the administrator:
    - (a) An initial fee of \$55; and
    - (b) Thereafter, an annual renewal fee of \$55 on or before December 31.
  5. An application for the renewal of the registrations of investment adviser representatives must be filed by the investment adviser not more than 60 days before December 31 and must contain:
    - (a) A list of the names of the investment adviser representatives; and
    - (b) For investment adviser representatives who are also registered sales representatives, the central registration depository number of those representatives.The application must be accompanied by the applicable renewal fee for each listed investment adviser representative.
- (Added to NAC by Sec'y of State, eff. 11-19-92)

#### **90.3915 Cessation of employment with investment adviser.**

1. The license of an investment adviser representative terminates upon the withdrawal, cancellation or termination of his employment with an investment adviser. The investment adviser shall file the uniform termination notice for securities industry registration (Form U-5) with the administrator upon the withdrawal, cancellation or termination of his employment of an investment adviser representative.

2. An investment adviser representative whose employment with an investment adviser ceases and who intends to transact business in this state as an investment adviser representative with another investment adviser shall file a new application for a license, together with the required fee.

(Added to NAC by Sec'y of State, eff. 11-19-92)

## Branch Offices

### **90.392 Licensing requirements.**

1. A broker-dealer who maintains a branch office must obtain a license from the division before doing business at that office.

2. A broker-dealer who desires to obtain the license required by this section must:

(a) File an application for licensing of a branch office (Nevada Form 360-2);

(b) Be licensed in this state as a broker-dealer and, if qualification is required by NRS 80.010, be qualified to do business in this state; and

(c) Pay a fee of \$50. After the issuance of the initial license, this fee must be paid annually on or before December 31.

3. If any change occurs in the information set forth in an application made pursuant to this section, the applicant shall, within 30 days after the change, file an amended application and pay a fee of \$25.

(Added to NAC by Sec'y of State, 10-16-89, eff. 1-1-90)

### **90.3925 Designation as office of supervisory jurisdiction; designation of manager.**

1. A person who files an application pursuant to NAC 90.392 must designate the branch office as an office of supervisory jurisdiction if required to do so by the requirements of the National Association of Securities Dealers, regardless of whether he is a member of that association.

2. A manager for each branch office must be designated and licensed with the division as a principal. If the branch office is not designated as an office of supervisory jurisdiction, the manager need not be located at any office for which he is given supervisory responsibility. In any such case, the applicant must specify in writing to the division the name of each associated person designated as the manager in charge.

(Added to NAC by Sec'y of State, eff. 10-16-89)

### **90.393 Licensing of person in charge; roster of affiliated sales representatives.**

1. The individual in charge of a branch office must be licensed in this state as a sales representative or broker-dealer.

2. A broker-dealer who maintains a branch office shall keep a current roster of the sales representatives affiliated with that office.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.3935 Restrictions on name and location of operation.** A branch office must not be operated:

1. Under any name other than:

(a) The name of the broker-dealer; or

(b) A fictitious name registered by the broker-dealer as required by chapter 602 of NRS.

2. Within the physical confines of another business unless:

(a) There are conspicuous signs or physical separation of the businesses that clearly indicate to the public that the businesses are separate and distinct from one another; and

(b) Any person referring customers to or soliciting business for the branch office for compensation complies with the licensing requirements set forth in this chapter and chapter 90 of NRS.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92)

**90.394 Grounds for denial, suspension or revocation of license.** The administrator may deny, suspend or revoke any license issued for the operation of a branch office on any ground applicable to the denial, suspension or revocation of the license of a broker-dealer.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.3945 Notification of division before closing office or terminating business.** A broker-dealer shall notify the division before closing a branch office or terminating business at that location. Notice must be given by the filing of a request for withdrawal of a branch office (Nevada Form 360-2W).

(Added to NAC by Sec'y of State, eff. 10-16-89)

## REGISTRATION OF SECURITIES

### General Provisions

**90.395 Definitions.** As used in NAC 90.395 to 90.525, inclusive, unless the context otherwise requires:

1. "Commission" means any consideration paid for services rendered, whether received by or accruing to the benefit of a person in connection with the distribution of securities or otherwise. The term includes cash, selling discounts, fees, securities, contracts and any other thing of value.

2. "Dilution" means the difference between:

(a) The net tangible asset value of the issuer allocable to the equity securities being offered, calculated by dividing the net tangible asset value of the issuer by the number of equity securities outstanding, including the securities being offered; and

(b) The aggregate offering price for the securities being offered.

3. "Underwriter" means a person who purchases any security from the issuer with a view to, or offers or sells any security for an issuer in connection with, the distribution of the security, or participates in the direct or indirect underwriting of any such undertaking, but does not include a person whose interest in an undertaking is limited to that of a distributor or seller, and who receives a commission, if a commission is paid, not in excess of the usual and customary commission received by a distributor or seller.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.400 Filing of year-end securities sales report.** If an open-end management company, face amount certificate company or unit investment trust is required to file a report pursuant to paragraph (b) of subsection 3 of NRS 90.500, it shall satisfy that requirement by filing with the administrator a year-end securities sales report (Nevada Form 500-3).

