

LCB File No. R016-02

PROPOSED REGULATION OF THE SECRETARY OF STATE

January 31, 2002

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

AUTHORITY: §§1-50, NRS 90.750 and NRS 90.860.

Section 1. Chapter 90 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Branch office” defined. “Branch office” means any place of business in this state other than the principal office in the state of the broker-dealer, from which one or more sales representatives transact business.*

Sec. 3. *“IARD” defined. “IARD” means the web-based Investment Adviser Registration Depository operated by the National Association of Securities Dealers.*

Sec. 4. *Electronic Filing With Designated Entity: Designation; Use of the IARD; Electronic Filing for Investment Advisers and Representatives of Investment Advisers.*

1. Pursuant to NRS 90.350(2) of the Act, the Administrator designates the web-based Investment Adviser Registration Depository (“IARD”) operated by the National Association of Securities Dealers or another depository for registrations that has been approved by the administrator by regulation or order to receive and store filings and collect related fees from investment advisers and representatives of an investment adviser on behalf of the Administrator.

2. Except as otherwise provided by regulation or order by the Administrator, all investment adviser and representative of an investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to the IARD or another depository for registrations that has been approved by the administrator by regulation or order. The following additional conditions relate to such electronic filings:

(a) When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) Solely for purposes of a filing made through the IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by the IARD on behalf of the state.

3. Notwithstanding subsection (b) of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as the IARD provides for receipt of such filings and fees and the Administrator requires such filings by regulation or order. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by the IARD or another depository for registrations that has been approved by the administrator by regulation or order, shall be filed directly with the Administrator.

Sec. 5. *Annual Renewal for Representatives of Investment Advisers; Updates and Amendments; Completion of Filing.*

1. The application for annual renewal licensure as a representative of an investment adviser shall be filed with the IARD or another depository for registrations that has been approved by the administrator by regulation or order. The application for annual renewal licensure shall include the fee required by NRS 90.360 of the Act.

2. A representative of an investment adviser is under a continuing obligation to update information required by Form U-4 as changes occur.

(a) A representative of an investment adviser and the investment adviser must file promptly with the IARD or another depository for registrations that has been approved by the administrator by regulation or order, any amendments to the representative's Form U-4; and

(b) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

3. An application for initial or renewal licensure is not considered filed for purposes of NRS 90.350 and NRS 90.390(7) of the Act until the required fee and all required submissions have been received by the Administrator through IARD or another depository for registrations that has been approved by the administrator by regulation or order.

Sec. 6. *Transition for Electronic Filing of Form ADV.*

1. By October 1, 2002, each investment adviser licensed or required to be licensed under the Act must resubmit its Form ADV electronically (if it has not previously done so) with the IARD.

2. By October 1, 2002, a licensee must file any amendments to Form ADV required by this section electronically with the IARD.

3. By October 1, 2002, or when the IARD filing becomes available for each representative of an investment adviser licensed or required to be licensed under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with the IARD or another depository for registrations that has been approved by the administrator by regulation or order.

Sec. 7. NAC 90.030 is hereby amended to read as follows:

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

Sec. 8. NAC 90.061 is hereby amended to read as follows:

90.061 ~~["NASDAQ"]~~ "Nasdaq" defined. ~~["NASDAQ"]~~ "Nasdaq" means the ~~[National Association of Securities Dealers Automated Quotation System.]~~ *Nasdaq Stock Market, Inc.*

Sec. 9. NAC 90.081 is hereby amended to read as follows:

90.081 "Securities registration depository" defined. "Securities registration depository" means the system for the electronic registration of securities which is owned and operated by SRD, Inc. ~~[, 1700 North Moore Street, Suite 1215, Arlington, Virginia 22209, telephone: (703) 807-5700.]~~

Sec. 10. NAC 90.315 is hereby amended to read as follows:

90.315 Availability of forms.

1. Except as otherwise provided in this section, any form referred to in this chapter that pertains to the registration of securities or investment advisers may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 5th Street N.W.,

Washington, D.C. 20549 *or at www.sec.gov*. The Uniform Limited Offering Circular (Form U-7) may be obtained from the North American Securities Administrators Association, ~~555 New Jersey Avenue N.W., Suite 750,~~ *10 G Street, N.E., Suite 710*, Washington, D.C. ~~20001~~ *20002 or at www.nasaa.org*. An informational packet concerning the Small Corporate Offering Registration which contains a Uniform Limited Offering Circular (Form U-7) may be obtained from the office of the administrator by submitting a check payable to the ~~secretary~~ *Secretary* of ~~state~~ *State* in the amount of \$3.

