

## CHAPTER 90

## SECURITIES

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## GENERAL PROVISIONS

**NAC 90.011 Definitions. (NRS 90.750)** As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 90.015 to 90.078, 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; 5-23-96; 10-30-97; R016-02, 8-6-2002)

**NAC 90.015 "Administrator" defined. (NRS 90.750)** "Administrator" means the Administrator of the Division.

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

**NAC 90.020 "Affiliate of an issuer" defined. (NRS 90.750)** "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)

**NAC 90.025 "Assistant sales representative" defined. (NRS 90.750)** "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)

**NAC 90.027 "Branch office" defined. (NRS 90.750)** "Branch office" means any place of business in this State other than the principal office in this State of the broker-dealer, from which one or more sales representatives transact business.

(Added to NAC by Sec'y of State by R016-02, eff. 8-6-2002)

**NAC 90.030 "Central Registration Depository" defined. (NRS 90.750)** "Central Registration Depository" means the Central Registration Depository of the National Association of Securities Dealers and the North American Securities Administrators Association.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002)

**NAC 90.035 "Control person" defined. (NRS 90.750)** "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)

**NAC 90.040 "Division" defined. (NRS 90.750)** "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)

**NAC 90.042 "Federal covered adviser" defined. (NRS 90.750)** "Federal covered adviser" means a person who is:

1. Registered or required to be registered pursuant to section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3; or
2. Excluded from the definition of "investment adviser" pursuant to subparagraph (11) of paragraph (a) of section 202 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(11).

(Added to NAC by Sec'y of State, eff. 10-30-97; A by R016-02, 8-6-2002)

**NAC 90.045 “Fiscal year” defined. (NRS 90.750)** “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)

**NAC 90.051 “Insider” defined. (NRS 90.750)** “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)

**NAC 90.053 “Investment adviser registration depository” defined. (NRS 90.750)** “Investment adviser registration depository” means the Investment Adviser Registration Depository operated by NASD Regulation, Inc., or its successor, to provide a system for the electronic registration of investment advisers and representatives of investment advisers.

(Added to NAC by Sec’y of State by R016-02, eff. 8-6-2002)

**NAC 90.061 “Nasdaq” defined. (NRS 90.750)** “Nasdaq” means The Nasdaq Stock Market, Inc.

(Added to NAC by Sec’y of State, eff. 11-19-92; A by R016-02, 8-6-2002)

**NAC 90.071 “Office of the Administrator” defined. (NRS 90.750)** “Office of the Administrator” means the Office of the Secretary of State, Securities Division, 555 East Washington Avenue, Suite 5200, Las Vegas, Nevada 89101.

(Added to NAC by Sec’y of State, eff. 11-19-92; A 5-23-96)

**NAC 90.075 “Representative of an investment adviser” defined. (NRS 90.750)** “Representative of an investment adviser” has the meaning ascribed to it in NRS 90.278.

(Added to NAC by Sec’y of State, eff. 5-23-96)

**NAC 90.078 “Securities industry personnel” defined. (NRS 90.750)** “Securities industry personnel” includes, without limitation, broker-dealers, sales representatives, investment advisers, representatives of investment advisers and any other persons the Administrator designates as securities industry personnel pursuant to a rule or order.

(Added to NAC by Sec’y of State, eff. 10-30-97)

**NAC 90.090 “Investment contract” interpreted. (NRS 90.750)** 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)

**NAC 90.101 Severability of provisions. (NRS 90.750)** 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**

### **NAC 90.315 Availability of forms. (NRS 90.750)**

1. Except as otherwise provided in this section, any form referred to in this chapter that pertains to the registration of securities or the licensing of investment advisers may be obtained from the Securities and Exchange Commission, Publications Unit, Mail Stop C-11, 450 Fifth Street, N.W., Washington, D.C. 20549, or from the Securities and Exchange Commission at the Internet address <http://www.sec.gov/divisions/corpfin/forms/securities.shtml> or the Internet address <http://www.sec.gov/divisions/investment/iard/iastuff.shtml>, respectively. The Small Company Offering Registration Form (Form U-7) and the Uniform Investment Company Notice Filing (Form NF) may be obtained from the North American Securities Administrators Association, 10 G Street, N.E., Suite 710, Washington, D.C. 20002. The Small Company Offering Registration Form (Form U-7) and the Uniform Investment Company Notice Filing (Form NF) may also be obtained from the North American Securities Administrators Association at the Internet address [http://www.nasaa.org/nasaa/corpfin/scor\\_forms.asp](http://www.nasaa.org/nasaa/corpfin/scor_forms.asp) and the Internet address [http://www.nasaa.org/nasaa/library/uniform\\_forms.html](http://www.nasaa.org/nasaa/library/uniform_forms.html), respectively. An informational packet concerning the Small Company Offering Registration which contains a Small Company Offering Registration Form (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 Media Source, P.O. Box 9403, Gaithersburg, Maryland 20898-9403, or from the National Association of Securities Dealers at the Internet address <http://www.nasdr.com/forms.asp>.

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 Amendment to Registration of a Branch Office (Nevada Form 360-2A).
- (c) The Request for Withdrawal of a Branch Office (Nevada Form 360-2W).
- (d) The Year-End Securities Sales Report (Nevada Form 500-3).
- (e) The Notice of Withdrawal of Registration (Nevada Form 500-12).
- (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 or from the Secretary of State at the Internet address <http://www.sos.state.nv.us/securities/licensing/index.htm>.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92; R016-02, 8-6-2002)

### **NAC 90.3155 Irrevocable consent to service of process. (NRS 90.750, 90.770)**

1. An applicant for licensing as a broker-dealer satisfies the requirement set forth in NRS 90.770 concerning the filing of an irrevocable consent to service of process by filing with the Administrator the Uniform Consent to Service of Process (Form U-2) as required by NAC 90.330.

2. An applicant for licensing as a sales representative, assistant sales representative or representative of an investment adviser or an issuer who proposes to offer a security in this State through an agent satisfies the requirement set forth in NRS 90.770 concerning the filing of an irrevocable consent to service of process by filing with the Administrator:

- (a) The Uniform Consent to Service of Process (Form U-2);
  - (b) The Uniform Application for Broker-Dealer Registration (Form BD); or
  - (c) The Uniform Application for Investment Adviser Registration (Form ADV).
- (Added to NAC by Sec'y of State, eff. 5-23-96; A by R016-02, 8-6-2002)

**NAC 90.317 Issuance of written interpretations of provisions. (NRS 90.715; 90.750)**  
 The Division will not render a written interpretation of any provision of this chapter or chapter 90 of NRS.

(Added to NAC by Sec'y of State, eff. 10-16-89; A by R047-04, 5-25-2004)

**NAC 90.318 Request for waiver or no-action letter. (NRS 90.715, 90.750)**

1. A request for a waiver or no-action letter must be submitted in writing to the Office of the Administrator, accompanied by the fee set forth in NRS 90.715.

2. Two copies of the request for a waiver or no-action letter must be filed. The request for a waiver or no-action letter 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 for a waiver or no-action letter 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. As used in this section, "no-action letter" has the meaning ascribed to it in NRS 90.715.

