PROPOSED REGULATION OF THE SECRETARY OF STATE

LCB FILE NO. R018-21I

The following document is the initial draft regulation proposed by the agency submitted on 07/02/2021

PROPOSED REGULATIONS OF THE
SECRETARY OF STATE, SECURITIES DIVISION

LCB File No. _____

Chapter 90 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 through 16, inclusive of this regulation.

Sec. 1. ***Offering by investment companies registered under the Investment Company Act of 1940. (NRS 90.540, 90.750)***

1. With respect to a security that is offered in the State of Nevada by an investment company registered under the Investment Company Act of 1940, the issuer shall make a mandatory notice filing by:

(a) Filing with the Administrator a Uniform Investment Company Notice Filing (Form NF) prior to the initial offer in the State of Nevada.

(b) Paying to the Administrator a fee of (1) $300 in the case of a unit investment company, and (2) $500 in the case of any other type of investment company.

2. The notice filing required in Subsection 1 is effective for 12 months. If the issuer continues to offer the securities in the State of Nevada the mandatory notice filing must be renewed by filing with the Administrator an updated Uniform Investment Company Notice Filing (Form NF) prior to the expiration of the previous filing and paying a renewal fee in the amount specified in subsection 1(b).

COMMENT: Pursuant to the National Securities Market Improvement Act of 1996 ("NSMIA"), securities issued by investment companies registered under the Investment Company Act of 1940 are "covered securities" and the states are preempted from requiring the registration of such securities. Prior to NSMIA, Nevada adopted the Uniform Securities Act, with certain revisions, which contained exemptions for some types of securities issued by certain registered investment companies, i.e., open-end management companies and unit investment trusts under NRS 90.520(2)(n). However,

all securities issued by investment companies registered under the Investment Company Act of 1940 are "covered securities" pursuant to NSMIA whether they are open-end mutual funds, closed end funds, unit investment trusts or face amount certificate companies. As "covered securities", the states may still require notice filing and the payment of filing fees. This new regulation sets forth the notice filing requirement and filing fees that registered investment companies currently submit to the Secretary of State. We suggest that the new regulation be numbered NAC 90.514.

Sec. 2. ***Regulation Crowdfunding Notice Filing. (NRS 90.755)*** *The following provisions apply to offerings made under federal Regulation Crowdfunding (17 CFR §227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:*

1. Initial filing.

(a) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding, and that either

(1) has its principal place of business in this state, or

(2) sells 50% or greater of the aggregate amount of the offering to residents of this state, shall file the following with the Administrator:

(I) A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission;

(II) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and

(III) The filing fee prescribed by NRS 90.500(2).

(b) If the issuer has its principal place of business in this state, the filing required under paragraph (a) shall be filed with the Administrator when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50% or greater of the aggregate amount of the offering, the filing required under paragraph (a)

shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty (30) days from the date of completion of the offering.

(c) The initial notice filing is effective for twelve (12) months from the date of the completed filing with the Administrator.

2. Renewal. For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing the following on or before the expiration of the notice filing:

(a) A completed Uniform Notice of Federal Crowdfunding Offering form marked "renewal" and/or a cover letter or other document requesting renewal; and

(b) The renewal fee prescribed by NRS 90.500(2) to renew the unsold portion of securities for which a filing fee has previously been paid.

(c) If the amount of securities subject to the notice filing is being increased, the fee prescribed by NRS 90.500(2) to cover the increase in the amount of securities to be offered.

3. Amendment. An issuer may increase the amount of securities offered in this state by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked "amendment" or other document describing the transaction and a fee calculated pursuant to NRS 90.500(14) to cover the increase in the amount of securities being offered prior to selling additional securities in this state.

COMMENT: The text of the NASAA Model Rule for Federal Crowdfunding Offerings, adopted September 11, 2016, set forth above is intended to provide model language that states may adopt to require notice filings in connection with crowdfunding offerings made under federal "Regulation Crowdfunding". The text of the Model Rule was revised to comply with the NAC's formatting preferences and to add our specific fees references. While states are preempted from requiring the registration of such offerings, a state that either is home to the principal place of business of the issuer or in which residents have purchased 50% or greater of the aggregate offering amount may require the filing of all documents filed with the SEC, together with a consent to service of process and the fee that would otherwise

be required in the absence of preemption, solely for notice purposes. NRS 90.755 provides that "[t]he Administrator may adopt, by regulation or order, any filing requirements, registration exemptions and licensing requirements which are consistent with the Jumpstart Our Business Startups Act, Public Law 112-106, and any regulation adopted pursuant thereto by the United States Securities and Exchange Commission, including, without limitation, regulations relating to the creation and oversight of funding portals."

Sec. 3. ***Notice Filing Requirement for Regulation A – Tier 2 Offering. (NRS 90.755)*** *The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 18(b)(3), Section 18(b)(4), and/or Section 18(c)(2) of the Securities Act of 1933:*

1. Initial filing. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least 21 calendar days prior to the initial sale in this state:

(a) A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;

(b) A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

(c) The filing fee prescribed by NRS 90.500(2).

The initial notice filing is effective for twelve months from the date of the filing with this state.

2. Renewal. For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew the unsold portion of its notice filing by filing the following on or before the expiration of the notice filing:

(a) The Regulation A – Tier 2 notice filing form marked "renewal" and/or a cover letter or other document requesting renewal; and

(b) The renewal fee prescribed by NRS 90.500(2) to renew the unsold portion of securities for which a filing fee has previously been paid.

(c) If the amount of securities subject to the notice filing is being increased, the fee prescribed by NRS 90.500(2) to cover the increase in the amount of securities to be offered.

3. Amendment. An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked "amendment" or other document describing the transaction and a fee calculated pursuant to NRS.500(14) to cover the increase in the amount of securities being offered prior to selling additional securities in this state.

COMMENT: The text of the NASAA Notice Filing Rule for Regulation A – Tier Offerings, adopted May 5, 2016, set forth above is intended to provide model language that states may adopt to require notice filings in Tier 2 offerings under federal Regulation A. The text of the Model Rule was revised to comply with the NAC's formatting preferences and to add our specific fees references. While states are preempted from requiring the registration of such offerings, states may require the filing of all documents filed with the SEC, together with a consent to service of process and the fee that would otherwise be required in the absence of preemption, solely for notice purposes. As indicated above, NRS 90.755 provides that "[t]he Administrator may adopt, by regulation or order, any filing requirements, registration exemptions and licensing requirements which are consistent with the Jumpstart Our Business Startups Act, Public Law 112-106, and any regulation adopted pursuant thereto by the United States Securities and Exchange Commission[.]"

Sec. 4 ***Licensing Exemption for Merger and Acquisition Brokers. (NRS 90.320)***

1. Except as provided in paragraphs (2) and (3), a Merger and Acquisition Broker shall be exempt from licensing pursuant to NRS 90.310 under this regulation.

