

ADOPTED REGULATION
OF THE SECRETARY OF STATE
LCB File No. R018-21

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

AUTHORITY: §§ 1-4, 26, 33, 35, 37, 41-48, 52, 55 and 70, NRS 90.750; § 5, NRS 90.575 and 90.750; §§ 6 and 8, NRS 90.420 and 90.750; § 7, NRS 90.450 and 90.750; §§ 9-24, 29-32 and 51, NRS 90.390 and 90.750; §§ 25 and 54, NRS 90.320 and 90.750; §§ 27 and 28, NRS 90.750 and 90.755; § 34, NRS 90.456 and 90.750; § 36, NRS 90.614, 90.6145, 90.740 and 90.750; § 38, NRS 90.380 and 90.750; §§ 39, 40, 65 and 67-69, NRS 90.750 and 233B.050; § 49, NRS 90.340 and 90.750; § 50, NRS 90.350, 90.390 and 90.750; § 53, NRS 90.350 and 90.750; §§ 56-58, NRS 90.360 and 90.750; § 59, NRS 90.500 and 90.750; § 60, NRS 90.520, 90.530, 90.540 and 90.750; § 61, NRS 90.520 and 90.750; § 62, NRS 90.530 and 90.750; § 63, NRS 90.540 and 90.750; § 64, NRS 90.540, 90.750 and 90.830; § 66, NRS 90.750, 233B.050 and 233B.121.

A REGULATION relating to securities; revising and establishing various definitions relating to securities; revising provisions relating to the interpretation of chapter 90 of the Nevada Administrative Code; establishing procedures for the electronic delivery of certain documents; establishing procedures governing the security and confidentiality of personal information; authorizing the use of electronic signatures under certain circumstances; making various changes relating to sources through which certain forms can be obtained by securities agents; adopting by reference certain rules of the Financial Industry Regulatory Authority; revising provisions relating to registration information for certain examinations taken by securities agents; expanding the practices that constitute unethical or dishonest practices by certain securities agents; establishing provisions relating to the fiduciary duty of certain securities agents; requiring investment advisers to maintain various records, policies and procedures; establishing provisions relating to the minimum net worth of investment advisers; requiring representatives of investment advisers to complete continuing education under certain circumstances; establishing and revising various provisions relating to the licensing of merger and acquisition brokers; prohibiting broker-dealers from making or maintaining the registration of sales representatives in certain circumstances; authorizing the delay of transactions or disbursements from certain accounts relating to older persons or vulnerable persons in certain circumstances; revising provisions relating to the exemption of persons from the licensing requirements of sales representatives; revising

provisions relating to branch offices; revising provisions relating to the registration of securities; requiring certain issuers of securities to submit certain information and fees to the Administrator of the Securities Division of the Office of the Secretary of State, who is the Deputy of Securities; requiring issuers of certain securities to make a notice filing with and pay a fee to the Administrator; establishing and revising various provisions relating to proceedings before the Administrator; repealing and revising various provisions relating to federal covered advisers and investment advisers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Administrator of the Securities Division of the Office of the Secretary of State, who is the Deputy of Securities, to adopt regulations that define words and terms which are necessary to understand the provisions of law relating to securities and any regulation adopted thereto. (NRS 90.750)

Section 2 of this regulation defines the term "offering document." **Section 3** of this regulation defines the terms "Securities Act of 1933," "Securities Exchange Act of 1934," "Investment Company Act of 1940" and "Investment Advisers Act of 1940." **Sections 41, 42, 44, 48 and 52-54** of this regulation make conforming changes relating to those definitions. (NAC 90.011, 90.042, 90.088, 90.327, 90.345, 90.355, 90.369)

Section 43 of this regulation revises the definition of "insider." (NAC 90.051) **Section 44** revises the existing interpretation of "institutional buyer." (NAC 90.088)

Section 4 of this regulation requires chapter 90 of the Nevada Administrative Code to be interpreted in conformance with the National Securities Markets Improvement Act of 1996.

Sections 29-31 of this regulation establish procedures for the electronic delivery of certain documents. **Section 32** of this regulation establishes procedures governing the security and confidentiality of personal information. **Section 33** of this regulation authorizes issuers of securities and agents thereof to provide for the use of electronic signatures under certain circumstances.

Section 45 of this regulation makes various changes relating to sources through which certain forms can be obtained by actors in the security industry who transact business in this State. (NAC 90.315)

Section 46 of this regulation adopts by reference certain rules of the Financial Industry Regulatory Authority. (NAC 90.321) **Sections 48, 51 and 55** of this regulation make conforming changes relating to the adoption of such rules. (NAC 90.327, 90.342, 90.3745)

Section 47 of this regulation provides that registration information for certain examinations taken by securities agents may be obtained from the Internet website of the Financial Industry Regulatory Authority and removes references to such information being able to be obtained from the physical address of the Financial Industry Regulatory Authority. (NAC 90.325)

In relevant part, existing law authorizes the Administrator to order the denial, suspension or revocation of a license or place other conditions or limitations on certain licensed securities agents or applicants thereof in this State, if the person has engaged in unethical or dishonest

practices in the securities business. (NRS 90.420) Existing regulations set forth various acts or omissions that constitute unethical or dishonest practices. (NAC 90.327) **Section 6** of this regulation expands the practices that constitute unethical or dishonest practices for investment advisers, representatives of investment advisers and federal covered advisers as those practices relate to advertisements. Similarly, **section 5** of this regulation establishes the fiduciary duty of investment advisers, representatives of investment advisers and federal covered advisers and specifies conduct which violates the fiduciary duty.

Section 7 of this regulation provides that it is unlawful and deemed to be a fraudulent, deceptive and manipulative act, practice and course of business for an investment adviser to have custody of client funds or securities unless certain criteria are met by the investment adviser.

Section 8 of this regulation makes it an unethical or dishonest practice 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 of the client, or a portion of any such funds, unless certain criteria are met.

Existing law makes it unlawful for a person to transact business in this State as an investment adviser unless the person is: (1) licensed; or (2) exempt from the licensing requirements of this State. (NRS 90.330, 90.340) **Section 49** of this regulation removes the provisions in existing regulations which create a blanket exemption from the licensing requirements for federal covered advisers and instead provides that such an exemption applies if the federal covered adviser meets certain qualifications set forth in existing law. (NAC 90.3294)

Section 9 of this regulation: (1) requires an investment adviser to adopt a written plan for business continuity and success; and (2) establishes certain criteria concerning the written plan. **Section 10** of this regulation requires an investment adviser to adopt policies and procedures relating to physical security and cybersecurity. Additionally, **section 11** of this regulation requires an investment adviser to adopt privacy policies which are supplied to each client of the investment adviser. Finally, **section 12** of this regulation requires an investment adviser to provide specific documents to certain clients and prospective clients.

Sections 13-18 of this regulation require an investment adviser to maintain certain records and **sections 19-23** of this regulation set forth various requirements concerning the maintenance of such records.

Section 24 of this regulation prescribes minimum standards regarding the net worth of investment advisers. **Section 70** of this regulation repeals the existing regulation that pertains to certain investment advisers maintaining a minimum net capital or tangible net worth. (NAC 90.390)

Section 70 repeals various terms and provisions which adopt by reference certain policies and rules governing the practice of investment advisors. (NAC 90.3864, 90.3866, 90.3868) **Section 70** also repeals various provisions which require an investment adviser who is licensed or required to be licensed to comply with: (1) certain policies and rules adopted by reference; and (2) certain record keeping requirements. (NAC 90.387) Additionally, **section 70** repeals provisions that exempt offerings from certain registration and filing requirements. (NAC 90.515, 90.532)

Section 35 of this regulation requires certain representatives of investment advisers to complete continuing education under certain circumstances.