2. Any form pertaining to the licensing of broker-dealers and sales representatives may be obtained from the National Association of Securities Dealers, ~~Information Services, 9513 Key West Avenue, Rockville, Maryland 20850~~ *Media Source, P.O. Box 9403, Gaithersburg, MD, 20898-9403 or at www.nasdr.com*.

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).

~~(b)~~ *(c)* The Request for Withdrawal of a Branch Office (Nevada Form 360-2W).

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

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

~~(e) The Claim of Exempt Security (Nevada Form 520).~~

(f) The Claim of Exemption From Securities Registration (Nevada Form N-9).

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

Sec. 11. NAC 90.325 is hereby amended to read as follows:

90.325 Availability of registration materials for uniform examinations. Registration materials for the Uniform Securities Agent State Law Examination (Series 63), the Uniform

Investment Adviser Examination (Series 65) and the Uniform Combined State Law Examination (Series 66) may be obtained from the National Association of Securities Dealers ~~[, 9513 Key West Avenue, Rockville, Maryland 20850-3389.]~~ *at their website www.nasdr.com.*

Sec. 12. NAC 90.327 is hereby amended to read as follows:

90.327 Broker-dealers, ~~and~~ sales representatives, *investment advisers, and representatives of investment advisers*: Unethical and dishonest practices.

1. A broker-dealer, ~~or~~ sales representative, *investment adviser or representative of an investment adviser* who engages in any of the following acts or practices shall be deemed to have engaged in an unethical or dishonest practice within the meaning of paragraph (h) of subsection 1 of NRS 903.420:

(a) Engaging in any act or practice enumerated in NAC 90.328.

(b) In connection with any solicitation of the sale or purchase of a security that is not included in the ~~[NASDAQ]~~ *Nasdaq* or listed or approved for listing on a securities exchange described in paragraph (g) of subsection 2 of NRS 90.520, failing promptly to provide information requested by a customer, such as:

(1) The current prospectus concerning an offering;

(2) The most recently filed periodic report filed pursuant to section 13 of the Securities Exchange Act of 1934; or

(3) Any information required by Rule 15c2-11 of the Securities and Exchange Commission.

(c) Marking any order ticket or confirmation as unsolicited if the transaction is solicited.

(d) Failing to comply with any applicable provision of:

(1) The ~~[Rules of Fair Practice]~~ *Conduct Rules* of the National Association of Securities Dealers; or

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

(I) The Securities and Exchange Commission; or

(II) A self-regulatory organization approved by the Securities and Exchange Commission~~[-];~~*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.

Sec. 13. NAC 90.328 is hereby amended to read as follows:

90.328 Broker-dealers, ~~[and]~~ sales representatives, *investment advisers, representatives of investment advisers: Fraudulent practices.*

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

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

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

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

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

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

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

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

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

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

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

(2) Parking or withholding securities.

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

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

(I) The other securities held by the customer;

- (II) The financial situation of the customer; and
 - (III) Other data necessary to determine the suitability of the investment for the customer;
- (2) Failing to disclose the firm's bid and ask price of a particular security:
- (I) At the time of solicitation; and
 - (II) At the time of execution on the confirmation;
- (3) If the firm is a market maker at the time of the solicitation, failing to disclose, both at the time of solicitation and on the confirmation in connection with a principal transaction, a short inventory position in the firm's account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer;
- (4) Conducting any sale contests in a security;
- (5) Failing or refusing, in connection with a principal transaction, to promptly execute a sell order after a solicited purchase by a customer;
- (6) Soliciting a secondary market transaction if the broker-dealer, ~~or~~ sales representative, *investment adviser or a representative of an investment adviser* knows or should know that there has not been a bona fide distribution in the primary market;
- (7) Effecting any transaction in or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, without limitation, the use of boiler room tactics or a fictitious or nominee account; or
- (8) Failing to comply with any requirement for delivery of a prospectus promulgated under state or federal law.