2. A Merger and Acquisition Broker is not exempt from licensing under this paragraph if such broker does any of the following:

(a) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(b) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange

Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o(d).

(c) Engages on behalf of any party in a transaction involving a public shell company.

3. A Merger and Acquisition Broker is not exempt from registration under this paragraph if such broker is subject to:

(a) Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);

(b) A statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);

(c) A disqualification under the rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note);

(d) A final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H); or

(e) Failed to comply with NRS 645 et seq. if so required.

4. Nothing in this paragraph shall be construed to limit any other authority of the Administrator to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

5. Definitions. As used in this section:

(a) The term "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

(1) is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(2) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

(3) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(b) The term "eligible privately held company" means a company meeting both of the following conditions:

(1) The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

(2) In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(I) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

(II) The gross revenues of the company are less than $250,000,000.

(c) The term "Merger and Acquisition Broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that

broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company if:

(1) if the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(2) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(d) The term "public shell company" is a company that at the time of a transaction with an eligible privately held company:

(1) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

(2) has no or nominal operations; and

(3) has:

(I) no or nominal assets;

(II) assets consisting solely of cash and cash equivalents; or

(III) assets consisting of any amount of cash and cash equivalents and nominal other assets.

COMMENT: Taken from NASAA Model Rule Exempting Certain Model Rule Acquisition Brokers ("M&A Brokers" from registration adopted September 29, 2015). The NASAA Model Rule was modified to comply with numbering requirements with Nevada law and other non-substantive changes.

Sec. 5 ***Custody of Client Funds or Securities by Investment Advisers. (NRS 90.450)***

1. It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, licensed or required to be licensed, to have custody of client funds or securities unless:

(a) ***Notice to Administrator.*** *The investment adviser notifies the Administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;*

(b) ***Qualified Custodian.*** *A qualified custodian maintains those funds and securities:*

(1) In a separate account for each client under that client's name; or

(2) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(c) ***Notice to clients.*** *If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notice provided to the client (and in any subsequent account statements the investment adviser sends to that client) a direction to the client to compare the account statements from the custodian with those from the investment adviser.*

(d) ***Account Statements.*** *The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.*

(e) ***Special rule for limited partnerships and limited liability companies.*** *If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle) the account statements required under paragraph 1.(d) of this rule must be sent to each limited partner (or member or other beneficial owner), and the investment adviser must:*

(1) Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;

(2) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

(I) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

(II) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(f) ***Independent Verification.*** *The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant. This must be performed at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:*

(1) File a certificate on Form ADV-E with the Administrator within 120 days of the time chosen by the independent certified public accountant in paragraph 1.(f) of this rule, stating

that it has examined the funds and securities and describing the nature and extent of the examination.

(2) Notify the Administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator; and

(3) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(g) ***Investment advisers acting as qualified custodians.*** *If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:*

(1) The independent certified public accountant the investment adviser retains to perform the independent verification required by paragraph 1.(f) of this rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(2) The investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each

calendar year a written internal control report prepared by an independent certified public accountant:

(I) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year;

(II) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and

(III) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(h) ***Independent representatives.*** *A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs 1.(c) and 1.(d) of this rule.*

2. ***Exceptions.***

(a) ***Shares of mutual funds.*** *With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ('mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph 1. of this rule;*

(b) ***Certain privately offered securities.***

(1) The investment adviser is not required to comply with paragraph 1.(b) of this rule with respect to securities that are:

(I) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(II) Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(III) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2) Notwithstanding paragraph 2.(b) (1) of this rule, the provisions of this paragraph 2.(b) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph 2.(d) of this rule and the investment adviser notifies the Administrator in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

(c) ***Fee Deduction.*** *Notwithstanding paragraph 1.(f) of this rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:*

(1) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(2) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(3) Each time a fee is to be directly deducted from a client account, the investment adviser concurrently:

(I) Sends the qualified custodian, or if applicable, the independent party designated pursuant to section 1.(e)(2)(II), an invoice or statement of the amount of the fee to be deducted from the client's account; and

(II) Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(4) The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

(d) ***Limited partnerships subject to annual audit.*** *An investment adviser is not required to comply with paragraphs 1. (c) and (d) and shall be deemed to have complied with paragraph 1.(f) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:*

(1) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(I) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(II) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50;

(III) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(2) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator within 120 days of the end of its fiscal year;

(3) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(4) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;

(5) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the Administrator within four business days accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(6) The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(e) ***Registered Investment Companies.*** *The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940.*

3. ***Delivery to Related Persons.*** *Sending an account statement under paragraph 1.(e) of this rule or distributing audited financial statements under paragraph 2.(d) of this rule shall not satisfy the requirements of this rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.*

4. ***Definitions.*** *For purposes of the rule:*

(a) "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(1) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(2) A person is presumed to control a corporation if the person:

(I) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(II) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(4) A person is presumed to control a limited liability company if the person:

(I) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(II) Has the right to receive upon dissolution, or has contributed, 25percent or more of the capital of the limited liability company;

(III) Is an elected manager of the limited liability company; or

(5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(b) "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(1) Custody includes:

(I) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender within three business days of receiving them and the investment adviser maintains the records required under NAC 90. _____Section(2a22);

(II) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(III) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person(s) legal ownership of or access to client funds or securities.

(2) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains the records required under NAC 90._____(Section 12.1.(v))_;

(c) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

(d) "Independent party" means a person that:

(1) Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(2) Does not control and is not controlled by and is not under common control with the investment adviser;

(3) Does not have, and has not had within the part two years, a material business relationship with the investment adviser; and

(4) Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.

(e) "Independent representative" means a person who:

(1) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or

other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(2) Does not control, is not controlled by, and is not under common control with investment adviser; and

(3) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(f) "Qualified custodian" means the following:

(1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(2) A broker-dealer registered in this jurisdiction and with the Securities and Exchange Commission holding the client assets in customer accounts;

(3) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(g) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

COMMENT: This Section is adopted from the NASAA Custody Requirements for Investment Advisers, Model Rule 102(e)(1)-1, alternative 2 as last amended 4-15-

13 with modifications that relate to numbering requirements of Nevada law, and other minor changes.

Sec. 6 ***Investment Adviser Performance-Based Compensation Exemption***

1. It is deceptive and unethical conduct for an investment adviser to enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client unless:

(a) The investment adviser is not licensed and is not required to be licensed pursuant to NRS 90.330; or

(b) The following conditions in subsections 1.(b)(1) and 1.(b)(2) are met:

(1) The client entering into the contract is a "qualified client", as defined by Rule 205-3 under the Investment Advisers Act of 1940 (17 Code of Federal Regulations §275.205-3); and

(2) To the extent not otherwise disclosed on Form ADV Part 2, the investment adviser must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(I) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(II) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(III) The periods which will be used to measure investment performance throughout

the contract and their significance in the computation of the fee;

(IV) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(V) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

2. In the case of a private investment company, as defined in subsection 4.(b) of this rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-2(a)(22)], each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of subsection 1. of this regulation.