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.402 Prospectus: Index.** Any prospectus, amendment or supplement to a prospectus required by chapter 90 of NRS must have an index clearly identifying each topical heading in the order that it appears in the prospectus.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.403 Prospectus: Use of Small Corporate Offering Registration adopted by North American Securities Administrators Association.**

1. The Small Corporate Offering Registration, (Form U-7), as adopted by the North American Securities Administrators Association, may be used as a prospectus for the purposes of any requirement for a prospectus contained in this chapter or chapter 90 of NRS if the minimum offering price per share is equal to or more than \$5 per share. An offering submitted in connection with Rule 504 of Regulation D of the Securities and Exchange Commission, must be submitted on Form U-7.

2. Each Form U-7 so submitted must be completed in conformance with the uniform instructions accompanying the form.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92)

**90.405 Application of statements of policy to offerings; offerings made with unreasonable amounts of underwriters' and sellers' compensation; aggregate amount of compensation.**

1. For the purposes of NRS 90.510:

(a) Except as otherwise provided in paragraph (b), statements of policy adopted by the North American Securities Administrators Association may be used by the administrator to determine whether an offering:

(1) Is complete with respect to the disclosure provided;

(2) Works or will tend to work a fraud upon purchasers; or

(3) Is or will be made with unreasonable amounts of promoters' profits or participation, or unreasonable amounts or kinds of options.

(b) An offering is made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation if the aggregate amount of that compensation, calculated as provided in subsection 2:

(1) Is greater than 15 percent; or

(2) When added to the total amount of expenses incurred or to be incurred in connection with the offering, is greater than 20 percent, of the aggregate offering price.

2. Except as otherwise provided in this subsection, the aggregate amount of compensation includes the fair market value of any options or warrants given in connection with the offering to underwriters and sellers. If there is no evidence sufficient to establish a fair market value or other value, the value of these options and warrants shall be deemed to be not less than 20 percent of the public offering price of the stock to which they relate.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.408 Registration statements: Use of financial statements and financial information prepared in accordance with generally accepted accounting principles of Canada.**

1. Financial statements and financial information which have been prepared in accordance with generally accepted accounting principles of Canada, consistently applied, may be included in a registration statement which is filed with the administrator pursuant to NRS 90.470 or 90.480 if the registration statement has been designated as Form F-7, F-8, F-9 or F-10 by the Securities and Exchange Commission and:

(a) The securities which are the subject of a registration statement designated as Form F-7 by the Securities and Exchange Commission are offered for cash upon the exercise of rights granted to existing security holders.

(b) The securities which are the subject of a registration statement designated as Form F-8 by the Securities and Exchange Commission are securities to be issued in an exchange offer, merger or other business combination.

(c) The securities which are the subject of the registration statement designated as Form F-9 by the Securities and Exchange Commission are either nonconvertible preferred stock or nonconvertible debt which will be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(d) The securities which are the subject of a registration statement designated as Form F-10 by the Securities and Exchange Commission are offered and sold pursuant to a prospectus in which the Securities and Exchange Commission has not required a reconciliation to generally accepted accounting principles of the United States with respect to the financial information presented therein.

2. For the purposes of this section, preferred stock and debt securities which are not convertible for at least 1 year after the date of effectiveness of the registration statement shall be deemed to meet the requirement of paragraph (c) of subsection 1.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.410 Registration statements deemed abandoned; denial or revocation of statement.** The administrator may issue an order pursuant to NRS 90.510 denying or revoking the effectiveness of a registration statement which has been abandoned. A statement shall be deemed abandoned if its effectiveness is delayed or suspended for any cause and, during the 120 days following the delay or suspension, no communication concerning the registration is received by the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.412 Withdrawal of registration statement.** Any withdrawal of a registration statement must be submitted on a notice of withdrawal of registration (Nevada Form 500-12). No refund of filing fees will be made if a registration statement is withdrawn.

(Added to NAC by Sec'y of State, eff. 10-16-89)

**90.413 Application to extend effectiveness of registration statement.**

1. Except as otherwise provided in this section, any application to extend the effectiveness of a registration statement previously approved by the administrator will be processed as a new application for registration and must be accompanied by the filing fee and documentation required by NRS 90.470 and 90.500 and NAC 90.420.

2. If the application is made before the expiration of effectiveness of the registration statement on file with the division and no material change has occurred in the prospectus or other documentation on file, the issuer need only submit:

(a) The filing fee required by NRS 90.500;

(b) A uniform application to register securities (Form U- 1);

(c) An audited financial statement of the issuer for the last fiscal year; and

(d) An affidavit, signed by an executive officer of the issuer or underwriter, stating that no changes have occurred in the other documentation on file with the administrator. The affidavit must contain a clear reference to the file number of the division and specific documents represented to be current and accurate from the previous filing.

3. An application to extend the effectiveness of a previous registration statement must be submitted not more than 60 days before the date of expiration of the previous statement.

4. Upon approval, the application is effective for 1 year after the date of expiration of the previous statement or the date of approval of the subsequent application, whichever is later.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92)

**90.415 Waiver of provisions.** The administrator may waive the application of any provision of NAC 90.395 to 90.525, inclusive, if a written request for the waiver is filed with the administrator in accordance with NAC 90.318 by the registrant affected and the administrator determines that waiver is appropriate and is in the public interest.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

### Registration by Filing

**90.420 Documents required to accompany filing.**

1. Except as otherwise provided in subsection 2, a registration statement filed pursuant to NRS 90.470 must be accompanied by:

- (a) The uniform application to register securities (Form U-1);
- (b) The uniform consent to service of process (Form U-2);
- (c) A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

(d) Any other document or information requested by the administrator in writing before the effective date of the offering.