Existing law requires broker-dealers and sales representatives to be: (1) licensed; or (2) exempt from the licensing requirements. (NRS 90.310, 90.320) **Section 25** of this regulation establishes an exemption from the licensing requirements of broker-dealers for merger and acquisition brokers. **Section 37** of this regulation establishes provisions governing broker-dealers making or maintaining the registration of sales representatives. Additionally, **sections 50 and 53** of this regulation revise provisions relating to licensing qualifications of broker-dealers and sales representatives which require the applicant to take certain examinations. (NAC 90.330, 90.355)

Existing law requires: (1) broker-dealers and investment advisers to provide training relating to the identification and reporting of any suspected exploitation of older persons and vulnerable persons; and (2) certain persons in the securities industry to report the suspected exploitation of older persons and vulnerable persons. (NRS 90.614, 90.6145) **Section 36** of this regulation establishes provisions authorizing certain persons to: (1) delay transactions or disbursements from certain accounts relating to older persons and vulnerable persons; and (2) investigate and report the alleged exploitation of such older persons and vulnerable persons.

Existing law makes it unlawful for a person to transact business in this State as a sales representative unless the person is: (1) licensed; or (2) exempt from the licensing requirements in this State. (NRS 90.310) Existing regulations establish that a person transacting business as a sales representative who is acting for an issuer effecting offers to sell or sales of securities is exempt from the licensing requirements of sales representatives in this State if: (1) the person offers to sell or sells certain securities described by federal law; and (2) the person is not paid for soliciting persons in this State. (NAC 90.369) **Section 54** of this regulation expressly provides that payment for such solicitation includes a commission or any other form of compensation.

Section 38 of this regulation requires sales representatives located in and working from this State to be affiliated with an associated registered branch office that is physically located in this State.

Existing regulations require a broker-dealer who maintains a branch office to obtain a license from the Division before doing business in the branch office. In order to obtain such a license, existing regulations require the broker-dealer to file an Application for Licensing of a Branch Office (Nevada Form 360-2) and to subsequently file an amendment to the form when any change occurs. (NAC 90.392) **Section 56** of this regulation provides that the applicant must file with the Central Registration Depository of the Financial Industry Regulatory Authority: (1) a Uniform Branch Office Registration Form (Form BR); and (2) an updated Form BR if a change occurs. **Section 57** of this regulation makes a conforming change related to the requirement that an applicant file a Form BR. Existing regulations also: (1) require that a manager for each branch office be designated and licensed with the Division as a principal; and (2) provide that if a branch office is not designated as an office of supervisory jurisdiction, the manager does not need to be located at any office for which the manager is given supervisory responsibility, but the applicant is required to specify the name of each person designated as the manager in charge and provide such information in writing to the Division. (NAC 90.3925) **Section 57** instead requires every registered broker-dealer to employ at its principal office and at each branch office in this State at least one person designated to act in a supervisory capacity and licensed with the

Division as a principal. **Section 57** also provides that if a branch office is not designated as an office of supervisory jurisdiction, a supervisor does not need to be located at any office for which he or she is given supervisory responsibility.

Existing regulations require a broker-dealer to notify the Division before closing a branch office or terminating business at the branch office location by filing a Request for Withdrawal of a Branch Office (Nevada Form 360-2W). (NAC 90.3945) **Section 58** of this regulation instead requires the broker-dealer to file a Uniform Branch Office Registration Form (Form BR) with the Central Registration Depository upon the occurrence of any such event.

Existing law makes it unlawful for a person to offer to sell or sell any security in this State unless: (1) the security is registered; or (2) the security or transaction is exempt from the registration requirements. (NRS 90.460, 90.520, 90.530) **Section 59** of this regulation expands the references to the forms required to be filed with an application to extend the effectiveness of a registration statement for a security. Additionally, **section 34** of this regulation requires an issuer of securities to make a notice filing with and pay a fee to the Administrator.

Existing regulations require a person who claims an exemption from the registration requirements relating to securities to file certain forms, materials and fees. (NAC 90.495) **Section 60** of this regulation provides that if a person claims an exemption established by statute and if the person is required to file a notice of exemption, the person must file certain forms, materials and fees with the Administrator.

Existing regulations compile applicable registration fees for securities and the required frequency of registration. (NAC 90.495) **Section 60** removes the compilation of fees and filing frequencies.

Existing law provides that securities listed on certain exchanges are exempt from the registration requirements for securities. (NRS 90.520) Existing regulations provide, in relevant part, that a security listed on Tier I of the Philadelphia Stock Exchange is exempt from the registration requirements. (NAC 90.500) **Section 61** of this regulation removes the reference to the Philadelphia Stock Exchange and replaces the reference with the Nasdaq OMX PHLX.

Existing law exempts certain nonissuer transactions by sales representatives from the registration requirements for securities. (NRS 90.530) Existing regulations provide that such transactions are exempt from the registration requirements if certain information is contained in specified publications. (NAC 90.510) **Section 62** of this regulation updates certain names of the specified publications.

Existing regulations provide that a nonissuer transaction by a sales representative licensed in this State of an outstanding security that is included or designated for inclusion in the Nasdaq SmallCap Market is exempt from the registration requirements in this State for securities. (NAC 90.516) **Section 63** of this regulation removes the reference to the Nasdaq SmallCap Market and replaces it with the Nasdaq Capital Market.

Existing regulations establish that an offer to sell or purchase a security made over the Internet, World Wide Web or by similar means constitutes an offer to sell or an offer to purchase a security which would subject the security to the registration requirements in this State. Existing regulations exempt any such security if: (1) the offer indicates that the securities are not being offered to the residents of a particular state; and (2) an offer is not otherwise specifically directed to any person in a state by or on behalf of the issuer of the securities. (NAC 90.534) **Section 64**

of this regulation provides that the securities are exempt if: (1) the offer indicates that the securities are not being offered to the residents of this State; and (2) an offer is not otherwise specifically directed to any person in a state by or on behalf of the issuer of the securities.

If an investment company registered under the Investment Company Act of 1940 offers any security in this State, **section 26** of this regulation requires the filing of a notice with and payment of a fee to the Administrator.

Section 27 of this regulation: (1) requires issuers who sell and offer securities which are exempt under federal regulations relating to crowdfunding to submit certain documents and pay a fee to the Administrator; and (2) provides the timeframe in which such a submission must be made. Similarly, **section 28** of this regulation: (1) requires issuers who offer and sell Tier 2 securities, as defined by federal law, to submit certain documents and pay a fee to the Administrator; and (2) sets forth the timeframe in which such submissions must be made.

Existing regulations establish various provisions relating to proceedings before the Administrator. (NAC 90.540-90.610) **Section 39** of this regulation establishes provisions which: (1) authorize the Administrator to order the parties to attend a prehearing conference; and (2) afford the Administrator certain power relating to the prehearing conference. **Section 40** of this regulation establishes provisions which: (1) require parties to exchange certain documents relating to exhibits and witnesses before a hearing; and (2) provide for the admittance of exhibits at a proceeding by the stipulation of the parties.

Section 65 of this regulation revises provisions relating to the appearance of counsel at a proceeding who is not barred in this State by requiring such an attorney to receive approval from the Nevada Supreme Court before appearing at the proceeding. (NAC 90.550)

Section 66 of this regulation makes various changes relating to complaints and answers and the scheduling of hearings. (NAC 90.560) **Section 67** of this regulation places restrictions on the length of a reply. (NAC 90.565) **Section 68** of this regulation makes various changes relating to the filing and service of pleadings, motions, oppositions, replies and other documents, and the required timing of such filings and service. (NAC 90.570)

Section 69 of this regulation requires oral proceedings to be transcribed by a certified court reporter instead of a shorthand reporter. (NAC 90.585)

Section 1. Chapter 90 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 40, inclusive, of this regulation.

Sec. 2. 1. *“Offering document” includes, without limitation, a registration statement, prospectus, applicable agreement, charter, by-law, opinion of counsel and other opinion, specimen, indenture, consent to service of process and associated resolution, sales material, subscription agreement and any applicable exhibit.*

2. As used in this section, “sales material” includes, without limitation, materials used in connection with the solicitation of purchasers of securities which are approved as sales literature or other related materials by the Securities and Exchange Commission, the Financial Industry Regulatory Authority or a state, as applicable.

Sec. 3. “Securities Act of 1933,” “Securities Exchange Act of 1934,” “Investment Company Act of 1940” and “Investment Advisers Act of 1940” mean the federal statutes of those names, as amended.