3. Transition rules:

(a) If an investment adviser entered into a contract and satisfied the conditions of this rule that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this rule; provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this rule in effect when the person or company becomes a party to the contract will apply with regard to

that person or company.

(b) If an investment adviser was not required to be licensed pursuant to NRS 90.330 and was not licensed, subsection 1.(3)(a) shall not apply to an advisory contract entered into when the investment adviser was not required to be licensed and was not licensed, provided, however, that the investment adviser was in compliance with all rules and regulations regarding performance based compensation in any jurisdiction in which the investment adviser was registered or required to be registered at the time of entering into the advisory contract.

(c) Solely for purposes of subsections 3(a) and 3(b) of this regulation, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract, and will not cause subsection 3.(a) Act to apply to such transferee.

4. The following definitions apply for purposes of this rule:

(a) "Company" shall have the same meaning as in section 202(a)(5) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(5), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(b) "Private investment company" shall mean a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a), but for the exception provided from that definition by section 3(c)(1) of such Act, 15 U.S.C. 80a-3(c)(1).

COMMENT: This regulation is based upon NASAA Model Rule 102(f)-3 adopted 4-15-13, with modifications to fit to Nevada law requirements.

Sec. 7 ***Investment Advisers Business Continuity and Succession Planning. (NRS 90.390)***

Every investment adviser shall establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

1. *The protection, backup, and recovery of books and records;*
2. *Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians),and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;*
3. *Office relocation in the event of temporary or permanent loss of a principal place of business;*
4. *Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and*
5. *Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.*

Commentary: This Section is based upon NASAA's Model Rule 203 (a)-1A, on Business Continuity and Succession Planning, adopted April 13, 2015.

Sec. 8. ***Unethical Business Practices Of Investment Advisers, Investment Adviser Representatives, And Federal Covered Advisers (NRS 90.575, NRS 90.860)***

1. *A person who is an investment adviser, an investment adviser representative or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct*

alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and its clients and the circumstances of each case, an investment adviser, an investment adviser representative or a federal covered adviser shall not engage in unethical business practices, including the following:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser or an investment adviser representative in such situations can directly benefit from the number of securities transactions effected in a client's account.

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(f) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(g) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to fail to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(h) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(i) Charging a client an unreasonable advisory fee.

(j) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(k) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(l)

(1) Except as otherwise provided in subsection (l) (2), it shall constitute a dishonest or unethical practice within the meaning of NAC 90.327 for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement that does any one of the following:

(I) Refers to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

(II) Refers to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than one year if the advertisement or list also includes all of the following: the name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, the most recently available market price of each such security, and a legend on the first page in prominent print or type that states that the reader should not assume that

recommendations made in the future will be profitable or will equal the performance of the securities in the list.

(III) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

(IV) Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

(V) Represents that the Administrator or the Nevada Securities Division has approved any advertisement.

(VI) Contains any untrue statement of a material fact, or that is otherwise false or misleading.

(2) With respect to federal covered advisers, the provisions of this section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

(3) For the purposes of this section, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(I) Any analysis, report, or publication concerning securities.

(II) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.

(III) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(IV) Any other investment advisory service with regard to securities.

(m) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(n) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of NAC 90.____(Section 6)and any subsequent amendments.

(o) Entering into, extending or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(p) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(q) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act,

notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

(r) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Nevada Uniform Securities Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

(s) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

(t) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Nevada Uniform Securities Act or any rule or regulation adopted by the Administrator.

(u) Accessing a client's account by using the client's own unique identifying information (such as username and password. This subsection is not intended to apply to data aggregation software where:

(1) the investment adviser does not know, or have access to, the client's password(s);

(2) there is an agreement between the data aggregation software company and the custodian(s)/online account platform which permits this "back-door" access; and

(3) the data is read-only (i.e., the investment adviser can only view the information and cannot effectuate any changes to the client's underlying account(s)).

(v) Failing to establish, maintain, and enforce a required policy or procedure.

The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

COMMENT; This Section is consistent with NASAA Model Rule 102(a)(4)-1 as amended through 5/19/19 , utilizing alternative 2 as it relates to advertising. The Model Rule is modified to utilize numbering consistent with Nevada law, and to include other non-substantive changes.

Sec. 9 ***INVESTMENT ADVISER INFORMATION SECURITY AND PRIVACY RULE (NRS 90.390)***

1. Physical Security and Cybersecurity Policies and Procedures. Every investment adviser licensed or required to be licensed shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(a) The physical security and cybersecurity policies and procedures must:

(1) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(2) Ensure that the investment adviser safeguards confidential client records and information; and

(3) Protect any records and information the release of which could result in harm or

inconvenience to any client.

(b) The physical security and cybersecurity policies and procedures must cover at least five functions:

(1) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(2) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(3) Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;

(4) Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and

(5) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(c) Maintenance. The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation. The investment adviser must keep records regarding its review of the policies and procedures and any amendments made.

2. Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

COMMENT: Language from the NASAA Investment Adviser Information Security and Privacy Rule adopted May 19, 2019. Minor changes were made to make the rule consistent with Nevada law.

Sec. 10 ***Investment Adviser Brochure Rule*** *(NRS 90.390, 90.750)*

1. GENERAL REQUIREMENTS. Unless otherwise provided in this rule, an investment adviser licensed or required to be licensed pursuant to NRS 90.330 shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

(a) a brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

(b) a copy of its Part 2B brochure supplement for each individual

(1) providing investment advice and having direct contact with clients in this state; or

(2) exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) a copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

(d) a summary of material changes, which may be included in FORM ADV Part 2 or given as a separate document; and

(e) such other information as the Administrator may require.

(f) the brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2. Changes to any fee charged by the investment adviser shall be considered a material change for purposes of this subsection.

2. DELIVERY.

(a) INITIAL DELIVERY. An investment adviser, except as provided in subsection (b)(3), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

(1) Not less than 48 hours prior to entering into any advisory contract with such client or prospective client; or

(2) At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) ANNUAL DELIVERY. An investment adviser, except as provided in subsection 2. (c), must:

(1) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

(2) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

(c) Delivery of the brochure and related brochure supplements required by subsections 2. (a) and (b) need not be made to:

(1) clients who receive only impersonal advice and who pay less than $500 in fees per year; or

(2) An investment company registered under the Investment Company Act of 1940; or

(3) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

(d) Delivery of the brochure and related supplements may be made electronically if the investment adviser:

(1) in the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

(2) in the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;

(3) prepares the electronically delivered brochure and supplements in the format prescribed in sub. 1. and instructions to Form ADV Part 2;

(4) delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and

(5) establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this rule.

3. OTHER DISCLOSURES. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Nevada Uniform Securities Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

4. DEFINITIONS. For the purpose of this rule:

(a) "contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(1) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) any combination of the foregoing services.