2. Except as the administrator may direct, the exhibits accompanying the uniform application to register securities (Form U-1) need not be filed.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.425 Accelerated effectiveness.** The effectiveness of a registration statement filed pursuant to NRS 90.470 may be accelerated by the administrator upon the filing of a written request for acceleration. The request must be filed by the registrant and must set forth, in clear and concise terms, the basis for the request.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.430 Post-effective amendment.** A post-effective amendment of a registration statement filed pursuant to NRS 90.470 must be filed with the administrator not later than 5 business days after the date it is filed with the Securities and Exchange Commission.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.435 Timely filing of reports.** For the purposes of paragraph (e) of subsection 1 of NRS 90.470, all reports required to be filed during the 12 calendar months next preceding the filing of the federal registration statement shall be deemed to have been timely filed if they have:

- 1. Been filed within the time, including any permitted extensions of time, allowed by the Securities and Exchange Commission pursuant to its regulations; or

2. Been on file with the Securities and Exchange Commission for not less than 60 days.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### Registration by Coordination

#### **90.440 Documents required to accompany filing.**

1. Except as otherwise provided in subsection 2, a registration statement filed pursuant to NRS 90.480 must be accompanied by:

(a) The uniform application to register securities (Form U-1);

(b) The uniform consent to service of process (Form U-2);

(c) A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

(d) Any other document or information requested by the administrator in writing before the effective date of the offering.

2. Except as the administrator may direct, the exhibits accompanying the uniform application to register securities (Form U-1) need not be filed.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.445 Accelerated effectiveness.** The effectiveness of a registration statement filed pursuant to NRS 90.480 may be accelerated by the administrator upon the filing of a written request for acceleration. The request must be filed by the registrant and must set forth, in clear and concise terms, the basis for the request.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.450 Post-effective amendment.** A post-effective amendment of a registration statement filed pursuant to NRS 90.480 must be filed with the administrator not later than 5 business days after the date it is filed with the Securities and Exchange Commission.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.453 Effective date of registration statement filed with Securities and Exchange Commission.** Notwithstanding the provisions of paragraph (b) of subsection 3 of NRS 90.480, if a registration statement is filed on Form F-7, F-8, F-9 or F-10 with the Securities and Exchange Commission, it may become effective, subject to any other applicable requirements, after it has been on file with the administrator for at least 7 days. If the registration statement is not filed with the administrator within 5 days after the initial filing under the Securities Act of 1933, the registration statement must have been on file with the administrator for 30 days or any shorter period authorized by the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.455 Written notice of date federal registration statement became effective.** The notice to the administrator required by subsection 4 of NRS 90.480 must be given by the registrant in writing. The administrator will promptly acknowledge receipt of the notice.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)



## Registration by Qualification

**90.460 Documents required to accompany filing.** A registration statement filed pursuant to NRS 90.490 must be accompanied by:

1. The uniform application to register securities (Form U-1), including the exhibits required by that application;
2. The uniform consent to service of process (Form U-2);
3. A copy of the final offering prospectus or pending preparation of the final prospectus, a copy of the preliminary prospectus;
4. A copy of the articles of incorporation and bylaws or their substantial equivalents, as applicable, which are currently in effect;
5. A copy of any agreement with or among the underwriters;
6. A copy of any indenture or other instrument governing the issuance of the security to be registered;
7. A copy, specimen or description of the security;
8. A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which states whether the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer; and
9. Any other document or information requested by the administrator in writing before the effective date of the offering.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.465 Amendment to prospectus, pamphlet or similar document.** Within 30 days after the effective date of a registration statement filed pursuant to NRS 90.490, the registrant shall file with the administrator a copy of any amendment to any prospectus, pamphlet or other document filed pursuant to paragraph (m) of subsection 2 of NRS 90.490.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### **90.470 Preparation and auditing of financial statements.**

1. Except as otherwise provided in subsection 2 of this section or in the uniform limited offering circular (Form U-7) adopted by the North American Securities Administrators Association, a financial statement filed pursuant to paragraph (q) of subsection 2 of NRS 90.490 must be:

- (a) Prepared in accordance with generally accepted accounting principles;
- (b) Audited in accordance with generally accepted auditing standards; and
- (c) Except as otherwise approved by the administrator under the circumstances of the case, contain the unqualified opinion of an independent certified public accountant.

2. If an issuer has an established fiscal year and submits a financial statement which:

- (a) Is audited as provided in this section; and
- (b) Covers at least 1 fiscal year,

any interim financial statement which is filed for the period between the end of the issuer's last fiscal year and the date of filing need not be audited, but must be prepared in accordance with generally accepted accounting principles.

3. In the case of a registration by an issuer with one or more subsidiaries, a consolidated financial statement complying with the requirements of this section and NRS 90.490 must be filed.

4. The requirements of this section are met by a financial statement prepared in accordance with any requirements prescribed for the issuer by the Securities and Exchange Commission.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### Development Stage Companies

#### **90.475 Applicability.**

1. The provisions of NAC 90.475 to 90.490, inclusive, are applicable to the registration pursuant to NRS 90.480 or 90.490 of any security issued by a development stage company. As used in this subsection, "development stage company" means an issuer which has no public market for its securities and no significant earnings or revenues from continuing operations during the last 5 years or any shorter period of its existence.