Sec. 4. Chapter 90 of NAC must be interpreted and applied in harmony with the National Securities Markets Improvement Act of 1996, Public Law 104-290.

Sec. 5. 1. A person who is an investment adviser, a representative of an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the clients of the investment adviser, representative of the investment adviser or federal covered adviser, as applicable.

2. An investment adviser, representative of an investment adviser or federal covered adviser shall not violate subsection 1 by engaging in unethical business practices, including, without limitation, the following conduct:

(a) If investment supervisory services are provided to a client, recommending to the client 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 relating to the investment objectives, financial situation and needs of the client and any other information known by the investment adviser;

(b) Exercising 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 10 business days after the date of the first transaction placed, pursuant to the oral discretionary authority of the client, 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 must be executed, or both;

(c) Inducing trading in the account of a client 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 the investment adviser or a representative of the investment adviser in the situation can directly benefit from the number of securities transactions effected in the account of the client;

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

(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:

(1) The investment adviser is a financial institution engaged in the business of loaning funds; or

(2) The client is an affiliate of the investment adviser;

(g) Borrowing money or securities from a client unless the client is:

(1) A broker-dealer;

- (2) An affiliate of the investment adviser; or*
- (3) A financial institution engaged in the business of loaning funds;*
- (h) Misrepresenting to an advisory client or prospective advisory client:*
 - (1) The qualifications of the investment adviser or any employee of the investment adviser; or*
 - (2) The nature of the advisory services being offered or fees to be charged for the service;*
- (i) Omitting or failing to state to an advisory client or prospective advisory client a material fact necessary to make a comprehensive statement regarding:*
 - (1) The qualifications of the investment adviser or any employee of the investment adviser; or*
 - (2) The nature of the advisory services being offered or fees being charged for the services of the investment adviser;*
- (j) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact to the client;*
- (k) Charging a client an unreasonable advisory fee;*
- (l) Failing to disclose to a client, in writing before rendering advice, any material conflict of interest relating to the investment adviser, or any of its employees, which could reasonably be expected to impair the rendering of unbiased and objective advice, including, without limitation, a conflict of interest relating to:*
 - (1) A compensation arrangement connected with advisory services to a client that is in addition to compensation for the advisory services; or*

(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;

(m) Making a guarantee to a client that a specific result will be achieved, regardless of whether the guarantee relates to a gain or loss;

(n) Disclosing the identity, affairs or investments of a client unless:

(1) Required by law; or

(2) The consent of the client is obtained by the investment adviser or a representative of the investment adviser;

(o) Taking any action, directly or indirectly, with respect to a security or fund in which the client has a beneficial interest, where the investment adviser has custody or possession of the security or fund and the action of the investment adviser violates section 7 of this regulation;

(p) Entering into, extending or renewing an investment advisory contract, unless the contract is:

(1) In writing; and

(2) Discloses, in substance:

(I) The services to be provided;

(II) The term of the contract;

(III) The advisory fee;

(IV) The formula for computing the fee described in sub-subparagraph (III);

(V) The amount of the prepaid fee to be returned in the event of contract termination or non-performance;

(VI) Whether the contract grants discretionary power to the investment adviser; and

(VII) That an assignment of the contract must not be made by the investment adviser without the consent of the parties to the contract;

(q) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, the use of which is contrary to the provisions of section 204A of the Investment Advisers Act of 1940;

(r) Entering into, extending or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940;

(s) Indicating in an advisory contract any condition, stipulation or provision which binds any person to waive compliance with a provision of chapter 90 of NRS or the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940;

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

(u) 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 chapter 90 of NRS or any rule or regulation adopted by the Administrator;

(v) Accessing the account of a client by using the unique identifying information of the client; or

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

3. The provisions of this section apply to a federal covered adviser:

(a) To the extent that the alleged conduct violating subsection 1 is fraudulent or deceptive;

and

(b) As permitted by section 203A of the Investment Advisers Act of 1940 and the National Securities Markets Improvement Act of 1996, Public Law No. 104-290.

4. The provisions of paragraph (r) of subsection 2 apply to all investment advisers and representatives of investment advisers who are registered or required to be registered pursuant to law or regulation, notwithstanding whether the adviser or representative would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

5. The provisions of paragraph (j) of subsection 2 do not apply to an investment adviser who:

(a) Uses published research reports or statistical analyses to render advice; or

(b) Orders any such report or analysis in the normal course of providing service.

6. As used in this section, “unique identifying information”:

(a) Includes, without limitation, the username and password used by a client to access the account of the client; and

(b) Does not include data aggregation software if:

(1) The investment adviser does not know, or have access to, the password of the client used for the client account;

(2) There is an agreement between the data aggregation software company and the custodian or online account platform which permits back-door access to the client account; and

(3) The data is supplied in a manner in which the investment adviser may only view the information and cannot effectuate any changes to the underlying account of the client.

Sec. 6. 1. *An investment adviser, representative of an investment adviser or federal covered adviser 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 if the adviser or representative, directly or indirectly, uses any advertisement:*

(a) To refer to a testimonial of any kind relating to:

(1) The adviser or a representative of the investment adviser; or

(2) The advice, analysis, report or other service rendered by the adviser or representative of the investment adviser;

(b) To refer to past specific recommendations of the adviser or representative of the investment adviser that were or would have been profitable to any person, unless the adviser or representative of the investment adviser furnishes or offers to furnish a list of all recommendations made by the adviser or representative of the investment adviser within the immediately preceding 1-year period, if the advertisement or list includes, without limitation:

(1) The name of each security recommended;

(2) The date and nature of each recommendation;

(3) The market price of the security at that time and the price at which the recommendation was to be acted upon by the adviser or representative of the investment adviser;

(4) The most recently available market price of each such security; and

(5) A legend on the first page of the advertisement or list, 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 advertisement or list;

(c) To represent that any graph, chart, formula or other device being offered may, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell the securities;

(d) To represent, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making any decision of the person 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 the use of the graph, chart, formula or other device;

(e) To represent 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;

(f) To represent that the Administrator or the Division has approved any advertisement; or

(g) That contains any untrue statement of a material fact or that is otherwise false or misleading.

2. The provisions of this section apply to federal covered advisers as permitted by section 203A of the Investment Advisers Act of 1940 and the National Securities Markets Improvement Act of 1996, Public Law No. 104-290.

3. As used in this section, “advertisement” includes, without limitation, any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in an electronic or paper publication, by radio or television or by any medium that offers:

(a) Any analysis, report or publication concerning securities;

(b) Any analysis, report, publication, graph, chart, formula or other device 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; or

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

Sec. 7. 1. Except as otherwise provided in this section, it is unlawful and deemed to be a fraudulent, deceptive and manipulative act, practice and course of business for an investment adviser, whether licensed or required to be licensed, to have custody of client funds or securities.

2. An investment adviser, whether licensed or required to be licensed, may have custody of client funds and securities if:

(a) The investment adviser promptly notifies the Administrator on a Uniform Application for Investment Adviser Registration (Form ADV) that the investment adviser has or may have custody of the client funds and securities;

(b) Except as otherwise provided in subsection 9, a qualified custodian maintains the client funds and securities:

(1) In a separate account for each client, the account of which must be designated by the name of the client; or

(2) In an account that contains only the client funds and securities and which is:

(I) In the name of the investment adviser, as agent or trustee for the client; or

(II) In the case of a pooled investment vehicle managed by the investment adviser, in the name of the pooled investment vehicle;

(c) Except as otherwise provided in subsection 10, the investment adviser notifies each client whose funds or securities are maintained in an account described in paragraph (b), the notification of which must:

(1) Be sent to the client:

(I) Upon the opening of the account; and

(II) At any time there is a change to the information described in subparagraph (2);

and

(2) Include, without limitation:

(I) The name and address of the qualified custodian;

(II) The manner in which the client funds and securities are maintained; and

(III) If the investment adviser sends an account statement to the client, a statement directing the client to compare the account statement of the investment adviser with the account statement of the qualified custodian;

(d) Except as otherwise provided in subsection 10, the investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian described in paragraph (b) sends, at least quarterly, to each client for which the qualified custodian maintains funds and securities and to each person described in subparagraph (1) of paragraph (e), if applicable, an account statement which includes, without limitation:

(1) The amount of funds and type of securities in the account at the end of the statement period; and

(2) Each transaction during the statement period;

(e) The investment adviser is a general partner of a limited partnership or managing member of a limited-liability company, or the investment adviser otherwise holds a comparable position for another type of pooled investment vehicle and the investment adviser:

(1) Enters 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 accounts described in paragraph (b); and

(2) Sends all invoices and receipts to the independent party described in subparagraph (1). The invoices and receipts must include, without limitation, the amount of the fee, expenses or capital withdrawal and the method of calculation, such that the independent party may:

(I) Determine that the payment is in accordance with the standards of the pooled investment vehicle, including, without limitation, any standard generally established in the partnership agreement or membership agreement, as applicable; and

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

(f) Except as otherwise provided in subsections 10 and 11, the client funds and securities 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; and

(g) The investment adviser maintains, or the investment adviser has custody because a related person maintains, the client funds or securities as a qualified custodian in connection with any advisory services the investment adviser provides to clients and if:

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

(2) The investment adviser obtains, or receives from its related person, within 6 months of becoming subject to this paragraph and thereafter not less frequently than once each calendar year, a written internal control report.

3. A client may designate an independent representative to receive, on his or her behalf, the notices and account statements described in paragraphs (d) and (e) of subsection 2.

4. With respect to shares of an open-end company, the investment adviser may use the transfer agent of the open-end company in lieu of a qualified custodian for the purpose of satisfying the conditions set forth in subsection 2.

5. The examination described in paragraph (f) of subsection 2 must:

(a) Be performed at a time that is chosen by the independent certified public accountant who is a party to the written agreement; and

(b) Occur without prior notice or announcement to the investment adviser on a date that is irregular from year to year.

6. The written agreement described in paragraph (f) of subsection 2 must:

(a) Provide for the first examination to occur within 6 months after the effective date of this regulation, except that if an investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur not later than 6 months after obtaining the internal control report; and

(b) Require the independent certified public accountant to:

(1) File a certificate on Form ADV-E with the Administrator within 120 days after a date chosen by the independent certified public accountant. The certificate must:

(I) State that the independent certified public accountant has examined the funds and securities; and

(II) Describe the nature and extent of the examination;

(2) Notify the Administrator within 1 business day after the finding of any material discrepancy 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 4 business days after the resignation or dismissal from, or other termination of, the engagement, or removal of itself or being removed from consideration for being reappointed, a Form ADV-E accompanied by a statement that includes, without limitation:

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

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

7. The internal control report described in paragraph (g) of subsection 2 must:

(a) Be prepared by an independent certified public accountant, who must:

(1) Verify that the funds and securities are reconciled to a custodian other than the investment adviser or a person related to the investment adviser; and

(2) As of the commencement of the professional engagement period and as of each calendar year-end, be registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board in accordance with its rules; and

(b) Include, without limitation, an opinion of the independent certified public accountant described in paragraph (a) 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, without limitation, the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the client of the investment adviser, during the year.

8. The provisions of paragraph (d) of subsection 2 and subsection 10 are not satisfied if the account statement is sent solely to limited partners, members or other beneficial owners who are not natural persons or are otherwise entities in and of themselves and are related persons of the investment adviser.

9. The provisions of paragraph (b) of subsection 2 do not apply if:

(a) The securities:

(1) Were acquired from the issuer in a transaction or chain of transactions not involving any public offering;

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

(3) Are transferable only with prior consent of the issuer or holder of the outstanding securities of the issuer; and

(b) The following requirements are met as they apply to securities held for an account of a limited partnership, limited-liability company or other pooled investment vehicle:

(1) The entity is audited;

(2) The audited financial statements are distributed in the manner prescribed by subsection 10; and

(3) The investment adviser notifies the Administrator on a Uniform Application for Investment Adviser Registration (Form ADV) that the investment adviser intends to provide audited financial statements.

10. The provisions of paragraphs (c), (d) and (f) of subsection 2 do not apply to an investment adviser, with respect to the account of a limited partnership, limited-liability company or any other type of pooled investment vehicle, if:

(a) The investment adviser sends, at least quarterly, to all limited partners, members or other beneficial owners of the entity, as applicable, a statement showing:

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

(2) A listing of all long and short positions on the closing date of the statement in accordance with Rule ASC 946-210-50 of the Financial Accounting Standards Board; and

(3) The total amount of additions to and withdrawals from the fund by the investment adviser and the total value of the interest of the investment adviser in the fund at the end of the quarter;

(b) At least annually the fund is subject to an audit and distributes, not later than 120 days after the end of its fiscal year, its audited financial statements, prepared in accordance with generally accepted accounting principles, to each limited partner, member or other beneficial owner of the entity and to the Administrator;

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

(d) Upon liquidation and promptly after the completion of the final audit, the investment adviser distributes the final financial statements of the fund, prepared in accordance with generally accepted accounting principles, to each limited partner, member or other beneficial owner of the entity and to the Administrator;

(e) The written agreement with the independent certified public accountant requires 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 4 business days after such resignation, dismissal, termination or removal, and the notification is accompanied by a statement that includes, without limitation:

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

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

(f) The investment adviser notifies the Administrator on a Uniform Application for Investment Adviser Registration (Form ADV) that the investment adviser intends to use the statement delivery and audit safeguards described in this subsection.

11. An investment adviser is not required to obtain an annual verification of client funds and securities maintained by a qualified custodian pursuant to paragraph (f) of subsection 2 if:

(a) The investment adviser has:

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

(2) Written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

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

(1) The qualified custodian or the independent representative designated pursuant to subsection 3, as applicable, an invoice or statement of the amount of the fee to be deducted from the account of the client; and

(2) The client an invoice or statement itemizing the fee, the itemization of which must include 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; and

(c) The investment adviser notifies the Administrator on a Uniform Application for Investment Adviser Registration (Form ADV) that the investment adviser intends to use the safeguards provided in this subsection.

12. The provisions of this section do not apply to the account of an investment company registered under the Investment Company Act of 1940.

13. The provisions of this section do not apply to an investment advisory contract entered into by an investment adviser when the investment adviser was not licensed and was not required to be licensed pursuant to NRS 90.330 if the investment adviser was in compliance with all rules and regulations regarding performance-based compensation in each jurisdiction in which the investment adviser was registered or required to be registered at the time of entering into the advisory contract. For the purposes of this subsection, 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 provisions of this section to apply to the transferee.

14. As used in this section:

(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. Each of the following persons is presumed to have control:

(1) An officer, partner or director of the investment adviser, and any other person having similar status or function, who exercises executive responsibility;

(2) A person who, directly or indirectly, has the right to vote 25 percent or more of a class of the voting securities of a corporation;

(3) A person who has the power to sell or direct the sale of 25 percent or more of a class of the voting securities of a corporation;

(4) A person who has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of a partnership;

(5) A person who, directly or indirectly, has the right to vote 25 percent or more of a class of the interests of a limited-liability company;

(6) A person who has the right to receive upon dissolution of a limited-liability company, or has contributed, 25 percent or more of the capital of the limited-liability company;

(7) A person who is an elected manager of a limited-liability company; or

(8) A person who is a trustee or managing agent of a trust.

(b) “Custody” means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of the funds or securities or having the ability to appropriate the funds or securities. The term:

(1) Includes, without limitation:

(I) An investment adviser if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of the funds or securities, in connection with any advisory services the investment adviser provides to clients;

(II) Possession of client funds or securities, unless the investment adviser receives the funds or securities inadvertently and returns the funds or securities to the sender within 3 business days after receiving the funds or securities and the investment adviser maintains the records required by section 13 of this regulation;

(III) Any arrangement, including, without limitation, 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 instruction of the investment adviser to the custodian; and

(IV) Any capacity, including, without limitation, as a 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 a trustee of a trust, that gives the investment adviser or any supervised person legal ownership of or access to client funds or securities; and

(2) Does not include the receipt of checks drawn by clients and made payable to third parties if the checks are forwarded to the third party within 3 business days after receipt and the investment adviser maintains the records required by section 13 of this regulation.