(b) "entering into," in reference to an advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

COMMENT: This rule is substantially similar to both the NASAA Brochure Rule Requirements for Investment Advisers Model Rule 203(b)-1, last amended 9/11/2011 and 17 C.F. R. 275.204-3 adopted by reference in NAC 90.3864. Changes were made to make the rule consistent with Nevada law and make clear that a change in fee requires an update to its form ADV and brochure along with delivery of the same to each client. Nevada previously adopted by reference the federal rule found at 17 CFR 204-3.

Sec. 11 ***Recordkeeping Requirements For Investment Advisers (*** *NRS 90.390, 90.750)*

1. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and

conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(f) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by NAC 90.390.

(g) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to

(1) any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) any receipt, disbursement or delivery of funds or securities, or

(3) the placing or execution of any order to purchase or sell any security, provided, however,

(I) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(II) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(h) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(j) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for

the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(l)

(1) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

(I) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(II) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(2) For purposes of this subsection (l) the following definitions will apply.

(I)The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective

dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: i. any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(II) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 % of the voting securities of a company shall be presumed to control such company.

(III) An investment adviser shall not be deemed to have violated the provisions of this subdivision (l) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(m)

(1) Notwithstanding the provisions of subdivision (l) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (I) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (II) transactions in securities which are direct obligations of the United States.

(2) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(3) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of (I) its total sales and revenues, and (II) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of this subdivision (m) the following definitions will apply.

(I)The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such the recommendations or of the information concerning the

recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(II) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of this subdivision (m) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(n) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of NAC 90. _____ (Section 11), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(o) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser (1) evidence of a written agreement to which the adviser is a party related to the payment of such fee; (2) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and(3) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with 17 C.F.R. 275.206(4)-3

of the Investment Advisers Act of 1940. For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(s) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(t) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in subdivision 1.(l)(2)(I) of this regulation, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(u) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(v) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep the following records relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

(1) Issuer;

(2) Type of security and series;

(3) Date of issue;

(4) For debt instruments, the denomination, interest rate and maturity date;

(5) Certificate number, including alphabetical prefix or suffix;

(6) Name in which registered;

(7) Date given to the adviser;

(8) Date sent to client or sender;

(9) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(10) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under NAC 90.____ (Section 6 – 2. (b)) the adviser shall keep the following records;

(1) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(2) A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(x)

(1) A copy of the investment adviser's Physical Security and Cybersecurity Policies and Procedures and Privacy Policy pursuant to NAC 90. ____(Section 10). In addition to the investment adviser's recordkeeping requirements pursuant to subsections 6. and 7. of this regulation, the investment adviser must maintain a current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent upon access to the investment adviser's computers or a network;

(2) All records documenting the investment adviser's compliance with NAC 90.____(Section 10), including, but not limited to, evidence of the annual review of the policies and procedures;

(3) A record of any violation of the NAC 90._____(Section 10), and of any action taken as a result of the violation.

(a) If an investment adviser has custody, as that term is defined in NAC 90. ____(Section 6 – 4.(b)) the records required to be made and kept under paragraph 1. above shall include:

(1) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(2) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(3) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(4) Copies of confirmations of all transactions effected by or for the account of any client.

(5) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(6) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients. If applicable to the adviser's situation, a copy of the special examination

report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(7) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(8) If applicable, evidence of the client's designation of an independent representative.

(b) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in NAC 90.___ (Section 6- 4(b)(1)(III), the adviser shall also keep the following records:

(1) True, accurate and current account statements;

(2) Where the adviser complies with NAC 90.____ (Section 6- 2. (d)) the records required to be made and kept shall include:

(I) the date(s) of the audit;

(II) a copy of the audited financial statements; and

(III) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(3) Where the adviser complies with NAC 90. ___ (Section 6- 1.(e)) the records required to be made and kept shall include:

(I) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(II) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

3. Every investment adviser subject to subsection 1. of this regulation who renders any investment supervisory or management service to any client shall, with respect to the portfolio

being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(b) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

4. Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

5. Every investment adviser subject to subsection 1 of this regulation shall preserve the following records in the manner prescribed:

(a). All books and records required to be made under the provisions of paragraph 1. through 3 (a), inclusive, of this regulation (except for books and records required to be made under the provisions of paragraphs 1. (k) and 1. (p) of this regulation), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

(b) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be

maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made under the provisions of paragraphs 1.(k) and 1. (p) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(d) Books and records required to be made under the provisions of paragraphs 1. (q) – (v), inclusive, of this regulation shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

6. Notwithstanding other record preservation requirements of this regulation, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(a) records required to be preserved under paragraphs 1.(c), 1.(g)-(j), 1.(n)-(0), 1.(q)- (s), 2. and 3. inclusive, of this regulation, and

(b) the records or copies required under the provision of paragraphs 1.(k) and 1.(p) of this regulation which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the

business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subdivision 5. of this regulation.

7. An investment adviser subject to subsection 1. of this regulation, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this regulation for the remainder of the period specified in this regulation, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

8.

(a). Pursuant to subsection 5. of this regulation the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(1) Paper or hard copy form, as those records are kept in their original form; or

(2) Micrographic media, including microfilm, microfiche, or any similar medium; or

(3) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) The investment adviser must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(2) Provide promptly any of the following that the Administrator (by its examiners or other representatives) may request:

(I) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(II) A legible, true, and complete printout of the record; and

(III) Means to access, view, and print the records; and

(3) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(1) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(2) To limit access to the records to properly authorized personnel and the Administrator (including its examiners and other representatives); and to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

9. For purposes of this regulation, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

10. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this regulation, shall be deemed to be made, kept, maintained and preserved in compliance with this regulation.

11. Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

COMMENT: This regulation is based upon NASAA Model Rule 203(a)-2 Alternative I as amended 5/19/2019, and is substantially similar to 17 C.F.R. 275.204-2, which was previously adopted by reference in NAC 90.3864.

Sec. 12. ***Electronic Offering Documents, Subscription Agreements, and Signatures (NRS 90.390, 90.750)***

1. *Electronic Offering Documents, An issuer of securities or agent acting on behalf of the issuer may deliver Offering Documents over the Internet or by other electronic means, or in machine-readable format, provided:*

(a) Each Offering Document:

(1) Is prepared, updated, and delivered in a manner consistent and in compliance with state and federal securities laws;

(2) Satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printed version (other than electronic instructions and/or procedures as may be

displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);

(3) Is delivered as a single, integrated document or file; when delivering multiple Offering Documents, the documents must be delivered together as a single package or list;

(4) Where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source; and

(5) Is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents;

AND

(b) The issuer or agent acting on behalf of the issuer:

(1) Obtains informed consent from the investor or prospective investor to receive Offering Documents electronically;

(2) Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic Offering Documents has been delivered;

(3) Employs safeguards to ensure that delivery of Offering Documents occurred at or before the time required by law in relation to the time of sale; and

(4) Maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the Securities Administrator.