2. For the purposes of subsection 1:

(a) "Public market" does not include any thin market which does not result in reliable prices. In determining whether a market is a public market, the administrator may consider:

- (1) The history of the market;
- (2) The public trading volume in the market;
- (3) Any spread between bid and asked prices in the market;
- (4) The number of market makers in the market;
- (5) Public float in the market;
- (6) The pricing formula used in the market;
- (7) Inclusion of the market in the NASDAQ; and
- (8) Any other relevant factor.

(b) An issuer shall be deemed to have significant earnings from continuing operations if, during each of any two consecutive fiscal years during the period prescribed by subsection 1, the issuer had earnings per share equal to at least 5 percent of the initial public offering price per common share. Nothing in this paragraph shall be deemed to preclude the administrator from considering other indicators of earnings or revenues.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

#### **90.480 Contents of registration statement or offering document; penalty for failure to comply.**

1. The registration statement, in the case of a security registered pursuant to NRS 90.480, or the offering document required by subsection 11 of NRS 90.500 in the case of a security registered pursuant to NRS 90.490, must set forth with reasonable specificity:

- (a) The intended use of the proceeds of the offering;
- (b) The type of business in which the issuer is or will be engaged;
- (c) The product or service offered or to be offered by the issuer; and
- (d) The name of each principal manager of the business of the issuer.

2. If the information required by subsection 1 is not set forth with the specificity required by that subsection, the administrator may deem the offering to be a blank check blind pool and may deny, suspend or revoke the effectiveness of the registration statement pursuant to NRS 90.510 unless:

- (a) The net offering proceeds to the issuer, after deducting offering expenses and commissions, are not less than \$150,000;
- (b) Notwithstanding the provisions of NAC 90.490, the issuer has equity, contributed in cash, of not less than 10 percent of the aggregate offering price;

(c) Specific disclosure is made of the criteria to be used by management in acquiring a business or other asset;

(d) Disclosure is made of any previous involvement of any officer or director of the issuer in any similar offering, including:

(1) The nature of any transaction entered into by the issuer in connection with that offering;

(2) The dilution experienced by public shareholders as a result of that transaction; and

(3) The extent to which the criteria for selection set forth in the original prospectus were followed in effecting the transaction;

(e) The issuer undertakes in the prospectus to obtain the approval of a majority of disinterested shareholders if he proposes to:

(1) Spend more than 50 percent of the net offering proceeds in a transaction or series of related transactions;

(2) Issue new shares of stock equivalent, after completion of the transaction or series of related transactions, to more than 50 percent of the issued and outstanding stock;

(3) Change, without a meeting of the shareholders and within any 12-month period, more than one-half the members of the board of directors; or

(4) Change the criteria for acquisitions set forth in the prospectus; and

(f) The issuer undertakes in the prospectus to distribute an informational statement, before any vote of the shareholders conducted pursuant to paragraph (e), setting forth:

(1) All material facts regarding the proposal, including specific disclosure of the manner in which the criteria for selection set forth in the offering prospectus have been applied;

(2) A reasonably detailed description of any business or asset to be acquired in the proposed transaction;

(3) A detailed disclosure of any related-party transaction, finders' fee, consulting fee or agreement expected to be entered into or paid within the 12 months following the proposed transaction with or to any person who is an officer, director, promoter or principal shareholder of the issuer; and

(4) A pro forma balance sheet, prepared in accordance with generally accepted accounting principles, which gives effect to the proposed transaction and discloses the dilution to shareholders resulting from the transaction and the book value of the issuer immediately before and immediately after the transaction.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.483 Registration by qualification: Additional filings required after filing of registration statement.** Not later than 60 days after the closing of the offering or the expiration of the period of effectiveness, whichever occurs first, an issuer who is a development stage company and files a registration statement pursuant to NRS 90.490 which has been declared effective in Nevada shall file with the administrator:

1. A copy of all sales and promotional materials used in the connection with the offering; and

2. A report which sets forth the:

(a) Amount of securities sold during the effective period of the offering;

(b) Consideration paid for each security; and

(c) Names and addresses of all purchasers.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.485 Limitation on amount of dilution in offering; remedy for violation.** The amount of dilution in an offering by a development stage company may not exceed 75 percent of the aggregate offering price. For any violation of this section, the administrator may deem the offering to be one which will be made with unreasonable amounts of promoters' profits or participation and issue an order denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement filed in connection with the offering.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.490 Offering of debt securities, equity securities, or securities convertible to equity securities; offering of partnership units or trust certificate.**

1. In the case of an offering by a development stage company of debt securities, equity securities or securities which are convertible to equity securities, the company must maintain equity of not less than \$50,000 or 5 percent of the aggregate offering price, whichever is less. For the purposes of this subsection, "equity" means the sum of consideration contributed for the equity securities of the issuer plus retained earnings. Retained deficits do not reduce the equity of the issuer for the purposes of this subsection. Capital contributed in the form of services, tangible or intangible property, or evidence of indebtedness may qualify as equity for the purposes of this subsection if approved by the administrator and:

(a) There is objective evidence of the market value of the services or the tangible or intangible property and title to the property is held by the issuer;

(b) The indebtedness is recourse debt against an obligor who has a verifiable net tangible asset value equal to 100 percent of the principal amount of the indebtedness; or

(c) The indebtedness is secured by collateral with an objectively verified market value at least equal to the principal amount of the indebtedness.