(c) “Independent certified public accountant” means a certified public accountant that meets the standards of independence described in 17 C.F.R. § 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 a pooled investment;

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

(3) Does not have, and has not had within the immediately preceding 2 years, a material business relationship with the investment adviser; and

(4) Is prohibited from negotiating or agreeing to have material business relations or commonly controlled relations with an investment adviser for a period of 2 years after serving as the person engaged in an independent party agreement.

(e) “Independent representative” means a person who:

(1) Acts as an agent for an advisory client, in the case of a pooled investment vehicle, for a limited partner or a limited partnership, for a member of a limited-liability company or for a beneficial owner of another type of pooled investment vehicle, and who is, by law or contract, obliged to act in the best interest of the advisory client, limited partner, member or other beneficial owner;

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

(3) Does not have, and has not had within the immediately preceding 2 years, a material business relationship with the investment adviser.

(f) “Open-end company” has the meaning ascribed to it in section 5(a)(1) of the Investment Company Act of 1940.

(g) “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 who:

(I) Is registered in this State and with the Securities and Exchange Commission; and

(II) Holds client assets in customer accounts;

(3) A registered futures commission merchant who:

(I) Is registered under section 4f(a) of the Commodity Exchange Act; and

(II) Holds client assets in customer accounts, but only with respect to the funds and security futures of the client, 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, if the foreign financial institution keeps the assets of the advisory client in customer accounts segregated from the proprietary assets of the foreign financial institution.

(h) "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.

Sec. 8. 1. *It is unethical or dishonest practice for an investment adviser to enter into, extend or renew an investment advisory contract if the contract 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 a 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 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; and

(2) To the extent not otherwise disclosed on Part 2 of the Uniform Application for Investment Adviser Registration (Form ADV), the investment adviser discloses to the client, in writing, all material information relating to the proposed advisory arrangement, including, without limitation:

(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) That the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the account of the client, if applicable;

(III) The periods that will be used to measure investment performance throughout the contract and the significance of such periods in the computation of the fee;

(IV) The nature of any index that 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) If the compensation of the investment adviser 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, how the securities will be valued and the extent to which the valuation will be independently determined.

2. If an investment adviser enters into a contract and satisfies the conditions set forth in this section that are in effect when the contract is entered into, the investment adviser will be considered to satisfy the conditions set forth in this section, but if a natural person or company who is not a party to the contract subsequently becomes a party, including, without limitation, an equity owner of a private investment company advised by the investment adviser, the conditions set forth in this section that are in effect when the natural person or company becomes a party to the contract will apply with regard to the natural person or company. For the purposes of this subsection, a transfer of an equity ownership 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.

3. As used in this section:

(a) "Client" includes, without limitation:

(1) Each equity owner of a private investment company, unless the equity owner:

(I) Is the investment adviser who enters into the contract; or

(II) Is not charged a fee on the basis of a share of capital gains or capital

appreciation;

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

(3) A business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940.

(b) "Company" has the meaning ascribed to it in section 202(a)(5) of the Investment Advisers Act of 1940. The term does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(c) “Private investment company” means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940, but for the exception provided from that definition by section 3(c)(1) of the Act.

Sec. 9. 1. *An investment adviser shall establish, implement and maintain written procedures relating to a plan for business continuity and success.*

2. The plan described in subsection 1 must:

(a) Be based upon the facts and circumstances of the business model of the investment adviser, including, without limitation:

(1) The size of the business;

(2) The types of services provided to clients; and

(3) The number of business locations of the investment adviser; and

(b) Provide information relating to:

(1) The protection, backup and recovery of books and records;

(2) Any alternate means of communications with customers, key personnel, employees, vendors and service providers, including, without limitation, third-party custodians and regulators, in the event of a significant business interruption, the death or unavailability of key personnel or any other disruption or cessation of any business activity;

(3) An office relocation, if the business incurs a temporary or permanent loss of a principal place of business;

(4) The assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(5) Any efforts taken to minimize service disruptions and harm to the client, if such disruptions or harm could result from a sudden significant business interruption.

Sec. 10. 1. *An investment adviser who is licensed or required to be licensed shall establish, implement, update and enforce written policies and procedures for physical security and cybersecurity which are reasonably designed to ensure the confidentiality, integrity and availability of physical and electronic records and information.*

2. The policies and procedures described in subsection 1 must:

(a) Be tailored to the business model of the investment adviser, including, without limitation:

(1) The size of the firm;

(2) The type of services provided by the investment adviser; and

(3) The number of locations of the investment adviser;

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

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

(d) Protect records and information from any release which could result in harm or inconvenience to a client;

(e) Develop the organizational understanding to manage information security risks to systems, assets, data and capabilities;

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

(g) Develop and implement the appropriate activities to:

(1) Identify the occurrence of an information security event;

(2) Take action regarding a detected information security event; and

(3) Maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

3. The investment adviser shall:

(a) Review at least annually and modify as needed, the policies and procedures described in subsection 1 to ensure the adequacy of the security measures and the effectiveness of their implementation;

(b) Keep records relating to any review of the policies and procedures described in paragraph (a), which must include, without limitation, a summary of any amendments made as a result of the review; and

(c) Maintain true, accurate and current:

(1) Copies of the policies and procedures described in subsection 1, which must be:

(I) Maintained in hard copy; or

(II) Stored on electronic storage media that is separate from and not dependent upon access to the computers or networks of the investment adviser;

(2) Records documenting the compliance of the investment adviser with this section, including, without limitation, evidence of the annual review of the policies and procedures described in subsection 1; and

(3) Records of any violation of this section and any action taken as a result of the violation.

Sec. 11. 1. *An investment adviser who is licensed or required to be licensed shall establish, implement, update and enforce written policies that are reasonably designed to aid a client in understanding how the investment adviser collects private personal information.*

2. The policies described in subsection 1 must be delivered by the investment adviser to the client upon the initial engagement of the client and annually thereafter. An updated version of the policies must be delivered to the client promptly at such time that the policies are amended or any other time that the information in the policies becomes inaccurate.

3. The investment adviser shall maintain true, accurate and current:

(a) Copies of the policies described in subsection 1, which must be:

(1) Maintained in hard copy; or

(2) Stored on electronic storage media that is separate from and not dependent upon access to the computers or networks of the investment adviser;

(b) Records documenting the compliance of the investment adviser with this section, including, without limitation, evidence of the annual review of the policies; and

(c) Records of any violation of this section and any action taken as a result of the violation.

Sec. 12. 1. *Except as otherwise provided in this section, an investment adviser who is licensed or required to be licensed pursuant to NRS 90.330 shall furnish each designated client and designated prospective client with:*

(a) A brochure which may be a copy of Part 2A of the Uniform Application for Investment Adviser Registration (Form ADV) or written documents containing the information required by Part 2A of the Uniform Application for Investment Adviser Registration (Form ADV);

(b) A copy of its Part 2B brochure supplement for each person who:

- (1) Provides investment advice and has direct contact with clients in this State; or*
- (2) Exercises 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 to the documents described in paragraph (a), (b) or (c), which may be:*
- (1) Included in Part 2 of its Uniform Application for Investment Adviser Registration (Form ADV); or*
- (2) Given as a separate document; and*
- (e) Any other information required by the Administrator.*
- 2. The brochure described in paragraph (a) of subsection 1 must comply with the language, organizational format and filing requirements specified in the instructions to Part 2 of the Uniform Application for Investment Adviser Registration (Form ADV).*
- 3. An investment adviser shall deliver the brochure described in paragraph (a) of subsection 1 and any other documents required by this section to each designated prospective client:*
- (a) Not less than 48 hours before entering into an advisory contract with the designated prospective client; or*
- (b) At the time of entering into the contract, if the designated client has a right to terminate the contract without penalty within 5 business days after entering into the contract.*

4. An investment adviser, within 120 days after the end of its fiscal year, shall deliver to a designated client:

(a) Any updates to the brochure described in paragraph (a) of subsection 1 and any other information required by subsection 1; or

(b) A summary of the material changes to the documents described in subsection 1, including, without limitation:

(1) Any offer to provide a copy of the updated brochure and supplements; and

(2) Information relating to how the client may obtain a copy of the brochure, supplements and any other information required by subsection 1.