(Added to NAC by Sec'y of State, eff. 10-16-89; A by R047-04, 5-25-2004)

## SECURITIES AGENTS

### General Provisions

**NAC 90.321 Adoption by reference of *Conduct Rules*; review of changes. (NRS 90.750)**

1. The Administrator hereby adopts by reference the *Conduct Rules* adopted by the National Association of Securities Dealers as published in the manual of that association. A softcover copy of the manual is available from the National Association of Securities Dealers Media Source, P.O. Box 9403, Gaithersburg, Maryland 20898-9403, at the price of \$10, plus \$4.95 for shipping and handling for members or at the price of \$29.95, plus \$8.50 for shipping and handling for nonmembers. The manual is also available, free of charge, from the National Association of Securities Dealers at the Internet address <http://secure.nasdr.com/wbs/NETbos.dll?RefShow?ref=NASD4;&xinfo=/goodbye.htm>.

2. The Administrator will periodically review the *Conduct Rules* and determine within 30 days after the review whether any change made to those rules is appropriate for application in this State. If the Administrator does not disapprove a change to an adopted rule within 30 days after the review, the change is deemed to be approved by the Administrator.

(Added to NAC by Sec'y of State by R016-02, eff. 8-6-2002)

**NAC 90.325 Availability of registration materials for uniform examinations. (NRS 90.750)** Registration materials for the Uniform Securities Agent State Law Examination (Series 63), the Uniform Investment Adviser Examination (Series 65) and the Uniform Combined State Law Examination (Series 66) may be obtained from the National Association of Securities Dealers, 9509 Key West Avenue, Rockville, Maryland 20850, or from the National Association of Securities Dealers at the Internet address [http://www.nasdr.com/5200\\_explan.asp](http://www.nasdr.com/5200_explan.asp).

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92; 5-23-96; R016-02, 8-6-2002)

**NAC 90.327 Unethical and dishonest practices. (NRS 90.420, 90.750)**

1. A broker-dealer, sales representative, investment adviser or representative of an investment adviser 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 *Conduct Rules* as adopted by reference in NAC 90.321; or

(2) Any applicable rule of conduct or ethical standard promulgated by:

(I) The Securities and Exchange Commission;

(II) A self-regulatory organization approved by the Securities and Exchange Commission; or

(III) Any other organization approved by the Administrator by written order.

(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; R016-02, 8-6-2002)

**NAC 90.328 Fraudulent practices. (NRS 90.570, 90.750)**

1. A broker-dealer, sales representative, investment adviser or representative of an investment adviser 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, sales representative, investment adviser or representative of an investment adviser 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 Nasdaq National Market:

(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, sales representative, investment adviser or representative of an investment adviser 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; R016-02, 8-6-2002)

**NAC 90.329 Notification of customers before assessing new charges for services performed. (NRS 90.750)** A broker-dealer, sales representative, investment adviser or representative of an investment adviser 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; A by R016-02, 8-6-2002)

**NAC 90.3292 Broker-dealers and sales representatives: Exemption from licensing requirements under certain circumstances. (NRS 90.320, 90.750)**

1. A broker-dealer who:

(a) Is a resident of Canada; and

(b) Meets the conditions of paragraph (a) of subsection 1 of NRS 90.320,

↪ is exempt from the licensing requirements of NRS 90.310.

2. If a sales representative is acting for a broker-dealer who is exempt from the licensing requirements of NRS 90.310 pursuant to subsection 1, the sales representative is exempt from the licensing requirements of NRS 90.310.

(Added to NAC by Sec'y of State, eff. 10-30-97)

**NAC 90.3293 Investment advisers and representatives of investment advisers: Electronic transfer of fees to and filing of documents with certain depositories. (NRS 90.350, 90.750, 90.845, 90.847)**

1. Pursuant to subsection 2 of NRS 90.350, the Administrator designates the investment adviser registration depository, or any other depository for electronic registration that is approved by the Administrator by order, to receive and store filings and collect related fees from investment advisers and representatives of investment advisers on behalf of the Administrator.

2. Except as otherwise provided in subsection 5 and NAC 90.3294, an investment adviser or representative of an investment adviser who is required by this chapter or chapter 90 of NRS to pay a fee to the Administrator or file a document with the Administrator, including, without limitation, an application, amendment, report or notice, must comply with that requirement by:

(a) Transferring the fee electronically to the depository designated or approved pursuant to subsection 1; or

(b) Filing the document electronically with the depository designated or approved pursuant to subsection 1,

↪ as applicable.

3. If the instructions accompanying a document that is required to be electronically filed pursuant to subsection 2 require a signature, the applicant or an authorized officer of the applicant, as required, shall affix his electronic signature to the document by typing his name in the appropriate fields and submitting the document to the depository designated or approved pursuant to subsection 1. If a document is submitted in the manner set forth in this subsection, the document shall be deemed to include the legal signature of the person whose name is typed on the document.

4. A document that is required to be electronically filed pursuant to subsection 2 shall be deemed to be filed with the Administrator when all the required fees are received and the document is filed with and accepted on behalf of the Administrator by the depository.

5. If a fee or document that an investment adviser or representative of an investment adviser is required by this chapter or chapter 90 of NRS to pay to or file with the Administrator cannot be paid to, filed with or accepted by the depository designated or approved pursuant to subsection 1, the fee or document must be directly paid to or filed with the Administrator, as applicable.

(Added to NAC by Sec'y of State by R016-02, eff. 8-6-2002)

**NAC 90.3294 Federal covered advisers: Licensing requirements inapplicable under certain circumstances. (NRS 90.340, 90.350, 90.360, 90.750, 90.845, 90.847)**

1. The licensing requirements of NRS 90.330 do not apply to a federal covered adviser if the federal covered adviser complies with the requirements set forth in this section.

2. Except as otherwise provided in subsection 3, a federal covered adviser shall file a notice with the Administrator in the manner set forth in NAC 90.3293. The notice must consist of:

- (a) An executed Uniform Application for Investment Adviser Registration (Form ADV); and
- (b) The fee required by NRS 90.360 for an investment adviser.

3. If the depository designated or approved pursuant to subsection 1 of NAC 90.3293 does not allow the filing of Part 2 of Form ADV and the Administrator so requests, the federal covered adviser shall submit Part 2 of Form ADV to the Administrator within 5 days after the Administrator requests the federal covered adviser to submit the form.

4. A federal covered adviser must renew the notice required by subsection 2 annually, on or before December 31, by paying the fee required by NRS 90.360 for an investment adviser to the Administrator in the manner set forth in NAC 90.3293.

5. A federal covered adviser shall file with the Administrator in the manner set forth in NAC 90.3293 any amendments to the most recent Form ADV filed by the federal covered adviser that are required by the instructions set forth in Form ADV.

(Added to NAC by Sec'y of State, eff. 10-30-97; A by R016-02, 8-6-2002)

**NAC 90.3296 Federal covered advisers: Employment restrictions. (NRS 90.750)**

1. Except as otherwise provided in subsection 3, a federal covered adviser shall not employ, in order to engage in any activity related to the sale of securities in this State, any person having a place of business in this State who is suspended or barred from association with a broker-dealer or investment adviser by the Administrator.

2. A federal covered adviser does not violate this section unless the federal covered adviser knows or in the exercise of reasonable care should know of the suspension or bar.