2. Subscription agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form, as follows:

(a) Before completion of any subscription agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the subscription agreement;

(b) Mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing and/or signing; and

(c) Unless otherwise allowed by the Administrator, a single subscription agreement is used to subscribe a prospective investor in no more than one offering.

3. In the event of discovery of a security breach at any time in any jurisdiction, the issuer or its agent, as appropriate, will take prompt action to:

(a) Identify and locate the breach;

(b) Secure the affected information;

(c) Suspend the use of the particular device or technology that has been compromised until information security has been restored; and

(d) Provide notice of the security breach to any investor whose confidential personal information has been improperly accessed in connection with the security breach and to the Administrator of each state in which an affected investor resides. Compliance with this section after the discovery of a security breach or any other breach of personal information shall not substitute, or in any way affect, other requirements or obligations, including notification, imposed on an issuer or its agents pursuant to applicable laws, regulations, or standards.

4. *Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection 1. (a)(1).*
5. *Each electronic document shall be preceded by or presented concurrently with the following notice:* ***"Clarity of text in this document may be affected by the size of the screen on which it is displayed."***
6. *Informed consent to receive offering documents electronically pursuant to 1. (b)(1) in this section may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.*
7. *Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.*
8. *Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs –*

other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements – as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.

9. *Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-mangers, placement agents, broker-dealers, and/or other selling agents to maintain written policies and procedures covering the use of electronic offering documents and subscription agreements.*
10. *Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a non-rewritable and non-erasable format.*
11. *This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offering.*
12. ***Definitions of Terms Used in Policy Regarding Use of Electronic Documents and Electronic Signatures*** *– The following terms are defined for purposes of this regulation:*

    (a) "Offering documents" include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

    (b) "Sales materials" include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the States, as applicable.

(c) "Security Breach" shall mean the unauthorized accessing, acquisition, or disclosure of any data that compromises the security or confidentiality of confidential personal information maintained by the person or business; provided, however, that for this purpose a "security breach" shall relate only to a system, technology, or process that is used in connection with or introduced into a securities offering in order to implement the use of electronic offering documents and/or electronic signatures.

COMMENT: This Section is adopted from portions of the NASAA Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures with modifications relating to numbering requirements of Nevada law, and other minor changes.

Sec. 13 ***Use of Electronic Signatures***

(1) An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:

(a) The process by which electronic signatures are obtained:

(1) Will be implemented in compliance with the NRS Chapter 719 and Electronic Signatures in Global and National Commerce Act ("Federal E-Sign") and the Uniform Electronic Transactions Act, including an appropriate level of security and assurances of accuracy, and where applicable, required federal disclosures;

(2) Will employ an authentication process to establish signer credentials;

(3) Will employ security features that protect signed records from alteration; and

(4) Will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer.

(b) An investor or prospective investor shall expressly opt-in to the electronic signature initiative, and participation may be terminated at any time; and

(c) Investment opportunities shall not be conditioned on participation in the electronic signature initiative.

2. *Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agencies, broker-dealers, and other selling agents to maintain written policies and procedures covering the use of electronic signatures.*
3. *An election to participate in an electronic signature initiative pursuant to 1. (b) in this section may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.*
4. ***Definitions** – The following terms are defined for purposes of this regulation:*

(a) "Offering documents" include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

(b) "Sales materials" include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the States, as applicable.

(c) "Security Breach" shall mean the unauthorized accessing, acquisition, or disclosure of any data that compromises the security or confidentiality of confidential personal information maintained by the person or business; provided, however, that for this purpose a "security breach" shall relate only to a system, technology, or process that is used in connection with or introduced into a securities offering in order to implement the use of electronic offering documents and/or electronic signatures.

COMMENT: This Section is adopted from portions of the NASAA Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures with modifications relating to numbering requirements of Nevada law, and other minor changes.

Sec. 14 ***Requirement of Continuing Education of the Representative of Investment Adviser (NRS 90.575, 90.860)***

1. *Every representative of an investment adviser licensed under NRS 90.330 must complete the following continuing education requirements each Reporting Period:*

(a) ***Ethics and Professional Responsibility Requirement.*** *A representative of an investment adviser must complete six (6) Credits of Regulatory and Ethics Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and*

(b) ***Products and Practice Requirement.*** *A representative of an investment adviser must complete six (6) Credits of Products and Practice Content offered by an Authorized Provider.*

2. *A representative of an investment adviser who is also registered as a sales representative of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subsection 1.(b) Products and Practice*

Requirement for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;

(b) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

3. Credentialing Organization Continuing Education Compliance. *Credits of continuing education completed by a representative of an investment adviser who was awarded and currently holds a credential that qualifies for an examination waiver under subsection 3 of NAC 90.391 comply with sections 1.(a) and 1.(b) of this rule provided all of the following are true:*

(a) The representative of an investment adviser completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period;

(b) The credits of continuing education completed during the relevant Reporting Period by the representative of an investment adviser are mandatory to maintain the credential; and

(c) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved Continuing Education Content.

4. Continuing Education Reporting. *Every representative of an investment adviser is responsible for ensuring that the Authorized Provider reports the representative of an investment adviser's completion of the applicable continuing education requirements.*

5. No Carry-Forward. *A representative of an investment adviser who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.*

6. Failure to Complete or Report. *A representative of an investment adviser who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the representative of an investment adviser completes and reports all required continuing education Credits for all Reporting Periods as required by this rule. A representative who is CE inactive at the close of the next calendar year is not eligible for representative of an investment adviser licensing or renewal.*

7. Discretionary Waiver by the Administrator. *The Administrator may, in his/her discretion, waive any requirements of this rule.*

8. Home State. *A representative of an investment adviser licensed or required to be licensed in Nevada who is registered as a representative of an investment adviser in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:*

(a) The representative of an investment adviser's Home State has continuing education requirements that are at least as stringent as the above requirements; and

(b) The representative of an investment adviser is in compliance with the Home State's investment adviser representative continuing education requirements.

9. Unregistered Periods. *A representative of an investment adviser who was previously licensed under the Act and became unregistered must complete continuing education for all reporting periods that occurred between the time that the representative of an investment adviser became unregistered and when the person became registered again under the Act unless the representative of an investment adviser takes and passes the examination or receives an examination waiver as required by NRS 90.370 in connection with the subsequent application for licensing.*

10. Definitions. *As used in this rule, the following terms mean:*

(a) "Act" means the Nevada Uniform Securities Act.

(b) "Approved Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to a representative of an investment adviser under this regulation.

(c) "Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this regulation.

(d) "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(e) "FINRA" means the Financial Industry Regulatory Authority.

(f) "Home State" means the state in which the representative of an investment adviser has its principal office and place of business.

(g) "Ethics and Professional Responsibility Content" means Approved Continuing Education Content that addresses a representative of an investment adviser's ethical and regulatory obligations.