5. An investment adviser may electronically deliver the brochure described in paragraph (a) of subsection 1 and any related supplements required by subsection 1 if the investment adviser:

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

(b) In any case other than the initial delivery, obtains the prior consent of the designated client to provide the brochure, supplements and other information electronically;

(c) Prepares the brochure, supplements and other information in the format described in this section;

(d) Electronically delivers the brochure, supplements and other information in a format that can be retained by the client in either electronic or paper form; and

(e) Establishes procedures to:

(1) Supervise personnel transmitting the brochure, supplements and other information;
and

(2) Prevent violations of this section.

6. Nothing in this section shall relieve an investment adviser from any other obligation described in any provision of chapter 90 of NRS or the rules and regulations thereunder or other federal or state law to disclose information to its designated clients or prospective designated clients.

7. As used in this section:

(a) "Advisory contract" 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 which does not contain any expression of opinion as to the investment merits of a particular security; or

(3) By any combination of the foregoing services.

(b) "Designated client" or "designated prospective client" means a client or prospective client who:

(1) Receives only impersonal advice and who pays less than \$500 in fees per year;

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

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

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

Sec. 13. 1. *An investment adviser who is registered or required to be registered under the Investment Advisers Act of 1940 shall maintain the following, which are true, accurate and current:*

(a) A journal which includes:

(1) Each cash receipt and disbursement record; and

(2) Any other record of original entry forming the basis of an entry in any ledger;

(b) A ledger or similar record, whether general or auxiliary, which reflects asset, liability, reserve, capital, income and expense accounts;

(c) A memorandum of each:

(1) Order given by the investment adviser for the purchase or sale of a security, including, without limitation, an order entered pursuant to the discretionary power of the investment adviser;

(2) Instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security; and

(3) Modification or cancellation of any order or instruction described in subparagraph (1) or (2);

(d) Any checkbook, bank statement, cancelled check or cash reconciliation of the investment adviser;

(e) Any bill or statement, or a copy thereof, whether paid or unpaid, which relates to the investment advising business of the investment adviser;

(f) Any trial balance, internal audit working paper relating to the business of the investment adviser and any of the following financial statements:

(1) A balance sheet prepared in accordance with generally accepted accounting principles;

(2) An income statement;

(3) A cash flow statement; or

(4) A net worth computation, as applicable;

(g) Except as otherwise provided in subsection 3, originals of all written communications received by the investment adviser and copies of all written communications sent by the investment adviser relating to:

(1) Each recommendation made or proposed to be made and advice given or proposed to be given;

(2) Each receipt, disbursement or delivery of funds or securities; and

(3) The placing or execution of each order to purchase or sell any security;

(h) A list or other record of each account of the investment adviser that identifies any account in which the investment adviser is vested with a discretionary power for a fund, security or transaction of a client;

(i) A copy of any power of attorney or like document which evidences the granting of discretionary authority to the investment adviser by a client;

(j) A physical copy of:

- (1) Each agreement entered into by the investment adviser with a client; and*
- (2) Any other written agreement relating to the business of the investment adviser;*
- (k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including, without limitation, electronic media, that the investment adviser circulates or distributes, whether directly or indirectly, to two or more persons not connected with the business of the investment adviser. If the document recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the file must contain a memorandum indicating the reasons for the recommendation by the investment adviser;*
- (l) A copy of each written statement and an amendment or revision thereof, given or sent to a client or prospective client who subsequently became a client of the investment adviser, and a record of the dates that the statement, amendment or revision was given, or offered to be given, to the client or prospective client;*
- (m) For each client obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:*
- (1) Evidence of a written agreement where the adviser is a party and which is related to the payment of the fee;*
- (2) A signed and dated acknowledgment evidencing the receipt by the client of the investment disclosure statement and the written disclosure statement of the solicitor; and*
- (3) A copy of the written disclosure statement of the solicitor;*
- (n) A record of each account, book, internal working paper or any other document that is necessary to form the basis for, or demonstrate, the calculation of the performance or rate of*

return of each managed account or securities recommendation in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including, without limitation, electronic media, that the investment adviser circulates or distributes, whether directly or indirectly, to two or more persons not related to the investment advising business of the investment adviser;

(o) A file containing a copy of each written communication received or sent by the investment adviser relating to:

(1) Litigation involving the investment adviser or a representative or employee of the investment adviser; and

(2) Any written complaint of a client or customer of the investment adviser;

(p) Any written information concerning a client that is the basis for making a recommendation or providing any investment advice to the client;

(q) Any written procedure reasonably designed to achieve compliance with a security law or regulation;

(r) A file containing a copy of each application, amendment, renewal filing or other correspondence, other than a notice of general dissemination relating to a registrant or an advisory representative of the investment adviser, as defined in section 14 of this regulation, that was filed with or received from any state or federal agency or regulatory organization;

(s) A copy of the following documents which must include original signatures of the appropriate signatory of the investment adviser and the representative of the investment adviser:

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

(2) Each amendment to Disclosure Reporting Pages (DRP U-4), which must be made available for inspection upon request;

(t) If the investment adviser inadvertently held or obtained a security or fund of a client and returned the security or fund to the client within 3 business days, or forwarded a third-party check within 24 hours, a ledger or other listing relating to the inadvertent custody, which must include, without limitation:

- (1) The issuer;*
- (2) The type of security and series;*
- (3) The date of issue;*
- (4) For debt instruments, the denomination, interest rate and maturity date;*
- (5) The certificate number, including, without limitation, the alphabetical prefix or suffix;*
- (6) The name in which the security or fund is registered;*
- (7) The date the security or fund was obtained or given to the investment adviser;*
- (8) The date the security, fund or third-party check was sent to the client or sender;*
- (9) The form of delivery to the client or sender or a copy of the form of delivery; and*
- (10) The mail confirmation number, if applicable, or any confirmation by the client or sender of the return of the fund or security; and*

(u) If an investment adviser obtains possession of securities that are acquired from an issuer in a transaction or chain of transactions not involving a public offering in compliance with the provisions of section 7 of this regulation:

(1) A record showing the name, address and phone number of the issuer or current transfer agent, 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 the securities are transferable only with the prior consent of the issuer or holder of the outstanding securities of the issuer.

2. The memorandum described in paragraph (c) of subsection 1 must, as applicable:

(a) Show the terms and conditions of the order, instruction, modification or cancellation;

(b) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and

(c) Show the account for which the order was entered, the date of entry and the broker-dealer or bank with or through whom the transaction was effected, where appropriate.

3. For the purposes of paragraph (g) of subsection 1:

(a) If a notice, circular or other advertisement was sent by an investment adviser who offered a report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser is not required to keep a record of the names and addresses of the persons to whom the notice, circular or other advertisement was sent, unless the notice, circular or advertisement was distributed to persons named on any list relating to a

requirement for recordkeeping, in which case the investment adviser must retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(b) “Communication” does not include an unsolicited marketing letter or other similar communication of general public distribution not prepared by or for the investment adviser.

4. The documents described in paragraph (m) of subsection 1 must be in compliance with the Investment Advisers Act of 1940.

5. As used in this section:

(a) “Discretionary power” does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before an order is given by an investment adviser, the client directed or approved the purchase or sale of a definite amount of the particular security.

(b) “Performance of managed accounts” means the retention of each:

(1) Account statement, if the statement reflects all debits, credits and other transactions in the account of the client for the period of the statement; and

(2) Worksheet necessary to demonstrate the calculation of the performance or rate of return of each account.

(c) “Solicitor” means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

Sec. 14. 1. *In addition to any other recordkeeping requirement, an investment adviser who is registered or required to be registered under the Investment Advisers Act of 1940 shall maintain a true, accurate and current record of every security transaction in which the investment adviser or any advisory representative of the investment adviser has, or by reason*

of any transaction acquires, any direct or indirect beneficial ownership, unless the transaction is:

(a) In an account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control; or

(b) A direct obligation of the United States.