3. Upon request from a federal covered adviser and for good cause shown, the Administrator may, by order, waive the prohibition of this section with respect to a particular person who has been suspended or barred.

(Added to NAC by Sec'y of State, eff. 10-30-97)

**NAC 90.3298 Securities industry personnel: Use of Internet for distribution of information. (NRS 90.320, 90.340, 90.750)**

1. Securities industry personnel who use the Internet to distribute information on available products and services shall not be deemed to be transacting business in this State for the purposes of NRS 90.310 or 90.330 if the information so distributed:

(a) Contains a legend clearly stating that the securities industry personnel may only transact business in those states in which they are licensed or otherwise excluded from applicable state licensing requirements;

(b) Contains a mechanism which reasonably ensures that a subsequent interaction between prospective customers or clients residing in states where the securities industry personnel are not licensed is limited so that the securities industry personnel are not required to be licensed by the state and the securities are not required to be registered;

(c) Does not involve the actual effecting of securities trades;

(d) Does not involve the rendering of personalized investment advice for compensation;

(e) Is limited to the dissemination of information about a product or service; and

(f) Prominently discloses the affiliation of the sales representative with the broker-dealer or the representative of an investment adviser with the investment adviser.

2. The broker-dealer or investment adviser shall:

- (a) Review and approve the content of the information distributed on the Internet; and

(b) Specifically authorize the distribution of that information regarding the product or service; and

(c) Recognize that the sales representative or representative of the investment adviser is acting within the scope of his authority.

(Added to NAC by Sec'y of State, eff. 10-30-97)

### **Broker-Dealers**

**NAC 90.330 Applicant for licensing: Filing requirements; payment of fee. (NRS 90.350, 90.360, 90.390, 90.750, 90.845, 90.847)**

1. An applicant for licensing as a broker-dealer who is not registered with the National Association of Securities Dealers must pay to the Office of the Administrator the fee required by NRS 90.360 and file an application with the Office of the Administrator. The application must include:

(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 in the manner prescribed in NAC 90.335;

(d) A certificate that he has qualified to do business in this State, if qualification is required by NRS 80.010;

(e) 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;

(f) The Uniform Application for Securities Industry Registration or Transfer (Form U-4) for a designated official of the applicant; and

(g) Proof of successful completion by one or more designated employees of the applicant of:

(1) The Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66); and

(2) Any principal examination required by the National Association of Securities Dealers for registration of the applicant.

2. The original signature of the applicant must be used on the Uniform Application for Broker-Dealer Registration (Form BD) and the Uniform Consent to Service of Process (Form U-2) required by paragraphs (a) and (b) of subsection 1.

3. An applicant for licensing as a broker-dealer who is registered with the National Association of Securities Dealers must:

(a) File with the Central Registration Depository the documents required for licensing pursuant to paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Pay to the Central Registration Depository the fees required by NRS 90.360.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 5-23-96; R016-02, 8-6-2002)

**NAC 90.335 Filing of balance sheet. (NRS 90.350, 90.750)** 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)

**NAC 90.340 Failure to comply with Rule 15c3-1: Disciplinary proceedings. (NRS 90.420, 90.750)** 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)

**NAC 90.342 Compliance with certain provisions of *Conduct Rules*. (NRS 90.390, 90.750)** For the purposes of subsection 5 of NRS 90.390, each licensed broker-dealer shall comply with the provisions of Rule 3110 of the *Conduct Rules*, as adopted by reference in NAC 90.321, whether or not he is a member of the National Association of Securities Dealers.

(Added to NAC by Sec'y of State by R016-02, eff. 8-6-2002)

**NAC 90.345 Expiration and renewal of license. (NRS 90.350, 90.360, 90.390, 90.750, 90.845)**

1. The license of a broker-dealer expires on December 31 of each year. A broker-dealer must 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 and the documents must be filed with the Office of the Administrator 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, must file with the Office of the Administrator:

(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 must 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; R016-02, 8-6-2002)

**NAC 90.350 Withdrawal from licensing. (NRS 90.750, 90.847)**

1. Except as otherwise provided in subsection 2, a broker-dealer who withdraws from licensing in this State shall file with the Office of 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; R016-02, 8-6-2002)

### **Sales Representatives**

**NAC 90.355 Applicant for licensing: Filing requirements; payment of fee; required examinations. (NRS 90.350, 90.360, 90.750, 90.845, 90.847)**

1. Except as otherwise provided in this section, an applicant for licensing as a 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:

(1) The Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66); 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 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; 5-23-96)

**NAC 90.360 Cessation of employment or contractual relationship with broker-dealer. (NRS 90.350, 90.360, 90.380, 90.750, 90.845, 90.847)**

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 relicensing program of the Central Registration Depository.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R016-02, 8-6-2002)

**NAC 90.365 Expiration and renewal of license. (NRS 90.350, 90.360, 90.750, 90.845)**

1. The license of a sales representative expires on December 31 of each year. Except as otherwise provided in subsection 2, a sales representative must 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; R016-02, 8-6-2002)

**NAC 90.368 Licensing as representative of investment adviser: Exemption from licensing requirements under certain circumstances. (NRS 90.340, 90.750)**

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)

**NAC 90.369 Licensing requirements inapplicable under certain circumstances. (NRS 90.320, 90.750)** The provisions of NRS 90.310 do not apply to a sales representative acting for an issuer effecting offers to sell or sales of securities if:

1. The securities are set forth in subparagraph (3) of paragraph (b) of section 18 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3), or subparagraph (D) of subparagraph (4) of paragraph (b) of section 18 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), and the sales representative is not paid, directly or indirectly, for soliciting any person in this State; or

2. The transactions in this State are limited to only those transactions set forth in subparagraph (2) of paragraph (h) of section 15 of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h)(2).

(Added to NAC by Sec'y of State, eff. 10-30-97)

#### **Assistant Sales Representatives**

**NAC 90.371 Licensing requirements; expiration and renewal of license. (NRS 90.350, 90.360, 90.380, 90.750, 90.845, 90.847)**

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 the fee required by NRS 90.360 for a sales representative.

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.

5. The license of an assistant sales representative expires on December 31 of each year. An assistant sales representative must renew his license annually, on or before December 31, by paying the fee required by NRS 90.360 for a sales representative.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002)

**NAC 90.373 Restrictions on activities and compensation. (NRS 90.380, 90.750)**

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**

#### **NAC 90.375 Applicant for initial license: Filing requirements; payment of fee. (NRS 90.350, 90.360, 90.750, 90.845, 90.847)**

1. An applicant for an initial license as an investment adviser must file an application with the Administrator in the manner set forth in NAC 90.3293. The application must include:

(a) The Uniform Application for Investment Adviser Registration (Form ADV), completed in accordance with the instructions accompanying that application;

(b) Proof:

(1) Of successful completion by the applicant, if he is a natural person, or by an owner, officer or director of the applicant if the applicant is not a natural person, of:

(I) The Uniform Investment Adviser Law Examination (Series 65); or

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

(2) That the applicant, if he is a natural person, or an owner, officer or director of the applicant if the applicant is not a natural person, holds a professional designation listed in subsection 3 of NAC 90.391;

(c) The Uniform Application for Securities Industry Registration or Transfer (Form U-4) which is signed by the person submitting proof of the requirements set forth in paragraph (b); and

(d) Such other information as the Administrator may reasonably require.