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

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

Sec. 14. NAC 90.329 is hereby amended to read as follows:

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

Sec. 15. NAC 90.3294 is hereby amended to read as follows:

90.3294 Federal covered advisers: Licensing requirements inapplicable under certain circumstances. The licensing requirements of NRS 90.330 do not apply to a federal covered adviser if the federal covered adviser *complies with the following*:

~~[1. Has less than six clients in this state other than those clients listed pursuant to subparagraph (1) of paragraph (a) of subsection 1 of NRS 90.340; or
—2. Files with the administrator Form ADV, as prescribed by the Securities and Exchange Commission, and pays to the administrator of fee of \$150.]~~

1) Notice Filing. The notice filing for a federal covered adviser as defined by NAC 90.042 shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. 279.1)). A notice filing of a federal covered adviser shall be

deemed filed when the \$150.00 fee required by NRS 90.360 and the Form ADV are filed with and accepted by IARD on behalf of the state.

2) Portions of Form ADV not yet accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, the Administrator will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Administrator unless requested.

3) Renewal. The annual renewal of the notice filing for a federal covered adviser pursuant to section 202 of the Act shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the \$150.00 fee required by NRS 90.360 is filed with and accepted by IARD on behalf of the state.

4) Updates and Amendments. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

Sec. 16. NAC 90.330 is hereby amended to read as follows:

90.330 Applicant for licensing: Filing of documents and fee.

1. An applicant for licensing as a broker-dealer who is not registered with the National Association of Securities Dealers must ~~include in his~~ *file with the office of the administrator,* *an* application *including*:

- (a) The Uniform Application for Broker-Dealer Registration (Form BD);
- (b) The Uniform Consent to Service of Process (Form U-2);
- (c) A balance sheet prepared in the manner prescribed in NAC 90.335;

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

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

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

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

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

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

(h) The fee required by NRS 90.360.

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

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

(a) File with the central registration depository the documents required for registration pursuant to paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Pay to the central registration depository the fees required by NRS 90.360.

4. All broker-dealer licenses expire on December 31 of each calendar year.

Sec. 17. NAC 90.345 is hereby amended to read as follows:

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

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

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

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

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

3. A broker-dealer who is a member of the National Association of Securities Dealers shall pay the fee required by NRS 90.390 to the central registration depository on or before December 31.

Sec. 18. NAC 90.350 is hereby amended to read as follows:

90.350 Withdrawal from licensing.

1. Except as otherwise provided in subsection 2, a broker-dealer who withdraws from licensing in this state shall file with *the office of* the administrator the Uniform Request for Withdrawal From Registration as a Broker-Dealer (Form BDW).

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

Sec. 19. NAC 90.352 is hereby amended to read as follows:

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

1. The rules adopted by the National Association of Securities Dealers for the maintenance of books and records, as set forth in ~~[section 21 of Article III of that association's Rules of Fair Practice, as the rules in that section existed on December 7, 1993]~~ *Rule 3110 of that association's Conduct Rules*. Each licensed broker-dealer shall comply with the provisions of those rules, regardless of whether he is a member of that association.

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

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

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

5. Any other rules or policies governing the practices of broker-dealers and investment advisers which the administrator adopts by written order.

Sec. 20. NAC 90.353 is hereby amended to read as follows:

90.353 Materials adopted by reference: Availability.

1. The ~~[Rules of Fair Practice]~~ *Conduct Rules* adopted by the National Association of Securities Dealers are contained in the manual of that association. The manual is available ~~for~~

~~the price of \$110~~] from the National Association of Securities Dealers, ~~[Information, Membership Kit and Book Order Department, 9513 Key West Avenue, Rockville, Maryland 20850.]~~ *Media Source, P.O. Box 9403, Gaithersburg, MD, 20898-9403 or on their website at www.nasdr.com.*

2. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted by reference in subsection 2 of NAC 90.352, is available from the North American Securities Administrators Association, ~~[One Massachusetts Avenue, N.W., Suite 310, Washington, D.C. 20001]~~ *10 G Street, N.E., Suite 710, Washington, D.C. 20001 or on their website at www.nasaa.org* at no charge.