(h) "Products and Practice Content" means Approved Continuing Education Content that addresses a representative of an investment adviser's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(i) "Representative of an investment adviser" means an individual who meets the definition of "representative of an investment adviser" under the Act and an individual who meets the definition of "investment adviser representative" under 17 CFR 275.203A3.

(j) "NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.

(k) "Reporting Period" means one twelve-month (12) period as determined by NASAA. A representative of an investment adviser's initial Reporting Period with Nevada commences the first day of the first full Reporting Period after the individual is licensed or required to licensed with this state.

COMMENT: This Section is adopted from the NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(b)(6)-CE) adopted 11/24/2020 with modifications relating to numbering requirements of Nevada law, and other minor changes.

Sec. 15 ***Delaying Disbursement Suspected Financial Exploitation*** *(NRS 90.611-90.6145, 90.860) A broker-dealer or investment adviser may delay a disbursement from an account of an older person or vulnerable person or an account which an older person or vulnerable person is a beneficiary if:*

1. *the broker-dealer, investment adviser or designated reporter reasonably believes, after initiating an internal review of the requested disbursement and the suspected*

exploitation, that the requested disbursement may result in an exploitation of the older person or vulnerable person; and

2. *the broker-dealer or investment adviser:*
    a. *Immediately, but in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such part is reasonably believed to have engaged in suspected or attempted exploitation of the older person or vulnerable adult;*
    b. *Immediately, but in no event more than two business days after the requested disbursement, notifies the Administrator of the Nevada Securities Division and the Aging and Disability Services Division; and*
    c. *Continues its internal review of the suspected or attempted exploitation of the older person or vulnerable person, as necessary, and reports the investigation's results to the Administrator of the Nevada Securities Division and the Aging and Disability Services Division within seven (7) business days after the requested disbursement.*
3. *Any delay of disbursement as authorized by this regulation will expire upon the sooner of :*
    a. *a determination by the broker-dealer or investment adviser that the disbursement will not result in exploitation of the older person or vulnerable person; or*
    b. *fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless either the Securities*

Division or Aging and Disability Services Division requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.

4. *A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the Administrator of the Securities Division or the Aging and Disability Services Division, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.*
5. *A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with this section shall be immune from administrative imposed by the Administrator that might otherwise arise from such delay in a disbursement under the Nevada Securities Act.*

COMMENT: This Section is adopted from a portion of NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation adopted January 22, 2016. The entire model legislation was not proposed because it is substantially similar to law in 2015. See NRS 90.611-90.6145.

Sec. 16. ***Interpretation of Regulations and Chapter 90*** *The law Nevada Uniform Securities Act and these regulations shall be interpreted and applied in harmony with the National Securities Market Improvement Act of 1996.*

NAC 90.027 is hereby amended to read as follows:

Sec. 17. "Branch office" defined. (NRS 90.750) "Branch office" means any place of business in this State other than the principal office in [~~this State~~] *the state* of the broker-dealer, from which one or more sales representatives transact business.

NAC 90.051 is hereby amended to read as follows:

Sec. 18. "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*, membership interest of a limited liability company or other equity interest in another type of entity*;

2. Is an officer or director of a corporation*, manager or managing member of a limited liability company*; or

3. Is a spouse or other member of an officer's [~~or director's household~~]*, director's, manager's or managing member's household*.

NAC 90.088 is hereby amended to read as follows:

Sec. 19. **"Institutional buyer" interpreted. (NRS 90.750)** The Administrator will interpret the term "institutional buyer" as used in subsection 6 of NRS 90.240 to include, without limitation, any accredited investor as defined under [~~Rule 501 of Regulation D of the Securities Act of 1933, 17 C.F.R. § 230.501.~~]*Rule 501(a)(1-4), (7) and (8) of Regulation D of the Securities Act of 1933, 17 C.F.R. § 230.501(a)(1-4), (7) and (9-13).*

NAC 90.315 is hereby amended to read as follows:

Sec. 20. 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~~] *through its website*. The Small Company Offering Registration Form (Form U-7), the Uniform Investment Company Notice Filing (Form NF*), the Uniform Application to Register Securities (Form U-1), the Uniform Consent to Service of process (Form U-2) and the Uniform Corporate Resolution (Form U-2A), Uniform Notice of Federal Crowdfunding Offering, and Regulation A – Tier 2 Notice Filing Form* may be obtained from the Office of the Administrator or from the Nevada Secretary of State website. ~~the North American Securities Administrators Association, [750 First Street, N.E., Suite 1140, 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/Industry___Regulatory_Resources/Uniform_Forms/~~] *through its website*. [~~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]~~ ~~*Secretary of State through its website*.~~]

2. Any form pertaining to the licensing of broker-dealers, sales representatives *or branch offices* may be obtained from the Financial Industry Regulatory Authority [~~MediaSource, P.O. Box 9403, Gaithersburg, Maryland 20898-9403, or from the Financial Industry Regulatory Authority at the Internet address http://www.finra.org/Resources/FINRAForms/index.htm~~] *through its website*.

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)~~] *(a)* The Year End Securities Sales Report (Nevada Form 500-3).

[~~(e)~~] *(b)* The Notice of Withdrawal of Registration (Nevada Form 500-12).

[~~(f)~~] *(c)* The Claim of Exemption From Securities Registration (Nevada Form N-9).

(d) Nevada Child Support Statement.

→ Any of these forms may be obtained from the Office of the Administrator or from the Secretary of State [~~at the Internet address http://sos.state.nv.us/licensing/securities/forms.asp~~] *through its website*.

NAC 90.321 is hereby amended to read as follows:

Sec. 21. Adoption by reference of [~~Conduct~~] FINRA Rules; review of changes. (NRS 90.750)

1. The Administrator hereby adopts by reference [~~the Conduct Rules adopted by the Financial Industry Regulatory Authority as published in the manual of that Authority. A softcover copy of the manual is available from the Financial Industry Regulatory Authority MediaSource, 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 Financial Industry Regulatory Authority at the Internet address http://finra.complinet.com/finra/~~] *chapters 2000 through 7000, inclusive, of the Financial Industry Regulatory Authority ("FINRA") which is contained in the FINRA Manual which is published and available on the FINRA's website.*

The Administrator will periodically review the [~~Conduct~~] *FINRA* 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.

NAC 90.325 is hereby amended to read as follows:

Sec. 22. Availability of registration [~~materials~~] *information* for uniform examinations. (NRS 90.750) Registration [~~materials~~] *information* for *appropriate Financial Industry Regulatory Authority examinations* [~~the Uniform Securities Agent State Law Examination (Series 63), the Uniform Investment Adviser Law Examination (Series 65) and the Uniform Combined State Law Examination (Series 66)~~]may be obtained from the Financial Industry Regulatory Authority [~~, 9509 Key West Avenue, Rockville, Maryland 20850, or from the Financial Industry Regulatory Authority at the Internet address http://www.finra.org/RegistrationQualifications/BrokerGuidanceResponsibility/Qualifications/p011051.~~] *through its website.*

NAC 90.327 is hereby amended to read as follows:

Sec. 23. Unethical and dishonest practices. (NRS 90.420, 90.750)

1. A broker-dealer, sales representative, investment adviser, representative of an investment adviser or transfer agent 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 *or Section 9*.