2. In addition to the requirements set forth in subsection 1, an applicant for an initial license as an investment adviser must pay the fee required by NRS 90.360 to the Administrator in the manner set forth in NAC 90.3293.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 11-19-92; 5-23-96; R016-02, 8-6-2002)

#### **NAC 90.380 Expiration and renewal of license; filing of amendments and updates to Form ADV. (NRS 90.350, 90.360, 90.750, 90.845, 90.847)**

1. The license of an investment adviser expires on December 31 of each year. An investment adviser must renew his license annually, on or before December 31, by paying the fee required by NRS 90.360 to the Administrator in the manner set forth in NAC 90.3293.

2. An investment adviser shall file with the Administrator in the manner set forth in NAC 90.3293 any amendments to the most recent Form ADV filed by the investment adviser that are required by the instructions set forth in the Uniform Application for Investment Adviser Registration (Form ADV) within 30 days after the event that requires the filing of the amendment.

3. Within 90 days after the end of the fiscal year, an investment adviser must file an updated Form ADV with the Administrator in the manner set forth in NAC 90.3293.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R016-02, 8-6-2002)



**NAC 90.385 Withdrawal from licensing. (NRS 90.750, 90.847)** An investment adviser who withdraws from licensing shall file with the Administrator, in the manner set forth in NAC 90.3293, 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; R016-02, 8-6-2002)

**NAC 90.3864 Adoption by reference of certain policies and rules governing practice. (NRS 90.390, 90.750)** For the purposes of subsection 5 of NRS 90.390, the Administrator hereby adopts by reference:

1. The Statement of Policy on Unethical Business Practices of Investment Advisers, as adopted by the North American Securities Administrators Association on April 5, 1985, and amended by that association on April 27, 1997, and published in the *Commerce Clearing House NASAA Reports*.

2. Model Rule 203(a)(2), Alternative 2, Recordkeeping Requirements for Investment Advisers, as adopted by the North American Securities Administrators Association on May 3, 1998.

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.

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.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 9-15-94; R016-02, 8-6-2002)—  
(Substituted in revision for NAC 90.352)

**NAC 90.3866 Materials adopted by reference: Availability. (NRS 90.390, 90.750)**

1. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association and Model Rule 203(a)(2), as adopted by reference in subsections 1 and 2 of NAC 90.3864, are available, free of charge, from the North American Securities Administrators Association, 10 G Street, N.E., Suite 710, Washington, D.C. 20002. The Statement of Policy on Unethical Business Practices of Investment Advisers and Model Rule 203(a)(2) are also available, free of charge, from the North American Securities Administrators Association at the Internet address <[http://www.nasaa.org/nasaa/scripts/fu\\_display\\_list.asp?ptid=142](http://www.nasaa.org/nasaa/scripts/fu_display_list.asp?ptid=142)> and at the Internet address <[http://www.nasaa.org/nasaa/scripts/fu\\_display\\_list.asp?ptid=82](http://www.nasaa.org/nasaa/scripts/fu_display_list.asp?ptid=82)>, respectively.

2. 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 90.3864, are available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$55. Those provisions are also available, free of charge, from the Government Printing Office at the Internet address <<http://www.access.gpo.gov/nara/cfr/index.html>>.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92; 9-15-94; R016-02, 8-6-2002)—  
(Substituted in revision for NAC 90.353)

**NAC 90.3868 Materials adopted by reference: Review of changes. (NRS 90.390, 90.750)** The Administrator will periodically review:

1. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted by reference in subsection 1 of NAC 90.3864;

2. Model Rule 203(a)(2), as adopted by reference in subsection 2 of NAC 90.3864;

3. The provisions of 17 C.F.R. § 275.204-2, as adopted by reference in subsection 3 of NAC 90.3864; and

4. The provisions of 17 C.F.R. § 275.204-3, as adopted by reference in subsection 4 of NAC 90.3864,

➤ 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; A by R016-02, 8-6-2002)—(Substituted in revision for NAC 90.354)

**NAC 90.387 Recordkeeping requirements; disclosures to clients. (NRS 90.390, 90.750)**

1. Except as otherwise provided in subsection 2, an investment adviser licensed or required to be licensed pursuant to NRS 90.330 shall comply with the provisions of:

- (a) Model Rule 203(a)(2), as adopted by reference in subsection 2 of NAC 90.3864;
- (b) 17 C.F.R. § 275.204-2, as adopted by reference in subsection 3 of NAC 90.3864; and
- (c) 17 C.F.R. § 275.204-3, as adopted by reference in subsection 4 of NAC 90.3864.

2. An investment adviser who has his principal place of business in a state other than this State shall maintain and preserve only such books and records as are required by the state in which the investment adviser maintains his principal place of business, if the investment adviser is licensed in that state and is in compliance with that state's requirements for the preservation of books and records.

(Added to NAC by Sec'y of State, eff. 10-30-97; A by R016-02, 8-6-2002)

**NAC 90.390 Minimum net capital or tangible net worth; submission of certificate of accountant. (NRS 90.390, 90.750)**

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:

(a) Maintain net capital of not less than \$20,000 or a tangible net worth of not less than \$35,000; and

(b) Promptly submit to the Office of the Administrator a copy of the certificate of an accountant that is required to be filed with the Securities and Exchange Commission pursuant to 17 C.F.R. § 275.206(4)-2.

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.

3. An investment adviser who has a principal place of business in a state other than this State shall maintain only such minimum capital as is required by the state in which the adviser maintains his principal place of business, if the investment adviser is licensed in that state and is in compliance with that state's requirements for minimum capital.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 10-30-97; R016-02, 8-6-2002)

## **Representatives of Investment Advisers**

### **NAC 90.391 Applicant for initial license: Filing requirements; payment of fee. (NRS 90.350, 90.360, 90.750, 90.845, 90.847)**

1. An applicant for an initial license as a representative of an investment adviser must file an application with the Administrator in the manner set forth in NAC 90.3293.

2. Except as otherwise provided in subsections 3 and 5, the application must include:

(a) The Uniform Application for Securities Industry Registration or Transfer (Form U-4); and

(b) Proof of successful completion by the applicant of:

(1) The Uniform Investment Adviser Law Examination (Series 65); or

(2) The Uniform Combined State Law Examination (Series 66) and the General Securities Registered Representative Examination (Series 7).

3. The examination requirements set forth in subsection 2 do not apply to a person who includes in his application proof that he:

(a) Is certified as a Certified Financial Planner (CFP) by the Certified Financial Planner Board of Standards, Inc.;

(b) Is designated as a Chartered Financial Consultant (ChFC) by The American College located in Bryn Mawr, Pennsylvania;

(c) Is designated as a Personal Financial Specialist (PFS) by the American Institute of Certified Public Accountants;

(d) Is designated as a Chartered Financial Analyst (CFA) by the Association for Investment Management and Research;

(e) Is designated as a Chartered Investment Counselor (CIC) by the Investment Counsel Association of America, Inc.; or

(f) Holds such other professional designation as the Administrator may recognize by order.

4. An applicant for a license as a representative of an investment adviser must pay the fee required by NRS 90.360 to the Administrator in the manner set forth in NAC 90.3293.