3. The provisions of 17 C.F.R. § 275.204-2 and 17 C.F.R. § 275.204-3, as adopted by reference in subsections 3 and 4 of NAC 90.352, are available from the Securities and Exchange Commission, Public Reference Branch, 450 ~~[Seventh]~~ *Fifth* Street, N.W., Washington, D.C. 20549 ~~[, for the price of 24 cents per page, plus tax and postage.]~~ *or on their website at www.sec.gov.*

Sec. 21. NAC 90.354 is hereby amended to read as follows:

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

1. The ~~[Rules of Fair Practice]~~ *Conduct Rules*, as adopted by reference in subsection 1 of NAC 90.352;

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

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

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

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

Sec. 22. NAC 90.355 is hereby amended to read as follows:

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

1. Except as otherwise provided in this section, an applicant for licensing as a sales representative must include in his application the Uniform Application for Securities Industry Registration or Transfer (Form U-4) with his original signature and:

(a) Proof of successful completion of:

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

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

(b) Proof of waiver of those examinations.

2. If an applicant is to be licensed for a broker-dealer who is a member of the National Association of Securities Dealers, the documents required by this section and the fee required by NRS 90.30 must be filed with and paid to the central registration depository. In any other case, the documents and the fee must be filed with and paid to the administrator.

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

4. All sales representative licenses expire on December 31 of each calendar year.

Sec. 23. NAC 90.360 is hereby amended to read as follows:

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

1. The license of a sales representative terminates upon the withdrawal, cancellation or termination of his employment or contractual relationship with a broker-dealer. Except as otherwise provided in subsection 2, the sales representative, broker-dealer or issuer shall file with the office of the administrator the Uniform Termination Notice for Securities Industry Registration (Form U-5).

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

3. A sales representative whose employment or contractual relationship with a broker-dealer ceases and who intends to continue to transact business in this state as a sales representative must file a new application for a license, together with the required fee. If the sales representative is

applying for a license with a broker-dealer who is a member of the National Association of Securities Dealers, the application and fee may be processed through the ~~temporary agent~~ *registration* transfer program ~~of the North American Securities Administrators Association and~~ *with* the central registration depository.

Sec. 24. NAC 90.368 is hereby amended to read as follows:

90.368 Exemption from requirements for licensing *as a representative of an investment adviser* under certain circumstances.

1. A sales representative who is:

(a) Licensed pursuant to NRS 90.310;

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

(c) Employed by:

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

(2) A broker-dealer licensed pursuant to NRS 90.310 who offers investment advice provided by an investment adviser licensed pursuant to NRS 90.330, is exempt from licensing under NRS 90.330.

2. As used in this section:

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

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

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

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

Sec. 25. NAC 90.371 is hereby amended to read as follows:

90.371 Licensing: Application; required documents and annual fee.

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

2. An applicant for licensure as an assistant sales representative must include in his application the Uniform Application for Securities Industry Registration or Transfer (Form U-4) with his original signature and:

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

(b) Proof of waiver of that examination.

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

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

5. All assistant sales representative licenses expire on December 31 of each calendar year.

Sec. 26. NAC 90.375 is hereby amended to read as follows:

90.375 ~~[Applicant]~~ *Application for initial licensing: Filing of documents and fee.* An ~~[applicant]~~ *application* for *initial* licensing as an investment adviser ~~[must include in his application:]~~ *shall be made by completing* ~~[1. The]~~ *the* Uniform Application for Investment Adviser Registration (Form ADV) ~~[including:]~~ *in accordance with the form instructions, and by filing the form through the IARD. The application for initial licensing shall also include:*

~~[(a) The name of each representative of an investment adviser employed by the investment adviser; and~~

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

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

~~—3.]~~ *1.* Proof of successful completion of ~~[the Uniform Investment Adviser Law Examination (Series 65) or the Uniform Combined State Law Examination (Series 66)]~~ *licensing requirements for a representative of an investment adviser under NAC 90.391* by the applicant, if he is a natural person, or by an owner, officer or director of the applicant in any other case.

~~[4.]~~ *2.* The Uniform Application for Securities Industry Registration or Transfer (Form U-4) which is signed by the person submitting proof of successful completion of the ~~[Series 65 or 66]~~ examination *or designation* required pursuant to subsection 1.