In any case where noncash consideration is contributed as equity to satisfy the requirements of this subsection, the market value of all services and tangible and intangible property, plus the principal amount of all evidence of indebtedness and all cash consideration must equal at least 120 percent of the equity required by this subsection.

2. In the case of an offering of partnership units or a trust certificate, one or more of the general partners, promoters or managers of the partnership or trust must, before the effective date of the registration statement:

(a) Acquire an equity interest in the partnership or trust for a cash consideration of not less than \$50,000 or 5 percent of the aggregate offering price, whichever is less;

(b) Irrevocably agree to acquire an interest of the kind described in paragraph (a), for the consideration required by that paragraph, demonstrating to the satisfaction of the administrator his or their ability to perform under the agreement; or

(c) Maintain a tangible net worth, exclusive of homes, furnishings or automobiles, of not less than 10 percent of the aggregate offering price. Any tangible net worth which is used to satisfy the requirements of this paragraph in connection with an offering may not be used to satisfy these requirements in connection with another offering.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.492 Submission to division of material change in issuer or offering.** During the period of effectiveness of a registration statement, any material change in the issuer or the offering, including, without limitation:

1. Any change in the use of the proceeds of the offering;
2. Any change in the control of the issuer;
3. Any merger, acquisition or reorganization;
4. Any change in the executive officers of the issuer;
5. Any change in the principal business of the issuer; or
6. Any other material change in the prospectus,

must be submitted to the division in the form of a post-effective amendment that satisfies the registration requirements of this chapter and chapter 90 of NRS.

(Added to NAC by Sec'y of State, eff. 10-16-89)

### Exemptions from Registration

**90.495 Claim of exemption: Applicable fee and required frequency of filing; burden of proof when filing not required.**

1. Except as otherwise provided in this subsection, a person who claims an exemption from the registration requirement of NRS 90.460 must file the required claim of exemption (Nevada Form N-9), together with any other materials required pursuant to the section of statute or regulation which establishes the exemption and the stated fee. For convenience, the applicable fees and the required frequency of filing of the claim of exemption have been compiled in this section. For the purposes of this chart:

(a) The symbol "A" means that a claim of exemption and the required fee must be filed and paid initially and annually thereafter.

(b) The symbol "I" means that only an initial filing of a claim of exemption is required and that the required fee must be paid only at the initial filing of the claim of exemption.

(c) The symbol "T" means that a claim of exemption must be filed for each transaction or offering together with the required fee for each such transaction or offering.

Source of Exemption		Frequency Fee of Filing
Exemptions established by statute		
NRS 90.520, subsection 2, paragraph (c).....	\$150	A
NRS 90.520, subsection 2, paragraph (e).....	150	A
NRS 90.520, subsection 2, paragraph (f) .....	150	A
NRS 90.520, subsection 2, paragraph (g).....	150	A
NRS 90.520, subsection 2, paragraph (h) .....	150	A
NRS 90.520, subsection 2, paragraph (i) .....	150	A
NRS 90.520, subsection 2, paragraph (j).....	none	T
NRS 90.520, subsection 2, paragraph (k) .....	150	A
NRS 90.520, subsection 2, paragraph (n) .....	250	A
NRS 90.530, subsection 2.....	150	A
NRS 90.530, subsection 14, paragraph (b) .....	150	T
NRS 90.530, subsection 17, paragraph (b) .....	150	T

Source of Exemption		Frequency Fee of Filing
Exemptions established by regulation		
NAC 90.515 .....	150	T
NAC 90.516 .....	150	I
NAC 90.517 .....	150	I
NAC 90.518 .....	150	I
NAC 90.519 .....	150	I
NAC 90.521 .....	150	T
NAC 90.522 .....	150	T

2. An exemption from registration not listed in this section does not require the filing of a claim (Nevada Form N-9) with the administrator. Nevertheless, the burden of demonstrating the availability and applicability of such an exemption is on the person claiming the exemption.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.496 Claim of exemption: Effective period.**

1. Except as otherwise provided in subsections 2 and 3, a claim of exemption (Nevada Form N-9) is effective for 1 year after the date the claim is received by the administrator.

2. A claim of exemption pursuant to paragraph (n) of subsection 2 of NRS 90.520 is effective for 1 year after the date the claim is received by the administrator or the date on which the fiscal year ends, whichever is later.

3. A claim of exemption pursuant to NAC 90.516, 90.517, 90.518 or 90.519 is effective as long as the applicable qualifications are met for the exemption. Any person who is offering or selling such securities after the claim of exemption is received by the administrator is covered by the claim of exemption as long as it is effective.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.497 Claim of exemption: Expeditious processing.**

1. A person who files a claim of exemption (Nevada Form N-9) from the registration requirements of NRS 90.460 may request expeditious processing of the claim by paying an additional fee per filing for the expeditious processing.

2. For a fee of \$50 per filing the administrator will issue a notification of acceptance within 24 hours after receipt of the filing. For a fee of \$100 per filing the administrator will issue a notification of acceptance on the same date on which the filing is received, if the filing is received by the administrator before noon Pacific Standard Time.