5. In addition to the information required by subsection 2 and the fee required by subsection 4, a person licensed as a sales representative of a broker-dealer who is registered with the National Association of Securities Dealers and is also a licensed investment adviser in this State or is the affiliate of such a licensed investment adviser, must include his Central Registration Depository number in his application for an initial license as a representative of an investment adviser.

(Added to NAC by Sec'y of State, eff. 11-19-92; A 5-23-96; R016-02, 8-6-2002)

### **NAC 90.3911 Expiration and renewal of license; required updating of certain information. (NRS 90.350, 90.360, 90.750, 90.845, 90.847)**

1. The license of a representative of an investment adviser expires on December 31 of each year. A representative of an investment adviser must renew his license annually, on or before December 31, by paying the applicable fee required pursuant to NRS 90.360 to the Administrator in the manner set forth in NAC 90.3293.

2. A representative of an investment adviser and the investment adviser with whom the representative is employed or retained as an independent contractor shall update the information required by the Uniform Application for Securities Industry Registration or Transfer (Form U-4) filed with the Administrator pursuant to NAC 90.391 within 30 days after the change in that information occurs.

(Added to NAC by Sec'y of State by R016-02, eff. 8-6-2002)

### **NAC 90.3912 Licensing requirements inapplicable under certain circumstances. (NRS 90.340, 90.750)** The licensing requirements of NRS 90.330 do not apply to a representative of an investment adviser who is a federal covered adviser if the representative does not have a place of business in this State.

(Added to NAC by Sec'y of State, eff. 10-30-97)

**NAC 90.3915 Cessation of employment or contractual relationship with investment adviser. (NRS 90.350, 90.360, 90.750, 90.847)**

1. The license of a representative of an investment adviser terminates upon the withdrawal, cancellation or termination of his employment or contractual relationship with an investment adviser. The investment adviser shall file the Uniform Termination Notice for Securities Industry Registration (Form U-5) with the Administrator, in the manner set forth in NAC 90.3293, upon the withdrawal, cancellation or termination of his employment or contractual relationship with a representative of an investment adviser.

2. A representative of an investment adviser whose employment or contractual relationship with an investment adviser ceases and who intends to transact business in this State as a representative of an investment adviser with another investment adviser must file a new application for a license, together with the required fee.

(Added to NAC by Sec'y of State, eff. 11-19-92; A 5-23-96; R016-02, 8-6-2002)

**Branch Offices**

**NAC 90.392 Licensing requirements; changes in certain information; expiration and renewal of license. (NRS 90.360, 90.750)**

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 the appropriate fee set forth in NRS 90.360.

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 Amendment to Registration of a Branch Office (Nevada Form 360-2A) and pay the appropriate fee set forth in NRS 90.360.

4. A license obtained pursuant to this section expires on December 31 of each year. The license must be renewed annually on or before December 31 by paying the appropriate fee set forth in NRS 90.360.

(Added to NAC by Sec'y of State, 10-16-89, eff. 1-1-90; A by R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.3925 Designation as office of supervisory jurisdiction; designation of manager. (NRS 90.360, 90.750)**

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)

**NAC 90.393 Licensing of person in charge; roster of affiliated sales representatives. (NRS 90.360, 90.750)**

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)

**NAC 90.3935 Restrictions on name and location of operation. (NRS 90.360, 90.750)**  
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)

**NAC 90.394 Grounds for denial, suspension or revocation of license. (NRS 90.360, 90.750)** 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)

**NAC 90.3945 Notification of Division before closing office or terminating business. (NRS 90.360, 90.750)** 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**

**NAC 90.395 Definitions. (NRS 90.750)** As used in NAC 90.395 to 90.538, 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)

**NAC 90.398 Electronic filing; electronic payment of fees. (NRS 90.750, 90.845, 90.847)**  
1. Any document which must be filed pursuant to NRS 90.470 to 90.500, inclusive, or 90.520 may be filed with the Securities Registration Depository or any other system for the electronic registration of securities which is approved by the Administrator by order.

2. If a document is filed pursuant to subsection 1, any fee required by NRS 90.500 or 90.520 may be paid by the electronic transfer of money to the system for the electronic registration of securities with which the document was filed.

3. As used in this section, "Securities Registration Depository" means the system for the electronic registration of securities that is owned and operated by SRD, Inc., or its successor.

(Added to NAC by Sec'y of State, eff. 5-23-96; A by R016-02, 8-6-2002)—(Substituted in revision for NAC 90.422)

**NAC 90.400 Filing of Year-End Securities Sales Report. (NRS 90.500, 90.750)** 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)

**NAC 90.402 Prospectus: Index. (NRS 90.750)** 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)

**NAC 90.403 Prospectus: Use and availability of Small Company Offering Registration Form. (NRS 90.750)**

1. The Small Company Offering Registration Form (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 \$1 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.

3. An issuer who uses Form U-7 in connection with an offering pursuant to Rule 504 of Regulation D of the Securities and Exchange Commission may elect in writing to participate in the Western Regional Review, as administered by the North American Securities Administrators Association.

4. Form U-7 may be obtained from the North American Securities Administrators Association or the Office of the Administrator in the manner described in NAC 90.315.

(Added to NAC by Sec'y of State, eff. 10-16-89; A 11-19-92; 10-30-97; R016-02, 8-6-2002)

**NAC 90.405 Application of statements of policy to offerings; offerings made with unreasonable amounts of underwriters' and sellers' compensation; aggregate amount of compensation. (NRS 90.510, 90.750)**

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)

**NAC 90.408 Registration statements: Use of financial statements and financial information prepared in accordance with generally accepted accounting principles of Canada. (NRS 90.500, 90.750)**

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)

**NAC 90.410 Registration statements deemed abandoned: Circumstances and effect. (NRS 90.500, 90.750)** A registration statement shall be deemed abandoned if the registration statement does not become effective within 1 year after the date on which the registration statement is filed with the Administrator. A registration statement that has been deemed abandoned pursuant to this section must not be reinstated. An applicant who wishes to register securities under a registration statement that has been deemed abandoned pursuant to this section must file a new registration statement that includes the filing fee required by NRS 90.500 and the documents required to be filed pursuant to:

1. NRS 90.470 and NAC 90.420;
2. NRS 90.480 and NAC 90.440; or
3. NRS 90.490 and NAC 90.460,

↳ as applicable.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R016-02, 8-6-2002)

**NAC 90.412 Withdrawal of registration statement. (NRS 90.750)** 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)

**NAC 90.413 Application to extend effectiveness of registration statement. (NRS 90.500, 90.750)**

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)

**NAC 90.415 Waiver of provisions. (NRS 90.715, 90.750)** The Administrator may waive the application of any provision of NAC 90.395 to 90.538, inclusive, if a written request for the waiver is filed with the Administrator in accordance with NRS 90.715 and NAC 90.318 by the registrant affected and the Administrator determines that waiver is appropriate under the circumstances 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; R047-04, 5-25-2004)

### **Registration by Filing**

**NAC 90.420 Documents required to accompany filing. (NRS 90.470, 90.750)** A registration statement filed pursuant to NRS 90.470 must be accompanied by:

1. The Uniform Application to Register Securities (Form U-1);

2. The Uniform Consent to Service of Process (Form U-2);

3. The Uniform Corporate Resolution (Form U-2A);

4. A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

5. 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; R016-02, 8-6-2002)

**NAC 90.425 Accelerated effectiveness. (NRS 90.470, 90.750)** 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)



**NAC 90.430 Posteffective amendment. (NRS 90.470, 90.750)** A posteffective 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)

**NAC 90.435 Timely filing of reports. (NRS 90.470, 90.750)** 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**

**NAC 90.440 Documents required to accompany filing. (NRS 90.480, 90.750)** A registration statement filed pursuant to NRS 90.480 must be accompanied by:

1. The Uniform Application to Register Securities (Form U-1);

2. The Uniform Consent to Service of Process (Form U-2);

3. The Uniform Corporate Resolution (Form U-2A);

4. A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

5. 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; R016-02, 8-6-2002)

**NAC 90.445 Accelerated effectiveness. (NRS 90.480, 90.750)** 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)

**NAC 90.450 Posteffective amendment. (NRS 90.480, 90.750)** A posteffective 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)

**NAC 90.453 Effective date of registration statement filed with Securities and Exchange Commission. (NRS 90.480, 90.750)** 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)

**NAC 90.455 Written notice of date federal registration statement became effective. (NRS 90.480, 90.750)** 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**

**NAC 90.460 Documents required to accompany filing. (NRS 90.490, 90.750)** 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. The Uniform Corporate Resolution (Form U-2A);
4. A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus;
5. A copy of the articles of incorporation and bylaws or their substantial equivalents, as applicable, which are currently in effect;
6. A copy of any agreement with or among the underwriters;
7. A copy of any indenture or other instrument governing the issuance of the security to be registered;
8. A copy, specimen or description of the security;
9. 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
10. 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; R016-02, 8-6-2002)

**NAC 90.465 Amendment to prospectus, pamphlet or similar document. (NRS 90.490, 90.750)** 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)

**NAC 90.470 Preparation and auditing of financial statements. (NRS 90.490, 90.750)**

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**

#### **NAC 90.475 Applicability. (NRS 90.480, 90.490, 90.750)**

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; R016-02, 8-6-2002)

#### **NAC 90.480 Contents of registration statement or offering document; penalty for failure to comply. (NRS 90.480, 90.490, 90.500, 90.510, 90.750)**

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, in the case of a security other than a security described in subsection 3, 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 that 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.

3. If, in the case of a security registered on Form SB-2 with the United States Securities and Exchange Commission, pursuant to Rule 419 of the Securities and Exchange Commission, 17 C.F.R. § 230.419, and registered pursuant to NRS 90.480, 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 the registration statement sets forth with reasonable specificity:

(a) The name of each principal manager of the business of the issuer;

(b) That the net offering proceeds to the issuer are not less than \$75,000;

(c) That, 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;

(d) That specific disclosure has been made of the criteria to be used by management in acquiring a business or other asset;

(e) That disclosure has been made of any previous involvement of any officer, director or principal manager 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 that transaction;

(f) That the issuer has undertaken in the prospectus to distribute an informational statement, before any vote of the shareholders is conducted pursuant to Rule 419 of the Securities and Exchange Commission, 17 C.F.R. § 230.419, 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 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, principal manager, 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;

(g) That the offering will be completed within 3 months after the registration statement registered pursuant to NRS 90.480 becomes effective and that all the money of the investors that was raised in the offering will be held in an escrow account described in 17 C.F.R. § 230.419(b)(1)(i)(A) or in a trust account described in 17 C.F.R. § 230.419(b)(1)(i)(B);

(h) That the money of the investors that is held in the escrow or trust account will not be distributed to any officer, director, principal manager or promoter until an acquisition of another company has been completed and confirmed by the investors; and

(i) Either that any acquisition of another company resulting from an offering made pursuant to Rule 419 of the Securities and Exchange Commission, 17 C.F.R. § 230.419, will be completed within 9 months after the date on which the offering is completed or that the money of the investors which is held in the escrow or trust account, including any interest, will be returned to the investors within 5 days after that date.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R047-04, 5-25-2004)

**NAC 90.483 Registration by qualification: Additional filings required after filing of registration statement; enforcement. (NRS 90.490, 90.560, 90.750)**

1. 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:

(a) A copy of all sales and promotional materials used in connection with the offering; and

(b) A report which sets forth the:

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

(2) Consideration paid for each security; and

(3) Names and addresses of all purchasers.

2. If an issuer fails to file with the Administrator the report described in paragraph (b) of subsection 1, the Administrator may impose a sanction against the issuer pursuant to subsection 2 of NRS 90.630.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002)

**NAC 90.485 Limitation on amount of dilution in offering; remedy for violation. (NRS 90.480, 90.490, 90.510, 90.750)** The amount of dilution in an offering by a development stage company may not exceed 75 percent of the aggregate offering price unless that limitation is waived by the Administrator pursuant to NRS 90.715. 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; R047-04, 5-25-2004)

**NAC 90.490 Offering of debt securities, equity securities or securities convertible to equity securities; offering of partnership units or trust certificate. (NRS 90.480, 90.490, 90.750)**

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)

**NAC 90.492 Submission to Division of material change in issuer or offering. (NRS 90.480, 90.490, 90.500, 90.750)** 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 posteffective 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**

**NAC 90.495 Claim of exemption: Applicable fee and filing requirements; burden of proof when filing not required. (NRS 90.520, 90.530, 90.540, 90.750)**

1. Except as otherwise provided in this section, a person who claims an exemption from the registration requirement of NRS 90.460 must file the required Claim of Exemption From Securities Registration (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                           | Fee   | Frequency of Filing |
|---|-------|---------------------|
| <b>Exemptions established by statute</b>      |       |                     |
| NRS 90.520, subsection 2, paragraph (c).....  | \$300 | A                   |
| NRS 90.520, subsection 2, paragraph (e).....  | 300   | A                   |
| NRS 90.520, subsection 2, paragraph (f).....  | 300   | A                   |
| NRS 90.520, subsection 2, paragraph (i).....  | 300   | A                   |
| NRS 90.520, subsection 2, paragraph (j).....  | none  | T                   |
| NRS 90.520, subsection 2, paragraph (k).....  | 300   | A                   |
| NRS 90.530, subsection 2.....                 | 300   | A                   |
| NRS 90.530, subsection 14, paragraph (b)..... | 300   | T                   |
| NRS 90.530, subsection 17, paragraph (b)..... | 300   | T                   |

| Source of Exemption                         | Fee   | Frequency of Filing |
|---|-------|---------------------|
| <b>Exemptions established by regulation</b> |       |                     |
| NAC 90.515 .....                            | \$300 | T                   |
| NAC 90.516 .....                            | 300   | I                   |
| NAC 90.517 .....                            | 300   | I                   |
| NAC 90.518 .....                            | 300   | I                   |
| NAC 90.519 .....                            | 300   | I                   |
| NAC 90.521 .....                            | 300   | T                   |
| NAC 90.522 .....                            | 300   | T                   |

2. A person who claims an exemption from the registration requirement of NRS 90.460 pursuant to paragraph (n) of subsection 2 of NRS 90.520 must file with the Administrator the Uniform Investment Company Notice Filing (Form NF) and the appropriate fee as set forth in subsection 4 of NRS 90.520.