3. The fee required by NRS 90.360.

4. Any other information the Administrator may reasonably require.

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

5. All investment adviser licenses expire on December 31 of each calendar year.

~~[/The original signature of the applicant must be used on the Uniform Application for Investment Adviser Registration (Form ADV) and the Uniform Consent to Service of Process (Form U-2) required by subsections 1 and 2./]~~ The documents required by this section and the fee required by NRS 90.360 must be filed with ~~[/and paid to the administrator./]~~ *the IARD.*

Sec. 27. NAC 90.380 is hereby amended to read as follows:

90.380 Renewal of license: ~~[/Filing of annual report; fees./]~~ *Updates and Amendments;*

Completion of Filing.

1. An investment adviser shall renew his license annually by paying the fee required by NRS 90.360 ~~[/and by filing with the administrator a copy of his most recent annual report (Form ADV-S)/]~~. The fee must be paid to the administrator ~~[/and the report filed with him/]~~ *through the IARD* on or before December 31.

2. An investment adviser must file with the IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV;

(a) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and

(b) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with the IARD an updated Form ADV.

3. Unless otherwise specified, an application for initial or renewal licensure is not considered filed for purposes of NRS 90.350 and NRS 90.380(7) of the Act until the required fee and all required submissions have been received by the Administrator through the IARD.

Sec. 28. NAC 90.385 is hereby amended to read as follows:

90.385 Withdrawal from licensing. An investment adviser who withdraws from licensing shall file with the administrator the Uniform Notice of Withdrawal From Registration as an Investment Adviser (Form ADV-W) *through the IARD*.

Sec. 29. NAC 90.387 is hereby amended to read as follows:

90.387 Recordkeeping requirements~~[.]~~ *for investment advisers: Delivery of brochure to clients; principal place of business in other state.*

1. For the purposes of subsection 5 of NRS 90.390, the Administrator hereby adopts by reference: The North American Securities Administrators Association's Rule 203(a)(2) Recordkeeping requirements for Investment Advisers, which is available at 10 G Street, N.E., Suite 710, Washington, D.C. 20001 or on their website at www.nasaa.org.

2. Unless otherwise provided in this rule, an investment adviser, licensed or required to be licensed pursuant to NRS 90.330 of the Act shall offer and deliver to each client and prospective client a firm brochure and one or more supplement(s) as required by this section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV, and such other information as the Administrator may require.

(a) An investment adviser shall deliver the current brochure required by this section to a client or prospective client, and

(b) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required of this section. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven days after the investment adviser is notified of the acceptance.

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

Sec. 30. NAC 90.390 is hereby amended to read as follows:

90.390 Required net capital or tangible net worth.

1. Unless he is exempt from registration under the Investment Advisers Act of 1940, an investment adviser who is not registered under that Act, and who takes or retains custody of securities or money of a client, shall *comply with the following requirements:*

(a) ~~maintain~~ Maintain net capital of not less than \$20,000 or a tangible net worth of not less than \$35,000.

(b) *Promptly submit to the Division a copy of the accountant's report in compliance with SEC Rule 206(4)-2.*

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

(a) Prepaid expenses, except items properly classified as current assets under generally accepted accounting principles;

(b) Deferred charges;

(c) The value of his intangible assets, including goodwill, franchises, organizational expenses, and unamortized debt discount and expense;

(d) In the case of a natural person, the value of his personal property which is not readily marketable and the fair market value of his homes, furnishings and automobiles, less any

indebtedness secured by such property, to the extent that the indebtedness is not greater than the carrying value of the property;

(e) In the case of a corporation, advances or loans to stockholders or officers; and

(f) In the case of a partnership, advances or loans to partners.

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

Sec. 31. NAC 90.391 is hereby amended to read as follows:

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

1. A person desiring to transact business as a representative of an investment adviser must apply to the administrator *through the IARD or another depository for registrations that has been approved by the administrator by regulation or order* for licensure.

2. Except as otherwise provided in subsection 4, an applicant for a license as a representative of an investment adviser must include in his application:

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

(b) Proof of successful completion by the applicant of *one of the following*:

(1) the Uniform Investment Adviser Law Examination (Series 65) or

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

(c) The examination requirements described above may be satisfied upon proof of alternative qualifications or credentials in good standing including:

(1) Designation of Certified Financial Planner (CFP) by the Certified Financial Planner Board of Standards, Inc.;

(2) Certification as a Chartered Financial Consultant (ChFC) granted by the American College;

(3) Designation of Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants.