2. The record described in subsection 1:

(a) Must include:

(1) The title and amount of the security involved;

(2) The date and nature of the transaction, including, without limitation, the purchase, sale or other acquisition or disposition;

(3) The price at which the transaction was effected; and

(4) The name of the broker-dealer or bank with or through whom the transaction was effected; and

(b) May contain a statement declaring that the reporting or recording of the transaction described in this section must not be construed as an admission that the investment adviser or advisory representative of the investment adviser has any direct or indirect beneficial ownership in the security.

3. The transaction described in subsection 1 must be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

4. The failure of an investment adviser to record the transaction of an advisory representative of the investment adviser shall not be deemed to be a violation of this section if the investment adviser establishes that the investment adviser instituted adequate procedures

and used reasonable diligence to promptly obtain reports of all transactions required to be recorded pursuant to this section.

5. As used in this section:

(a) “Advisory representative of an investment adviser” means:

(1) A partner, officer or director of an investment adviser;

(2) An employee of an investment adviser who:

(I) Participates in any way in the determination of which recommendations will be made; or

(II) In connection with the duties of the employee, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations; or

(3) Any of the following persons who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations:

(I) A person in a control relationship to the investment adviser;

(II) An affiliated person of a controlling person; or

(III) An affiliated person of an affiliated person.

(b) “Control” means 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 the company. A 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.

Sec. 15. 1. Notwithstanding the provisions of section 14 of this regulation, and in addition to any other recordkeeping requirement, if an investment adviser is registered or required to be registered under the Investment Advisers Act of 1940 and the investment adviser is primarily engaged in a business other than advising investment advisory clients, a record must be maintained of every securities transaction in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, unless the transaction is:

(a) 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; or

(b) A direct obligation of the United States.

2. The record described in subsection 1:

(a) Must include:

(1) The title and amount of the security involved;

(2) The date and nature of the transaction, including, without limitation, the purchase, sale or other acquisition or disposition;

(3) The price at which the transaction was effected; and

(4) The name of the broker-dealer or bank with or through whom the transaction was effected; and

(b) May contain a statement declaring that the reporting or recording of a transaction described in this section must not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

3. *The transaction described in subsection 1 must be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.*

4. *The failure of an investment adviser to record the transaction of an advisory representative of the investment adviser shall not be deemed to be a violation of this section if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded pursuant to this section.*

5. *As used in this section:*

(a) *“Advisory representative” means:*

(1) *A partner, officer, director or employee of the investment adviser:*

(I) *Who participates in any way in the determination of which recommendation must be made; or*

(II) *Whose functions or duties relate to the determination of which securities are being recommended before the effective dissemination of the recommendations; or*

(2) *Any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations or the information concerning the recommendations:*

(I) *A person in a control relationship to the investment adviser;*

(II) *An affiliated person of a controlling person; or*

(III) *An affiliated person of an affiliated person.*

(b) *“Control” means 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 the*

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 the company.

(c) “Primarily engaged in a business other than advising investment advisory clients” means when, for each of the most recent 3 fiscal years of the investment adviser or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:

(1) Its total sales and revenues; and

(2) Its income, or loss, before income taxes and extraordinary items,

↳ from such other business.

Sec. 16. In addition to any recordkeeping requirement, if an investment adviser is registered or required to be registered under the Investment Advisers Act of 1940 and the investment adviser has custody of client funds or securities, the investment adviser shall ensure that any record required to be maintained by the investment adviser includes, as applicable:

1. A copy of each document executed by the client, including, without limitation, a limited power of attorney, under which the investment adviser is authorized or permitted to withdraw funds or securities of the client which are maintained with a custodian upon the instruction of the investment adviser to the custodian.

2. A journal or other record showing all purchases, sales, receipts and deliveries of securities, including, without limitation, certificate numbers, for all accounts and all other debits and credits to the accounts.

3. *A separate ledger account for each client showing:*
 - (a) *All purchases, sales, receipts and deliveries of securities;*
 - (b) *The date and price of each purchase and sale described in paragraph (a); and*
 - (c) *All debits and credits.*
4. *A copy of any confirmation of a transaction effected by or for the account of any client.*
5. *A record for each security in which any client has a position showing:*
 - (a) *The name of each client having any interest in each security;*
 - (b) *The amount or interest of each client; and*
 - (c) *The location of each security.*
6. *A copy of:*
 - (a) *Each quarterly account statement of the client, as generated and delivered by the qualified custodian;*
 - (b) *If the adviser generates a statement that is delivered to the client, the statement and the date that the statement was sent to the client; and*
 - (c) *A special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination, as applicable.*
7. *A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.*
8. *Any evidence of the designation of an independent representative by a client, if applicable.*

Sec. 17. *In addition to any recordkeeping requirement, if an investment adviser is registered or required to be registered under the Investment Advisers Act of 1940 and the investment adviser has custody of client funds or securities because the investment adviser advises a pooled investment vehicle, the investment adviser must keep:*

1. A true, accurate and current record of each account statement;

2. Where the investment adviser is subject to the requirements set forth in paragraph (d) of subsection 2 of section 7 of this regulation, records which include:

(a) The date of any audit;

(b) A copy of any audited financial statement; and

(c) Evidence of the mailing of the audited financial statement to each limited partner, member or other beneficial owner within 120 days after the end of the fiscal year of the investment adviser; and

3. Where the investment adviser is subject to the requirements set forth in paragraph (e) of subsection 2 of section 7 of this regulation, records which include:

(a) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(b) A copy of each invoice and receipt showing approval by the independent party for payment through the qualified custodian.

Sec. 18. *In addition to any recordkeeping requirement, if an investment adviser who is registered or required to be registered under the Investment Advisers Act of 1940 and the investment adviser renders an investment supervisory or management service to a client, the investment adviser 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:

1. Records for each client showing:

(a) The securities purchased and sold; and

(b) The date, amount and price of each purchase and sale.

2. For each security in which a client has a current position, information from which the investment adviser can promptly furnish:

(a) The name of the client; and

(b) The current amount or interest of the client.

Sec. 19. 1. A record required to be maintained by an investment adviser pursuant to sections 10, 11 and 13 to 18, inclusive, of this regulation:

(a) May be maintained by the investment adviser in such a 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.

(b) Must be maintained and preserved by the investment adviser:

(1) Except as otherwise provided in this section, in an easily accessible place for a period of not less than 5 years after the end of the fiscal year during which the last entry was made on record, the first 2 years of which must be in the principal office of the investment adviser.

(2) If the record is described in paragraph (k) or (n) of subsection 1 of section 13 of this regulation, in an easily accessible place for a period of not less than 5 years after 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, the first 2 years of which must be in the principal office of the investment adviser.

(3) If the record is described in paragraphs (o) to (t), inclusive, of subsection 1 of section 13 of this regulation, in an easily accessible place for a period of not less than 5 years after the end of the fiscal year during which the last entry was made on such record, the first 2 years of which must be 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 this State, if less than 5 years.

(4) If the record is a partnership article including any amendment thereof, article of incorporation, charter, minute book and stock certificate book of the investment adviser and of any predecessor, in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

2. In addition to any other recordkeeping requirement, an investment adviser must maintain at any business location in this State from which a customer or client is being provided or has been provided with investment advisory services the following records for the period of time described in subsection 1:

(a) The records described paragraphs (c), (g) to (j), inclusive, (l), (m), (o), (p) and (q) of subsection 1 of section 13 of this regulation and section 18 of this regulation; and

(b) The records described in paragraphs (k) and (n) of subsection 1 of section 13 of this regulation, which must identify the name of the representative of the investment adviser providing investment advice from that business location, or which identify the physical

address, mailing address, electronic mailing address or telephone number of the business location.