3. An exemption from registration not listed in this section does not require the filing of a Claim of Exemption From Securities Registration (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; R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.496 Claim of exemption: Effective period. (NRS 90.520, 90.530, 90.540, 90.750)**

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)

**NAC 90.497 Claim of exemption: Expeditious processing. (NRS 90.465, 90.750)** If expeditious processing is requested pursuant to NRS 90.465 and the applicable fee set forth in that section has been paid, the Administrator will transmit the notification of acceptance by facsimile machine.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R047-04, 5-25-2004)

**NAC 90.498 Claim of exemption: Offering issued in series of securities or relating to multiple funds. (NRS 90.520, 90.530, 90.540, 90.750)** 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)

**NAC 90.500 Securities listed on certain exchanges. (NRS 90.520, 90.750)** 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:

1. The Chicago Board Options Exchange;
2. Tier I of the Philadelphia Stock Exchange; or
3. Any other exchange designated by the Administrator by order.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; 5-23-96; R016-02, 8-6-2002)

**NAC 90.505 Rated promissory note, draft, bill of exchange or banker's acceptance. (NRS 90.520, 90.750)** For purposes of the exemption from registration provided by paragraph (k) 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 Mergent, Inc.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R016-02, 8-6-2002)

**NAC 90.510 Statutory exemption for nonissuer transaction by sales representative licensed in State: Inclusion of information on issuer in designated securities manual. (NRS 90.530, 90.750)** 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. *Mergent Industrial Manual*;
2. *Mergent Municipal and Government Manual*;
3. *Mergent Public Utility Manual*;
4. *Mergent Transportation Manual*;
5. *Mergent Bank and Finance Manual*;
6. *Mergent 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; R016-02, 8-6-2002)

**NAC 90.512 Nonissuer transaction by sales representative licensed in State: Security complying with certain requirements for statutory exemption. (NRS 90.530, 90.750)**

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)

**NAC 90.515 Offering complying with Regulation D of Securities and Exchange Commission. (NRS 90.540, 90.750)** 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 \$300 is paid to the Administrator; and

4. A Claim of Exemption From Securities Registration (Nevada Form N-9) is filed with the Administrator.

(Added to NAC by Sec'y of State, eff. 4-22-88; A 10-16-89; R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.516 Nonissuer transaction by sales representative licensed in State: Security included or designated for inclusion in Nasdaq SmallCap Market. (NRS 90.540, 90.750)**

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 SmallCap Market 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 SmallCap Market;

(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 SmallCap Market which is not reflected in The Nasdaq SmallCap Market 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 \$300 to the Administrator; and

(b) Files a Claim of Exemption From Securities Registration (Nevada Form N-9) with the Administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.517 Nonissuer transaction by sales representative licensed in State: Security included or designated for inclusion in OTC Bulletin Board or American Stock Exchange Emerging Company Marketplace. (NRS 90.540, 90.750)**

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 OTC Bulletin Board as operated by the National Association of Securities Dealers 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 OTC 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 OTC Bulletin Board or American Stock Exchange Emerging Company Marketplace which is not reflected in the OTC 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 OTC 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 Company Offering Registration using the Small Company Offering Registration Form (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 OTC 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 \$300 to the Administrator; and

(b) Files a Claim of Exemption From Securities Registration (Nevada Form N-9) with the Administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.518 Nonissuer transaction by sales representative licensed in State: Security of no more than \$100,000 held by shareholder for 12-month period. (NRS 90.540, 90.750)**

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 \$300 to the Administrator; and

(b) Files a Claim of Exemption From Securities Registration (Nevada Form N-9) with the Administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R047-04, 5-25-2004)

**NAC 90.519 Certain securities issued by governmental entities. (NRS 90.540, 90.750)**

An issuer or a person acting on behalf of an issuer of a security described in paragraph (a) of subsection 2 of NRS 90.520, other than a security issued by this State or an agency, instrumentality or political subdivision of this State, shall file with the Administrator not later than the date of the first offer or sale of the security in this State, whichever occurs earlier, a Claim of Exemption From Securities Registration (Nevada Form N-9) and a fee of \$300 if the issuer would have been required to register the security with the Administrator before the enactment of the National Securities Markets Improvement Act of 1996, Public Law 104-290, unless the security or the transaction would have been exempt from registration pursuant to NRS 90.520 or 90.530 before the date of enactment of that Act.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R016-02, 8-6-2002; R047-04, 5-25-2004)

**NAC 90.521 Offer or sale complying with Regulation S of Securities and Exchange Commission. (NRS 90.540, 90.750)**

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 \$300 to the Administrator; and

(b) Files a Claim of Exemption From Securities Registration (Nevada Form N-9) with the Administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R047-04, 5-25-2004)

**NAC 90.522 Nonissuer transaction for which designated registration statement filed with and declared effective by Securities and Exchange Commission. (NRS 90.540, 90.750)**

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 \$300 to the Administrator; and

(b) Files a Claim of Exemption From Securities Registration (Nevada Form N-9) with the Administrator.

(Added to NAC by Sec'y of State, eff. 11-19-92; A by R047-04, 5-25-2004)

**NAC 90.525 Isolated transaction. (NRS 90.530, 90.750)** 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)

**NAC 90.532 Offering of certain securities for which designated notice is filed within 15 days after first sale. (NRS 90.540, 90.750)** An offering of securities is exempt from the provisions of NRS 90.460 and 90.560 if:

1. The securities are set forth in subsubparagraph (D) of subparagraph (4) of paragraph (b) of section 18 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D); and

2. Within 15 days after the first sale in this State of the security, a notice on Form D, as prescribed by the Securities and Exchange Commission, is filed with the Administrator with a fee of \$300.

(Added to NAC by Sec'y of State, eff. 10-30-97; A by R047-04, 5-25-2004)

**NAC 90.534 Certain offers of securities made over the Internet or similar electronic system. (NRS 90.540, 90.750, 90.830)**

1. An offer to sell or purchase a security that is made over the Internet, World Wide Web, or other similar proprietary or common carrier electronic system into this State is an offer to sell or an offer to purchase pursuant to NRS 90.830.

2. An offer made into this State pursuant to subsection 1 is exempt from the provisions of NRS 90.460 and 90.560 if:

(a) The offer indicates, directly or indirectly, that the securities are not being offered to the residents of a particular state; and

(b) An offer is not otherwise specifically directed to any person in a state by, or on behalf of the issuer of the securities.

3. No sales of the securities may be made in this State until the offering has been registered and declared effective and the final prospectus has been delivered to the investor before such sale or the sales are exempt from registration and the appropriate notice, if required pursuant to NAC 90.495, has been filed with the Administrator.

(Added to NAC by Sec'y of State, eff. 10-30-97)

**NAC 90.536 Certain offers of securities made to accredited investors. (NRS 90.540, 90.567, 90.750)**

1. Any offer to sell or the sale of a security by an issuer in a transaction that meets the requirements of this section is exempt from NRS 90.460 and 90.560 if the following conditions are met:

(a) Sales of securities must be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" has the meaning ascribed to it in 17 C.F.R. § 230.501(a).