(4) Designation of Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(5) Designation of Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(6) Any such other professional designation as the administrator may recognize by order.

3. An applicant for a license as a representative of an investment adviser must pay to the administrator *through the IARD or another depository for registrations that has been approved by the administrator by regulation or order:*

(a) An initial fee of \$55; and

(b) Thereafter, an annual renewal fee of \$55 on or before December 31.

4. A person registered as a sales representative of a registered broker-dealer that is also a registered investment adviser in this state or is the affiliate of such a registered investment adviser, must file an application for initial registration as a representative of an investment adviser with the division which must contain the name and central registration depository number of the applicant. The applicant for such a license must pay to the administrator *through the IARD or another depository for registrations that has been approved by the administrator by regulation or order:*

(a) An initial fee of \$55; and

(b) Thereafter, an annual renewal fee of \$55 on or before December 31.

5. An application for the renewal of the registrations of the representatives of an investment adviser must be filed by the investment adviser not more than 60 days before December 31 and must contain:

(a) A list of the names of the representatives of the investment adviser; and

(b) For representatives of the investment adviser who are also registered sales representatives, the central registration depository number of those representatives.

The application must be accompanied by the applicable renewal fee for each listed representative of the investment adviser.

6. All licenses for a representative of an investment adviser expire on December 31 of each calendar year.

Sec. 32. NAC 90.3915 is hereby amended to read as follows:

90.3915 Cessation of employment with investment adviser.

1. The license of a representative of an investment adviser terminates upon the withdrawal, cancellation or termination of his employment with an investment adviser. The investment adviser shall file the Uniform Termination Notice for Securities Industry Registration (Form U-5) with the administrator *through the IARD or another depository for registrations that has been approved by the administrator by regulation or order* upon the withdrawal, cancellation or termination of his employment of a representative of an investment adviser.

2. A representative of an investment adviser whose employment with an investment adviser ceases and who intends to transact business in this state as a representative of an investment

adviser with another investment adviser must file a new application for a license, together with the required fee.

Sec. 33. NAC 90.392 is hereby amended to read as follows:

90.392 Licensing requirements.

1. A broker-dealer who maintains a branch office must obtain a license from the division before doing business at that office.
2. A broker-dealer who desires to obtain the license required by this section must:
 - (a) File an Application for Licensing of a Branch Office (Nevada Form 360-2);
 - (b) Be licensed in this state as a broker-dealer and, if qualification is required by NRS 80.010, be qualified to do business in this state; and
 - (c) Pay a fee of \$50. After the issuance of the initial license, this fee must be paid annually on or before December 31.
3. If any change occurs in the information set forth in an application made pursuant to this section, the applicant shall, within 30 days after the change, file an amended application (*Form 360-2a*) and pay a fee of \$25.
4. *All branch office licenses expire on December 31 of each calendar year.*

Sec. 34. NAC 90.403 is hereby amended to read as follows:

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

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

connection with Rule 504 of Regulation D of the Securities and Exchange Commission must be submitted on Form U-7.

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

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

4. The Form U-7 and its instructions are available through the North American Securities Administrators Association, 10 G Street, N.E., Suite 710, Washington, D.C., 20002 or on their website at www.nasaa.org.

Sec. 35. NAC 90.410 is hereby amended to read as follows:

90.410 Registration statements deemed abandoned~~]; denial or revocation of statement.~~
~~The administrator may issue an order pursuant to NRS 90.510 denying or revoking the effectiveness of a registration statement which has been abandoned. A statement shall be deemed abandoned if its effectiveness is delayed or suspended for any cause and, during the 120 days following the delay or suspension, no communication concerning the registration is received by the administrator].~~ *An application for registration of securities shall be deemed abandoned if such registration is not effective within one year from the date of receipt by the Division of the initial filing of the application for registration. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees shall be required.*

Sec. 36. NAC 90.420 is hereby amended to read as follows:

90.420 Documents required to accompany filing.

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

~~[(a)]~~ 1. The Uniform Application to Register Securities (Form U-1);

~~[(b)]~~ 2. The Uniform Consent to Service of Process (Form U-2);

3. *The Uniform Form of Corporate Resolution (Form U2a)*;

~~[(c)]~~ 4. A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

~~[(d)]~~ 5. Any other document or information requested by the administrator in writing before the effective date of the offering.