3. If such expeditious processing has been requested and the applicable fee paid, the administrator will transmit the notification of acceptance by facsimile machine.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.498 Claim of exemption: Offering issued in series of securities or relating to multiple funds.** A person who files a claim of exemption (Nevada Form N-9) from the registration requirements of NRS 90.460 involving a securities offering which is issued in a series of securities or relating to multiple funds shall file a separate claim of exemption for each such series or fund unless:

1. The series or funds are identified under the same name and are a single legal entity; and

2. Separate accounting for each series or fund is not maintained.  
(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.500 Security listed on Chicago Board of Options Exchange.** For purposes of the exemption from registration provided by paragraph (g) of subsection 2 of NRS 90.520, a security is also exempt from registration if it is listed or approved for listing upon notice of issuance on the Chicago Board of Options Exchange.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.505 Rated promissory note, draft, bill of exchange or banker's acceptance.** For purposes of the exemption from registration provided by paragraph (l) of subsection 2 of NRS 90.520, a promissory note, draft, bill of exchange or banker's acceptance is exempt from registration if it is rated by Standard & Poor's Corporation or Moody's Investors Service, Incorporated.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.510 Statutory exemption for nonissuer transaction by sales representative licensed in state: Inclusion of information on issuer in designated securities manual.** For purposes of the exemption from registration provided by subsection 3 of NRS 90.530, a transaction is exempt from registration if the information required by that subsection is contained in:

1. Moody's Industrial Manual;
2. Moody's Municipal and Governmental Manual;
3. Moody's Public Utility Manual;
4. Moody's Transportation Manual;
5. Moody's Bank and Finance Manual;
6. Moody's International Manual; or
7. Standard & Poor's Corporation Records.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92)

**90.512 Nonissuer transaction by sales representative licensed in state: Security complying with certain requirements for statutory exemption.**

1. Except as otherwise provided in subsection 2, a nonissuer transaction by a sales representative licensed in this state in an outstanding security that complies with the provisions of paragraphs (a), (b), (c) and (e) of subsection 3 of NRS 90.530 is exempt from the registration requirements of NRS 90.460.

2. The exemption provided in subsection 1 is not available for a development stage company.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.515 Offering complying with Regulation D of Securities and Exchange Commission; fee.** An offering is exempt from the registration requirements of NRS 90.460 if:

1. It complies with the requirements of Regulation D of the Securities and Exchange Commission (17 C.F.R. §§ 230.501 to 230.506, inclusive), except for Rule 504 of that Regulation (17 C.F.R. § 230.504);
2. A manually signed copy of a notice of sale of securities pursuant to Regulation D (Form D) is filed with the administrator as provided in 17 C.F.R. § 230.503;
3. A fee of \$150 is paid to the administrator; and
4. A claim of special exemption (Nevada Form 540) is filed with the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.516 Nonissuer transaction by sales representative licensed in state: Security included or designated for inclusion in NASDAQ and not listed on National Market System or NASDAQ Bulletin Board.**

1. A nonissuer transaction by a sales representative licensed in this state of an outstanding security that is included or designated for inclusion in the NASDAQ, other than those listed on the National Market System or NASDAQ Bulletin Board, is exempt from the registration requirements of NRS 90.460 if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer who is an underwriter of the security;

(c) The issuer of the security has been in continuous operation for at least 2 years before inclusion or designation for inclusion of the security in the NASDAQ;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition during the 30 days preceding the inclusion or designation for inclusion of the security in the NASDAQ which is not reflected in the NASDAQ listing; and

(e) The issuer of the security is not in bankruptcy or in receivership at the time of the offer or sale of the security.

2. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

(a) Pays a fee of \$150 to the administrator; and

(b) Files a claim of exemption (Nevada Form N-9) with the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.517 Nonissuer transaction by sales representative licensed in state: Security included or designated for inclusion in NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace.**

1. A nonissuer transaction by a sales representative licensed in this state of an outstanding security that is included or designated for inclusion in the NASDAQ Bulletin Board or the American Stock Exchange Emerging Company Marketplace is exempt from the registration requirements of NRS 90.460 if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer who is an underwriter of the security;

(c) The issuer of the security has been in continuous operation for at least 5 years before inclusion or designation for inclusion of the security in the NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace;

(d) The issuer has not undergone a major reorganization, merger or acquisition during the 120 days preceding the inclusion or designation for inclusion of the security in the NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace which is not reflected in the NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace listing;

(e) The issuer of the security is not in bankruptcy or in receivership at the time of the offer or sale of the security; and

(f) The security has been, except as otherwise provided in subsection 2, outstanding for at least 2 years before inclusion in the NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace and:

(1) Was part of an initial public offering which was registered in any state as a Small Corporate Offering Registration using the uniform limited offering circular



(Form U-7), as adopted by the North American Securities Administrators Association; or

(2) Was registered for sale in any state as a Regulation A filing with the Securities and Exchange Commission.

2. In the case of an insider, promoter or control person of the issuer or an affiliate of such an insider, promoter or control person, the security must have been held for at least 3 years before inclusion in the NASDAQ Bulletin Board or American Stock Exchange Emerging Company Marketplace.

3. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

(a) Pays a fee of \$150 to the administrator; and

(b) Files a claim of exemption (Nevada Form N-9) with the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.518 Nonissuer transaction by sales representative licensed in state: Security of no more than \$100,000 held by shareholder for 12-month period.**

1. A nonissuer transaction by a sales representative licensed in this state of an outstanding security of no more than \$100,000 which was held by a shareholder for any 12-month period is exempt from the registration requirements of NRS 90.460, if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer who is an underwriter of the security;

(c) The issuer of the security has been in continuous operation for at least 5 years before the resale of the security;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition during the 120 days preceding the transaction which is not disclosed by the sales representative;

(e) The issuer of the security is not in bankruptcy or in receivership at the time of the offer or sale of the security; and

(f) The security has been, except as otherwise provided in subsection 2, outstanding for at least 2 years before the resale of the security and:

(1) Was part of an initial public offering which was registered in any state as a Small Corporate Offering Registration using the uniform limited offering circular (Form U-7), as adopted by the North American Securities Administrators Association; or

(2) Was registered for sale in any state as a Regulation A filing with the Securities and Exchange Commission.

2. In the case of an insider, promoter or control person of the issuer or an affiliate of such an insider, promoter or control person, the security must have been held for at least 3 years before the resale of the security.

3. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

(a) Pays a fee of \$150 to the administrator; and

(b) Files a claim of exemption (Nevada Form N-9) with the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.519 Certain securities issued by governmental entities.**

1. A security, including a revenue obligation, issued by the United States, an agency or corporate or other instrumentality of the United States, an international agency or corporate or other instrumentality of which the United States and one or more foreign governments are members, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more states or their political subdivisions, which is payable solely from the revenues to be received from an enterprise is exempt from the registration provisions of NRS 90.460 if:

(a) The enterprise which is obligated for payment of the principal and interest on the security is entirely owned or operated by the governmental entity or political subdivision issuing the security;

(b) The enterprise which is obligated for payment of the principal and interest on the security is performing a governmental function, including, but not limited to, the financing of student loans, single family residential mortgage loans, low-income housing, nonprofit health care facilities, public or private schools, facilities for the disposal of solid waste or the generation and sale of electricity; and

(c) The enterprise which is obligated for payment of the principal and interest on the security or the governmental entity or political subdivision which issued the security is legally authorized to adjust charges to cover the payment of principal and interest on the security and has contracted to do so.

2. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

(a) Pays a fee of \$150 to the administrator;

(b) Files a claim of exemption (Nevada Form N-9) with the administrator; and

(c) Submits with the claim of exemption a copy of the preliminary official statement or other disclosure document regarding the security. The person claiming the exemption shall mark or otherwise index the statement or document to indicate the portions of the statement or document that evidence compliance with the conditions set forth in subsection 1.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.521 Offer or sale complying with Regulation S of Securities and Exchange Commission.**

1. An offer or sale of a security is exempt from the registration requirements of NRS 90.460 if it complies with the provisions of Regulation S of the Securities and Exchange Commission (17 C.F.R. §§ 230.901 to 230.904, inclusive).

2. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

(a) Pays a fee of \$150 to the administrator; and

(b) Files a claim of exemption (Nevada Form N-9) with the administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92)

**90.522 Nonissuer transaction for which designated registration statement filed with and declared effective by Securities and Exchange Commission.**

1. A nonissuer transaction, whether or not effected through a broker-dealer, involving any class of an issuer's security is exempt from the registration requirements of NRS 90.460 if:

(a) The issuer filed a registration statement with the Securities and Exchange Commission on Form F-8, F-9 or F-10; and

(b) The Securities and Exchange Commission has declared the registration statement to be effective.

2. An exemption provided by this section is available if, preceding the initial use of the exemption, the person claiming the exemption:

- (a) Pays a fee of \$150 to the administrator; and
  - (b) Files a claim of exemption (Nevada Form N-9) with the administrator.
- (Added to NAC by Sec'y of State, eff. 11-19-92)

**90.525 Isolated transaction.** For purposes of the exemption from registration provided by subsection 1 of NRS 90.530, a transaction is "isolated" if it does not occur more frequently, with respect to the same offeror or seller, than twice during any 12-month period.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

## PROCEEDINGS BEFORE THE ADMINISTRATOR

**90.540 Applicability.** The provisions of NAC 90.540 to 90.610, inclusive, govern practice and procedure before the administrator in any proceeding under NRS 90.420, 90.510, 90.630, 90.800 or 90.820.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### **90.545 Notice.**

1. Notice of any hearing or opportunity for hearing required in a proceeding before the administrator must be:

(a) Served upon each respondent and any other person designated by order of the administrator, by personal service or by certified mail to the last known address of the person; and

(b) If the administrator by order so directs, published at least once in a newspaper of general circulation in the county specified by the administrator.

2. Except as otherwise provided in NRS 90.800, the notice must be served and published, if publication is ordered, not less than 10 days nor more than 30 days before the date fixed for the hearing, unless the administrator for good cause shown prescribes a shorter period.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.550 Representation by counsel.** Any party to a proceeding before the administrator is entitled to be represented by counsel. A person who is not a member of the State Bar of Nevada but who is a member in good standing and eligible to practice before the bar of any United States court or of the highest court of any state, territory or insular possession of the United States, and who has been retained to represent a client in a proceeding before the administrator, shall associate an active member of the State Bar of Nevada as counsel of record.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### **90.555 Administrator's staff to bring proceeding; respondent.**

1. The staff of the administrator will bring any proceeding before the administrator or his representative, may appear at any hearing, and have all rights of participation as a party to the proceeding. If counsel is desired, the attorney general will represent the staff.