(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, 15 U.S.C. § 78m; 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~~] *FINRA* Rules as adopted by reference in NAC 90.321; [~~or~~]

(2) NAC 90 .____(Section 6,) NAC90. _____(Section 9); or

[~~(2)~~] *(3)* Any applicable rule of conduct or ethical standard promulgated by:

(I) The Securities and Exchange Commission;

(II) *The Financial Industry Regulatory Authority or* [~~A~~] *any other* 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.

NAC 90.3294 is hereby amended to read as follows:

Sec. 24. 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.~~] *1.* Except as otherwise provided in subsection*s* [~~3~~] *2 or 5*, 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.~~] *2.* 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.~~] *3.* A federal covered adviser must renew the notice required by subsection [~~2~~] *1* 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.~~] *4.* 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.

5. A federal covered adviser is exempt from this notice filing requirement if such adviser meets the factual criteria set forth in NRS 90.340(1)(a).

NAC 90.330 is hereby amended to read as follows:

Sec. 25. 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 Financial Industry Regulatory Authority 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 or she 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 *the appropriate Financial Industry Regulatory Authority examinations for a principal.* [~~:~~

~~(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 Financial Industry Regulatory Authority 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 Financial Industry Regulatory Authority must:

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

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

NAC 90.342 is hereby amended to read as follows:

Sec. 26. Compliance with certain provisions of [~~Conduct~~] *the Financial Industry Regulatory Authority* Rules *relating to books and records*. (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~~] *Rules 4511 through 4515, inclusive, and Rule 7440 adopted by the Financial Industry Regulatory Authority*, whether or not he or she is a member of the Financial Industry Regulatory Authority.

NAC 90.355 is hereby amended to read as follows:

Sec. 27. 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 or her application the Uniform Application for Securities Industry Registration or Transfer (Form U-4) with the applicant's original signature and:

(a) Proof of successful completion of *the appropriate Financial Industry Regulatory Authority examinations*[~~:~~

~~(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 Financial Industry Regulatory Authority 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 Financial Industry Regulatory Authority, 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 Financial Industry Regulatory Authority 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, 15 U.S.C. § 78c, he or she must also apply for registration as a Municipal Securities Representative with the Financial Industry Regulatory Authority and pass the Series 52 Municipal Securities Representative Examination.

NAC 90.360 is hereby amended to read as follows:

Sec. 28. 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 or her 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 Financial Industry Regulatory Authority, 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 Financial Industry Regulatory Authority, the application and fee may be processed through the relicensing program of the Central Registration Depository.

4. Except as provided in this subsection, a broker-dealer shall not make or maintain a registration for a sales representative if (a) the person is no longer active in the broker dealer's securities business, (b) the person is no longer is functioning as a sales representative, or (c) where the sole purpose is to avoid the applicable examination requirements which may lapse. Notwithstanding subsection (4), a broker-dealer may make or maintain a sale representative registration for a person who performs legal, compliance, internal audit, back-office operations or similar responsibilities for the broker-dealer or the broker-dealer's other sales representatives.

NAC 90.369 is hereby amended to read as follows:

Sec. 29. 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)~~] *(F)* of subparagraph (4) of paragraph (b) of section 18 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)[~~(D)~~]*(F)*, and the sales representative is not paid *commission or other compensation*, 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)~~] *(3)* of paragraph [~~(h)~~] *(i)* of section 15 of the Securities Exchange Act of 1934, 15 U.S.C. § [~~78o(h)(2)~~] 78o*(i)(2)*.

NAC 90.3745 is hereby amended to read as follows:

Sec. 30. Compliance with certain provisions of [~~Conduct~~] *the Financial Industry Regulatory Authority* Rules *relating to books and records*. (NRS 90.750) Each licensed transfer agent shall comply with the provisions of [~~Rule 3110 of the Conduct Rules, as adopted by reference in NAC 90.321~~] *Rules 4511 through 4515, inclusive, and Rule 7440 adopted by the Financial Industry Regulatory Authority*, whether or not the transfer agent is a member of the Financial Industry Regulatory Authority.

NAC 90.3864 is hereby repealed:

Sec. 31. [~~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.~~

NAC 90.3866 is hereby repealed:

Sec. 32. [~~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 [~~, ~~750 First Street, N.E., Suite 1140, 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 and at the Internet address 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 275.204-3, as adopted by reference in subsections 3 and 4 of NAC 90.3864, are available, by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, for the price of $55. Those provisions are also available, free of charge, from the *U.S.* Government Printing Office at the Internet address http://www.access.gpo.gov/nara/cfr/index.html~~.

NAC 90.3868 is hereby repealed.

Sec. 33. ~~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~~];

[~~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.~~

NAC 90.387 is hereby repealed to read as follows:

Sec. 34. [~~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 or her 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 or her 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.~~]

NAC 90.390 is hereby amended to read as follows:

Sec. 35. [~~Minimum net capital or tangible net worth; submission of certificate of accountant~~]

Minimum financial requirements for investment advisers; custody requirements for investment advisers. **(NRS 90.390, *90.450*, 90.750)**

Minimum Financial Requirements For Investment Advisers

1. An investment adviser licensed or required to be licensed under NRS 90.330 who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000 except:

(a) Advisers having custody solely due to direct fee deduction and complying with the terms described under NAC 90._____(Section 6)) and related books and records, as described in NAC 90.____(Section 12), shall not be required to comply with the net worth or bonding requirements of this regulation.

(b) Advisers having custody solely due to advising pooled investment vehicles and complying with NAC 90.___ (Section 6. 1-(e) and or Section 6 – 2(d) and related books and records requirements in NAC 90._____ (Section 12), shall not be required to comply with the net worth or bonding requirements of this Rule.

2. An investment adviser licensed or required to be licensed under NRS 90.330 who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

3. An investment adviser licensed or required to be licensed pursuant to NRS 90.330 who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

4. Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser licensed or required to be licensed pursuant to NRS 90.330 shall by the close of business on the next business day notify the Administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Administrator of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

5. For purposes of this regulation, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

6. For purposes of this regulation, "custody" is defined Section 6-4. (b)

7. For purposes of this regulation an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(a) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(b) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(c) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

8. The Administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

9. Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

1. [~~Unless he or she 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 or her 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 or her personal property which is not readily marketable and the fair market value of his or her 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 or her 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.~~]

NAC 90.392 is hereby amended to read as follows:

Sec. 36. 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)~~] *with the Central Registration Depository a Uniform Branch Office Registration Form (Form BR)*;

(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)~~] *with the Central Registration Depository an updated Uniform Branch Office Registration Form (Form BR)* 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.