~~[2. Except as the administrator may direct, the exhibits accompanying the Uniform Application to Register Securities (Form U-1) need not be filed.]~~

Sec. 37. NAC 90.422 is hereby amended to read as follows:

90.422 Electronic filing; electronic payment of fees.

1. Any document which must be filed pursuant to NRS 90.470 to 90.500, inclusive, or 90.520 may be filed with the securities registration depository or any other system for the electronic registration of securities which is approved by the administrator *by regulation or order*.

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

Sec. 38. NAC 90.440 is hereby amended to read as follows:

90.440 Documents required to accompany filing.

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

~~[(a)]~~ 1. The Uniform Application to Register Securities (Form U-1);

~~[(b)]~~ 2. The Uniform Consent to Service of Process (Form U-2);

3. *The Uniform Form of Corporate Resolution (Form U2a)*;

~~[(c)]~~ 4. A copy of the final offering prospectus or, pending preparation of the final prospectus, a copy of the preliminary prospectus; and

~~[(d)]~~ 5. Any other document or information requested by the administrator in writing before the effective date of the offering.

~~[2. Except as the administrator may direct, the exhibits accompanying the Uniform Application to Register Securities (Form U-1) need not be filed.]~~

Sec. 39. NAC 90.460 is hereby amended to read as follows:

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

1. The Uniform Application to Register Securities (Form U-1), including the exhibits required by that application;

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

3. *The Uniform Form of Corporate Resolution (Form U2a)*;

~~[(3)]~~ 4. A copy of the final offering prospectus or pending preparation of the final prospectus, a copy of the preliminary prospectus;

~~[(4)]~~ 5. A copy of the articles of incorporation and bylaws or their substantial equivalents, as applicable, which are currently in effect;

~~[(5)]~~ 6. A copy of any agreement with or among the underwriters;

~~[6.]~~ 7. A copy of any indenture or other instrument governing the issuance of the security to be registered;

~~[7.]~~ 8. A copy, specimen or description of the security;

~~[8.]~~ 9. A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which states whether the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer; and

~~[9.]~~ 10. Any other document or information requested by the administrator in writing before the effective date of the offering.

Sec. 40. NAC 90.475 is hereby amended to read as follows:

90.475 Applicability.

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

2. For the purposes of subsection 1:

(a) "Public market" does not include any thin market which does not result in reliable prices.

In determining whether a market is a public market, the administrator may consider:

- (1) The history of the market;
- (2) The public trading volume in the market;
- (3) Any spread between bid and asked prices in the market;
- (4) The number of market makers in the market;

- (5) Public float in the market;
- (6) The pricing formula used in the market;
- (7) Inclusion of the market in the ~~INASDAQ~~ *Nasdaq*; and
- (8) Any other relevant factor.

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

Sec. 41. NAC 90.483 is hereby amended to read as follows:

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

1. A copy of all sales and promotional materials used in the connection with the offering; and
2. A report which sets forth the:
 - (a) Amount of securities sold during the effective period of the offering;
 - (b) Consideration paid for each security; and
 - (c) Names and addresses of all purchasers.

3. Failure to file the above referenced report may result in the imposition of penalties pursuant to NRS 90.630.

Sec. 42. NAC 90.495 is hereby amended to read as follows:

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

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

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

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

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

| Source of Exemption | Frequency | Fee of Filing |
|---|----------------|---------------|
| Exemptions established by statute | | |
| NRS 90.520, subsection 2, paragraph (c)..... | \$150 | A |
| NRS 90.520, subsection 2, paragraph (e)..... | 150 | A |
| NRS 90.520, subsection 2, paragraph (f)..... | 150 | A |
| NRS 90.520, subsection 2, paragraph (g)..... | 150 | A |
| NRS 90.520, subsection 2, paragraph (h)..... | 150 | A |

| | | |
|---|------|---|
| NRS 90.520, subsection 2, paragraph (i)..... | 150 | A |
| NRS 90.520, subsection 2, paragraph (j)..... | none | T |
| NRS 90.520, subsection 2, paragraph (k)..... | 150 | A |
| NRS 90.520, subsection 2, paragraph (n)..... | 250 | A |
| NRS 90.520, subsection 2..... | 150 | A |
| NRS 90.520, subsection 14, paragraph (b)..... | 150 | T |
| NRS 90.520, subsection 17, paragraph (b)..... | 150 | T |

| | |
|---------------------|---------------|
| Source of Exemption | Frequency |
| | Fee of Filing |