2. Any party against whom a proceeding is brought will be styled a respondent.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

### **90.560 Complaint; answer; setting of hearing.**

1. Pleadings before the administrator must be entitled complaint and answer.

2. Within 20 days after service of the complaint upon a respondent, he shall file with the administrator an answer to the complaint. Matters alleged by way of affirmative defense must be separately stated and numbered.

3. Except as otherwise provided in NRS 90.800, a complaint will be set for hearing at the earliest convenience of the administrator, unless notice of satisfaction of the complaint, by answer or otherwise, is received by the administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

#### **90.565 Motions.**

1. Any motion, except a motion made during a hearing, must:

(a) Be in writing;

(b) Except in the case of a motion for an extension of time or for additional discovery, contain a memorandum of law, not more than 10 pages in length, describing with particularity the grounds of the motion and the relief sought; and

(c) Be served upon each opposing party in the manner required by NAC 90.570 of this regulation.

2. A decision upon any motion which does not dispose of the proceeding on the merits will be rendered without oral argument unless a hearing is ordered by the administrator. Any motion not acted upon by the administrator shall be deemed denied upon the filing of the final order of the administrator in the proceeding.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

#### **90.570 Pleading, motion or other paper: Filing of copies; service of documents.**

1. An original and two legible copies of any pleading, motion or other paper must be filed with the administrator.

2. Any opinion, decision, order, motion or other document required to be served by the administrator or any party must be served upon all parties to the proceeding by personal service or by certified mail. In the case of service by mail, service is complete when a true copy of the document, properly stamped and addressed, is deposited in the United States mail.

3. Any document served by the administrator or any party must contain an acknowledgment or certificate of service.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

#### **90.575 Discovery.**

1. A party may request discovery by motion. A motion for additional discovery must be accompanied by a certificate of the moving party or his attorney, stating that an attempt has been made to obtain the requested discovery through informal means, but that the attempt has been unavailing.

2. The administrator may grant or deny discovery, or impose any limitation or condition upon discovery, as he deems appropriate.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

#### **90.580 Location of hearing.**

1. Except as otherwise provided in subsection 2, any hearing in a proceeding before the administrator will be held before the administrator or his representative at the office of the administrator or at any other appropriate location designated by the administrator.

2. Any party may, by motion, request that any hearing be held at a place in this state other than the office of the administrator or the location designated by the administrator. No such motion will be granted unless the moving party:

(a) Agrees to pay any cost associated with the relocation of the hearing; and

(b) Deposits with the administrator an amount of money, to be determined by the administrator, sufficient to pay the cost of relocation.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.585 Conduct of hearing.**

1. The provisions of NRS 233B.121 to 233B.1235, inclusive, and this section will govern the conduct of any hearing on the merits in a proceeding before the administrator.

2. The administrator or his representative will call the hearing to order and proceed to take the appearances and act upon any pending motions.

3. The staff of the administrator will first introduce evidence sufficient to establish the scope of the hearing and the jurisdiction of the administrator. Evidence will thereafter be presented in the order determined by the administrator or his representative.

4. All testimony to be considered by the administrator or his representative in any hearing, except matters noticed by him or entered by stipulation, must be sworn testimony.

5. The administrator or his representative may rule on the admission or exclusion of evidence and may take any action necessary to assure the fair and orderly conduct of the hearing.

6. Oral proceedings at the hearing will be taken down and transcribed by a shorthand reporter.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.590 Record.** The administrator will cause a record to be made of the proceeding in accordance with the provisions of NRS 233B.121. A party desiring a copy of any record or transcript may obtain it from the administrator by paying the cost of preparing the record or transcript.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.595 Continuance or adjournment of hearing.** Before or during a hearing, the administrator or his representative may, upon proper showing or on his own motion, continue or adjourn the hearing to a later time or a different place.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

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

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.605 Rendering of order or decision; petition for rehearing.**

1. An order or decision on a hearing will be rendered within 30 days after the completion of the hearing.

2. Any party aggrieved by a decision of the administrator or his representative may file a petition for rehearing as provided in this section.

3. A petition for rehearing must:

(a) Not exceed 10 pages in length;

(b) Be filed and served upon each opposing party within 15 days after service of the decision; and

(c) Set forth with particularity each point of law or fact on which the petitioner relies.

4. Unless the administrator so orders, the filing of a petition for rehearing does not stay enforcement of the decision.

5. A rehearing may be granted for any of the following reasons:

(a) Irregularity in the hearing proceedings, to which timely objection has been made;

(b) Accident or surprise which ordinary prudence could not have guarded against; or

(c) Newly discovered material evidence which could not with reasonable diligence have been produced at the hearing.

6. The staff of the administrator may file and serve a written answer to the petition. The answer must be filed and served within 10 days after service of the petition.

7. Oral argument on the petition will not be permitted.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)

**90.610 Granting or denying petition for rehearing.**

1. If a petition for rehearing is granted, the administrator may reverse or modify the decision, order the matter set for hearing, or enter any other order appropriate under the circumstances.

2. An order granting or denying a petition for rehearing must be filed within 30 days after the filing and service of the petition. If a petition for rehearing is granted, a decision on rehearing must be filed within 60 days after service of the order granting the petition.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89)