(b) This exemption is not available to an issuer that is in the development stage, has no specific business plan or purpose, or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(c) The issuer must reasonably believe that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months after sale, except a resale to an accredited investor or pursuant to a registration statement effective under NRS 90.470, 90.480 or 90.490, must be presumed to be with a view to distribution and not for investment. Securities issued under this exemption may only be resold pursuant to registration or an exemption under NRS 90.530.

2. This exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10 percent or more of any class of its equity securities, any of the issuer's promoters, promoters

presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(b) Has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(c) Is currently subject to any state or federal administrative enforcement order or judgment finding fraud or deceit in connection with the purchase or sale of any security; or

(d) Is currently subject to any order, judgment or decree of any court of competent jurisdiction, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

3. Paragraph (d) of subsection 2 does not apply if:

(a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; or

(b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification.

4. A general announcement of the proposed offering may be made by any means. The general announcement must include only the following information, unless additional information is specifically permitted by the Administrator:

(a) The name, address and telephone number of the issuer of the securities;

(b) The name, a brief description and the price, if known, of any security to be issued;

(c) A brief description of the business of the issuer in 25 words or less;

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; and

(f) A statement that:

(1) Sales will only be made to accredited investors;

(2) No money or other consideration is being solicited or will be accepted; and

(3) The securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission and are being offered and sold pursuant to any exemption from registration.

5. The issuer, in connection with an offer, may provide information in addition to the general announcement required by subsection 4 if such information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

6. No telephone solicitation is permitted unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

7. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this section.

8. The issuer shall file with the Administrator a notice of the transaction, a consent to service of process, a copy of the general announcement and a fee of \$500 within 15 days after the first sale in this State.

(Added to NAC by Sec'y of State, eff. 10-30-97; A by R047-04, 5-25-2004)

**NAC 90.538 Certain offers of securities made to solicit interest. (NRS 90.530, 90.540, 90.550, 90.750)**

1. An offer to sell a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or its equivalent for the security is exempt from NRS 90.460 and 90.560 if:

(a) The issuer:

(1) Is or will be a business entity organized under the laws of one of the states, territories or possessions of the United States or one of the provinces or territories of Canada; and

(2) Is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not an offering for which the specific business or properties cannot now be described;

(b) The offeror intends to register the security in this State and conduct its offering pursuant to Regulation A or Rule 504 of Regulation D of the Securities and Exchange Commission;

(c) Ten business days before the initial solicitation of interest, the offeror files with the Administrator a Solicitation of Interest Form, provided by the Administrator, and any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;

(d) Five business days before their usage, the offeror files with the Administrator any amendments to the materials filed pursuant to paragraph (c) or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(e) No Solicitation of Interest Form, script, advertisement or other material which the offeror has been notified by the Administrator not to distribute is used to solicit indications of interest;

(f) Except for scripted broadcasts and published notices, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within 5 days after the communication;

(g) During the solicitation of interest period, the offeror does not solicit or accept money or a commitment to purchase securities;

(h) No sale is made until 7 days after delivery to the purchaser of a prospectus; and

(i) The offeror does not know, and in the exercise of reasonable care, could not know that the issuer, any of the issuer's officers, directors or promoters or any of the issuer's shareholders who own at least 10 percent of its stock:

(1) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the filing of the Solicitation of Interest Form;

(2) Has been convicted before the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(3) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission before the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered before the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the

purchase or sale of any security or involving the making of any false filing with the state entered before the filing of the Solicitation of Interest Form.

2. The prohibitions of paragraph (i) of subsection 1 do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such person is licensed or registered in this State and Form B-D filed with this State discloses the order, conviction, judgment or decree relating to such person. No person disqualified pursuant to this section may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

3. The failure to comply with any condition of subsection 1 will not result in the loss of the exemption from the requirements of NRS 90.460 for any offer to sell that is made to a particular person or entity if the offeror shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular person or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of subsection 1.

↪ If an exemption is established only through reliance upon this section, the failure to comply is actionable as a violation of this section by the Administrator and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

4. The offeror shall comply with the following requirements:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products and statements in substantially the following form:

#### NOTICE

No money or other consideration is being solicited and none will be accepted.

No sale of the securities or commitment to purchase will be made or accepted until an offering circular that includes complete information about the issuer and the offering has been received by the offeree.

An indication of interest made by a prospective investor does not constitute an obligation or commitment of any kind.

This offer is being made pursuant to an exemption from registration under the federal securities laws and the laws of this State. No sale may be made until the offering statements are qualified by the Securities and Exchange Commission and the securities are registered in this State.

(b) All communications with prospective investors made in reliance on this section must cease after a registration statement is filed in this State, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this section.

(c) A preliminary prospectus or its equivalent may only be used in connection with an offering for which indications of interest have been solicited under this section if the offering is conducted by a licensed broker-dealer.

↪ Failure to comply with these requirements will not result in the loss of the exemption from the requirements of NRS 90.460 and 90.560, but is a violation of the Securities Act of 1933, is actionable by the Administrator under NRS 90.630 and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

5. The Administrator may waive any condition of this exemption in writing, upon application by the offeror and cause having been shown. Compliance or attempted compliance with this section, or the absence of any objection or order by the Administrator with respect to any offer of securities undertaken pursuant to this section, shall not be deemed to be a waiver of

any condition of this section or deemed to be a confirmation by the Administrator of the availability of this section.

6. An offer made in reliance on this section is not a violation of NRS 90.460 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

7. Issuers on whose behalf indications of interest are solicited under this section may not make offers to sell or sales in reliance on subsection 11 of NRS 90.530 until 6 months after the last communication with a prospective investor made pursuant to this section.

(Added to NAC by Sec'y of State, eff. 10-30-97)

## **PROCEEDINGS BEFORE THE ADMINISTRATOR**

**NAC 90.540 Applicability. (NRS 90.750, 233B.050)** 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)

### **NAC 90.545 Notice. (NRS 90.750, 233B.050)**

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)

**NAC 90.550 Representation by counsel. (NRS 90.750, 233B.050)** 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)

### **NAC 90.555 Administrator's staff to bring proceeding; respondent. (NRS 90.750, 233B.050)**

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)

### **NAC 90.560 Complaint; answer; setting of hearing. (NRS 90.750, 233B.050)**

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)

**NAC 90.565 Motions. (NRS 90.750, 233B.050)**

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.

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)

**NAC 90.570 Pleading, motion or other paper: Filing of copies; service of documents. (NRS 90.750, 233B.050)**

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)

**NAC 90.575 Discovery. (NRS 90.750, 233B.050)**

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)

**NAC 90.580 Location of hearing. (NRS 90.750, 233B.050)**

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)

**NAC 90.585 Conduct of hearing. (NRS 90.750, 233B.050)**

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)

**NAC 90.590 Record. (NRS 90.750, 233B.050)** 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)

**NAC 90.595 Continuance or adjournment of hearing. (NRS 90.750, 233B.050)** 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)

**NAC 90.600 Fees of witnesses. (NRS 90.750, 233B.050)** 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)

**NAC 90.605 Rendering of order or decision; petition for rehearing. (NRS 90.750, 233B.050)**

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)

**NAC 90.610 Granting or denying petition for rehearing. (NRS 90.750, 233B.050)**

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)