Exemptions established by regulation

| | | |
|-----------------|-------|---|
| NAC90.515..... | \$150 | T |
| NAC90.516..... | 150 | I |
| NAC 90.517..... | 150 | I |
| NAC 90.518..... | 150 | I |
| NAC 90.519..... | 150 | I |
| NAC 90.521..... | 150 | T |
| NAC 90.522..... | 150 | T |

2. An exemption pursuant to NRS 90.520, subsection 2, paragraph (n) is claimed by filing the Form NF and the appropriate fee with the administrator. The Form NF can be obtained through the Secretary of State, Securities Division, 555 E. Washington Avenue, Suite 5200, Las Vegas, NV 89101 or on their website at sos.state.nv.us.

~~[2.]~~ 3. An exemption from registration not listed in this section does not require the filing of a claim (Nevada Form N-9) with the administrator. Nevertheless, the burden of demonstrating the availability and applicability of such an exemption is on the person claiming the exemption.

Sec. 43. NAC 90.500 is hereby amended to read as follows:

90.500 Securities listed on certain exchanges. 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 of Options Exchange; or
2. Tier I of the Philadelphia Stock Exchange.

3. *Any other exchange that the administrator adopts by order.*

Sec. 44. NAC 90.505 is hereby amended to read as follows:

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

Sec. 45. NAC 90.510 is hereby amended to read as follows:

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

1. ~~Moody's]~~ *Mergent's* Industrial Manual;
2. ~~Moody's]~~ *Mergent's* Municipal and Governmental Manual;

3. ~~[Moody's]~~ *Mergent's* Public Utility Manual;
4. ~~[Moody's]~~ *Mergent's* Transportation Manual;
5. ~~[Moody's]~~ *Mergent's* Bank and Finance Manual;
6. ~~[Moody's]~~ *Mergent's* International Manual; or
7. Standard & Poor's Corporation Records.

Sec. 46. NAC 90.515 is hereby amended to read as follows:

90.515 Offering complying with Regulation D of Securities and Exchange Commission;

fee. An offering is exempt from the registration requirements of NRS 90.460 if:

1. It complies with the requirements of Regulation D of the Securities and Exchange Commission (17 C.F.R. §§ 230.501 to 230.506, inclusive), except for Rule 504 of that Regulation (17 C.F.R. § 230.504);
2. A manually signed copy of a notice of sale of securities pursuant to Regulation D (Form D) is filed with the administrator as provided in 17 C.F.R. § 230.503;
3. A fee of \$150 is paid to the administrator; and
4. A claim of special exemption (Nevada Form ~~[540]~~ *N-9*) is filed with the administrator.

Sec. 47. NAC 90.516 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

Sec. 48. NAC 90.517 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 49. NAC 90.519 is hereby amended to read as follows:

90.519 ~~[Certain securities issued by governmental entities.]~~ *Filing of notice before initial offering of certain securities issued by governmental entities.*

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

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

~~—(b) The enterprise which is obligated for payment of the principal and interest on the security is performing a governmental function, including, but not limited to, the financing of student~~

~~loans, single family residential mortgage loans, low income housing, nonprofit health care facilities, public or private schools, facilities for the disposal of solid waste or the generation and sale of electricity; and~~

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

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

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

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

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

The issuer or a person acting on behalf of the issuer with respect to federal covered securities referred to in NRS 90.520 2 (a) issued by a non-Nevada governmental issuer, which prior to the National Securities Markets Improvement Act of 1996 would have required to file with the administrator unless the security or the transactions would have been exempt from registration under NRS 90.520 or NRS 90.530, shall file with the administrator, no later than the earlier of the first offer or sales in this state, a notice on Form N-9 and a fee of \$150.

Sec. 50. NAC 90.326 and NAC 90.338 are hereby repealed.

TEXT OF REPEALED SECTIONS

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

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

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

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

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Central registration depository number, if applicable.

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

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

- (a) Regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or
- (b) Furnishes bona fide competitive bid and offer quotations on request and is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other broker-dealers.