NAC 90.3945 is hereby amended to read as follows:

Sec. 37. 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)~~] *with the Central Registration Depository a Uniform Branch Office Registration Form (Form BR)*.

NAC 90.413 is hereby amended to read as follows:

Sec. 38. 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~~] *NRS 90.470 through 90.500, and NAC 90.420, 90.440 and 90.460, as applicable*.

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.

NAC 90.495 is hereby amended to read as follows:

Sec. 39. 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*~~] *A* person who claims an exemption from the registration requirement of NRS 90.460 *pursuant to statute, and is required to file a notice with the Administrator in order to claim such exemption,* must file [~~the required~~] *a* 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~~
~~Exemptions established by statute~~		
~~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~~
~~Exemptions established by regulation~~		
~~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.~~] *2.* [~~An~~] R*egardless of whether an* exemption from registration [~~not listed in this section does not~~] require*s* 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.

NAC 90.500 is hereby amended to read as follows:

Sec. 40. **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~~] *NASDAQ OMX PHLX*; or
3. Any other exchange designated by the Administrator by order.

NAC 90.510 is hereby amended to read as follows:

Sec. 41. Statutory exemption for nonissuer transaction by sales representative licensed in Nevada: 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 *and News Reports*;
3. Mergent Public Utility Manual *and News Reports*;
4. Mergent Transportation Manual *and News Reports*;
5. Mergent Bank and Finance Manual;
6. Mergent International Manual *and News Reports*;
7. Standard & Poor's Corporation Records; or
8. Any other aggregator designated by the Administrator by order.

NAC 90.515 is hereby amended to read as follows:

Sec. 42. Offering complying with Regulation D*, Rule 506,* 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~~] *The issuer of any security that is offered in the State of Nevada and is a covered security pursuant to Rule 506 of* Regulation D of the Securities and Exchange Commission, 17 C.F.R. § 230.506[~~0.501 to 230.506, inclusive, except for Rule 504 of that Regulation, 17 C.F.R. § 230.504~~] *shall make a mandatory notice filing by*[~~;~~]*:*

(a) Filing with the Administrator a copy of the issuer's most recent Form D notice, as prescribed by the Securities and Exchange Commission, within 15 days after the first sale in this State; and

(b) Paying a fee of $500 to the Administrator.

[~~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.~~]

2. The notice filing required in Subsection 1 is effective for 12 months. If the issuer continues to offer the securities in the State of Nevada the mandatory notice filing must be renewed by filing with the Administrator a copy of the issuer's most recent Form D and paying a fee of $500.

3. An issuer who is required to make a notice filing hereunder shall also file with the Administrator a copy of any amendments to the Form D required to be filed with the Securities and Exchange Commission. No fee is required to file such amendments.

NAC 90.516 is hereby amended to read as follows:

Sec. 43. Nonissuer transaction by sales representative licensed in State: Security included or designated for inclusion in Nasdaq [~~SmallCap~~] *Capital* 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~~] *Capital* 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~~] *Capital* 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~~] *Capital* Market which is not reflected in The Nasdaq [~~SmallCap~~] *Capital* 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.

NAC 90.532 is hereby repealed.

Sec. 44. [~~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.~~]

\\\

\\\

\\\

NAC 90.534 is hereby amended to read as follows:

Sec. 45. 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~~] *Nevada*; and

(b) An offer is not otherwise specifically directed to any person in [~~a state~~] *Nevada* 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.

NAC 90.550 is hereby amended to read as follows:

Sec. 46. Representation by counsel. (NRS 90.750, 233B.050) Any party to a proceeding before the Administrator is entitled to be represented by counsel. Prior to filing a formal response, 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. Out of state counsel shall file an application to appear Pro Hac Vice as set forth in Rule 42 of the Nevada Supreme Court Rules and an order granting said appearance must be filed prior to out of state counsel appearing in any proceeding. The active member of the Nevada State Bar shall file with the Administrator the Motion to Associate pursuant to Rule 42.

NAC 90.560 is hereby amended to read as follows:

Sec. 47. Complaint; answer; setting of hearing *prehearing conference and exchange of exhibits and witness lists*. (NRS 90.750, 233B.050, *233B.121*)

1. [~~Pleadings~~] *Initial* pleadings, before the Administrator must be entitled complaint and answer.

2. *A complaint must be served with a summons, setting forth the location for filing an answer, the person representing the Division who is bringing the matter, notice that an answer to the complaint is due within 20 days from the date of service, and that failure to answer the complaint will result in an order on the complaint, and may result in an award of all relief sought in the complaint.*

[~~2.~~] *3.* Within 20 days after service of the complaint upon a respondent, [~~he or she~~] *respondent* shall file with the Administrator an answer to the complaint. Matters alleged by way of affirmative defense must be separately stated and numbered.

4. If, after service of the summons and complaint, any respondent fails to answer a complaint within 20 days, or within any extension granted by the Administrator, the Division may file a default and apply for a judgment on any or all of the claims made in the complaint. Upon the filing of a default, the Administrator will set the matter for hearing and determine the appropriate relief on the facts set forth in the complaint.

[~~3.~~] 5. 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.

6. Prior to the hearing, the Administrator may issue an order for a prehearing conference, setting a time and place for such conference to establish the issues to be resolved at the hearing. The Administrator may enter reasonable orders governing the conduct of the prehearing conference and, for good cause, allow a party to appear by telephone. For any party represented by counsel, that counsel must be present at the prehearing conference.

7. Unless otherwise ordered by the Administrator, the parties must exchange written lists of witnesses, exhibit lists, and provide copies of exhibits prior to 10 days before the date schedule for a hearing. Each party must be prepared to identify on the date of hearing any exhibits that may be admitted by stipulation of the parties.

NAC 90.565 is hereby amended to read as follows:

Sec. 48. Motions. (NRS 90.750**,** 233B.050**)**

1. Any motion *and any opposition thereto*, except a motion *or opposition* made during a hearing, must:

(a) Be in writing;

(b) Except in the case of a motion *or opposition* 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;

(c) Be served upon each opposing party in the manner required by NAC 90.570; and

(d) A reply, if any, must not be longer than 5 pages.

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.

NAC 90.570 is hereby amended to read as follows:

Sec. 49. 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, *and served on all parties, no later than twenty (20) days prior to the date set for hearing of the matter. Any party opposing the motion must file an opposition with the Administrator and serve said opposition on, within ten (10) days of service. A reply, if any, may be filed to any opposition, within five (5) days of service of the opposition. Upon application for good cause, the Administrator may extend or shorten the time periods set forth in this subsection.*

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 *to the last known address of the recipient,* is deposited in the United States mail. *Any party may consent to accept personal service by electronic means.*

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

4. Notwithstanding the provisions above, service is not required on a party who has defaulted and failed to appear in the proceedings.

NAC 90.585 is hereby amended to read as follows:

Sec. 50. 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 or her 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 the representative.

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

5. The Administrator or the 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~~] *certified court* reporter.