3. As used in this section, “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.

Sec. 20. *An investment adviser who is subject to the recordkeeping requirements described in sections 10, 11 and 13 to 18, inclusive, of this regulation, shall, before ceasing to conduct or discontinuing business as an investment adviser:*

1. Arrange and be responsible for the preservation of the records required to be maintained and preserved under those sections for the remainder of the period specified for the recordkeeping of the records; and

2. Notify the Administrator in writing of the exact address where the records will be maintained during that period.

Sec. 21. *1. An investment adviser may immediately produce and reproduce, and shall maintain and preserve, a record described in sections 10, 11 and 13 to 18, inclusive, of this regulation in:*

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

(b) Micrographic media, including, without limitation, microfilm, microfiche or any similar medium; or

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

2. An investment adviser described in subsection 1 shall:

(a) Arrange and index the records described in sections 10, 11 and 13 to 18, inclusive, of this regulation in a way that permits easy location, access and retrieval of any particular record;

(b) Promptly provide any of the following that the Administrator or its examiner or other representatives may request:

(1) A legible, true and complete copy of any record described in sections 10, 11 and 13 to 18, inclusive, of this regulation in the medium and format in which it is stored;

(2) A legible, true and complete printout of any record described in sections 10, 11 and 13 to 18, inclusive, of this regulation; and

(3) Means to access, view and print any record described in sections 10, 11 and 13 to 18, inclusive, of this regulation;

(c) Separately store, for the time required for preservation of the original record described in sections 10, 11 and 13 to 18, inclusive, of this regulation, a duplicate copy of the record on any medium authorized by this section; and

(d) In the case of a record described in sections 10, 11 and 13 to 18, inclusive, of this regulation that is created or maintained on electronic storage media, establish and maintain procedures to:

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

(2) Limit access to the records to properly authorized personnel and the Administrator, its examiners and other representatives; and

(3) Reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true and legible when retrieved.

Sec. 22. If a record is made, kept, maintained and preserved in compliance with Rule 17a-3 or 17a-4 of the Securities Exchange Act of 1934, and the record is substantially the same as a record required to be made, kept, maintained and preserved pursuant to sections 10, 11 and 13 to 18, inclusive, of this regulation, the record made, kept, maintained and preserved in compliance with the Securities Exchange Act of 1934 shall be deemed to meet the recordkeeping requirements set forth in sections 10, 11 and 13 to 18, inclusive, of this regulation.

Sec. 23. 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 is exempt from the requirements of sections 10, 11 and 13 to 18, inclusive, of this regulation, if the investment adviser is licensed in such a state and is in compliance with the recordkeeping requirements of that state.

Sec. 24. 1. If an investment adviser is licensed or required to be licensed pursuant to NRS 90.330 and the investment adviser has custody of client funds or securities, the investment adviser must maintain a minimum net worth of \$35,000 unless the investment adviser has custody of the funds and securities solely as a result of:

- (a) A direct fee deduction; or*
- (b) Advising a pooled investment vehicle.*

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

3. *An investment adviser who is licensed or required to be licensed pursuant to NRS 90.330 and who accepts prepayment of more than \$500 per client 6 or more months in advance shall maintain a positive net worth.*

4. *If the net worth of an investment adviser falls below the minimum standards established by this section, the investment adviser must:*

(a) Notify the Administrator not more than 1 business day after the occurrence of the event; and

(b) File a report with the Administrator, not more than 1 business day after the notification described in paragraph (a), which must include, without limitation:

(1) A trial balance of all ledger accounts;

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

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

(4) A statement of the number of client accounts.

5. *The Administrator may require an investment adviser to submit a current appraisal in order to establish the worth of any asset.*

6. *Nothing in this section shall be construed to relieve an investment adviser from any requirement of the state of its principal place of business relating to minimum net worth.*

7. *As used in this section:*

(a) "Custody" has the meaning ascribed to it in section 7 of this regulation.

(b) “Discretion” does not include an investment adviser placing a trade order with a broker-dealer pursuant to a third-party trading agreement if:

(1) 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 broker-dealer account of the client;

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

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

(c) “Net worth” means an excess of assets over liabilities as determined by generally accepted accounting principles. As used in this paragraph, the term “assets” does not include:

(1) Prepaid expenses, unless the item is properly classified as an asset under generally accepted accounting principles;

(2) Deferred charges;

(3) Goodwill;

(4) Franchise rights;

(5) Organization expenses;

(6) Patents;

(7) Copyrights;

- (8) Marketing rights;*
- (9) Unamortized debt discounts and expenses;*
- (10) Homes;*
- (11) Home furnishings;*
- (12) Automobiles;*
- (13) Advances or loans to a stockholder or officer in a corporation or a partner in a partnership;*
- (14) Any other assets of intangible nature; and*
- (15) Any other personal items of an individual that are not readily marketable.*

Sec. 25. 1. *Except as provided in subsection 2, a merger and acquisition broker is exempt from the licensing requirements described in NRS 90.310.*

2. A merger and acquisition broker is not exempt from licensing if the broker:

(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 Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934, or with respect to which the issuer files or is required to file periodic information, documents and reports under section 15(d) of the Securities Exchange Act of 1934;

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

(d) Is subject to:

(1) Suspension or revocation of registration under section 15(b)(4) of the Securities Exchange Act of 1934;

(2) A statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934;

(3) A disqualification under the rules adopted by the Securities and Exchange Commission under section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(4) A final order described in paragraph (4)(H) of section 15(b) of the Securities Exchange Act of 1934; or

(5) Chapter 645 of NRS and fails to comply with that chapter.

3. Nothing in this section shall be construed to limit any other authority of the Administrator to exempt any person or class of persons from any provision of this chapter or chapter 90 of NRS.

4. As used in this section:

(a) "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 an officer who exercises executive responsibility or has a similar status or function to a director, general partner, member or manager;

(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) “Eligible privately held company” means a company which:

(1) Does not have any class of securities registered or required to be registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934, or with respect to which the company files or is required to file periodic information, documents and reports under section 15(d) of the Act; 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, and as determined by the historical financial accounting records of the company:

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

(II) The gross revenues of the company were less than \$250,000,000; or

(III) The company satisfied both sub-subparagraphs (I) and (II).

(c) “Merger and acquisition broker” means a 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) 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, 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) A person who is offered securities in exchange for securities or assets of the eligible privately held company, before becoming legally bound to consummate the transaction, receives or has 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) “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 pursuant to section 12 of the Securities and Exchange Act of 1934, or with respect to which the company files or is required to file periodic information, documents and reports under section 15(d) of the Act;

(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.

Sec. 26. 1. *Before an investment company registered under the Investment Company Act of 1940 offers a security in this State, the issuer shall submit to the Administrator:*

(a) A completed Uniform Investment Company Notice Filing (Form NF); and

(b) If the issuer is:

(1) A unit investment company, a fee of \$300; or

(2) An investment company, other than a unit investment company, a fee of \$500.

2. *The notice and fee required by subsection 1 are effective for 1 year after the date on which the notice and fee are received by the Administrator.*

3. *If the issuer described in subsection 1 wishes to offer the security beyond the initial 1-year period described in subsection 2, the issuer must, before the expiration of such period, submit to the Administrator:*

(a) A complete and updated Uniform Investment Company Notice Filing (Form NF); and

(b) A renewal fee in the amount described in paragraph (b) of subsection 1.

Sec. 27. 1. *At the time described in subsection 2, a crowdfunding issuer shall submit to the Administrator:*

(a) At least one of the following:

(1) A completed Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF); or

(2) A copy of every document the crowdfunding issuer filed with the Securities and Exchange Commission;

(b) If the crowdfunding issuer only submits the documents described in subparagraph (2) of paragraph (a), a completed Uniform Consent to Service of Process Form (Form U-2); and

(c) The fee prescribed by subsection 2 of NRS 90.500.

2. If the crowdfunding issuer:

(a) Has its principal place of business in this State, the crowdfunding issuer must submit the documents and fee prescribed by NRS 90.500 to the Administrator when the crowdfunding issuer makes its initial Form C filing under the Securities Act of 1933 concerning the offering with the Securities and Exchange Commission; or

(b) Sells the offering to residents in this State, the crowdfunding issuer must submit the documents and fee prescribed by NRS 90.500 to the Administrator when the crowdfunding issuer becomes aware residents of this State have purchased at least 50 percent or more of the aggregate amount of the offering and not later than 30 days after the date of completion of the offering.

3. The submission required by subsection 1 is effective for 1 year after the date on which the documents and fee are received by the Administrator.

4. If the crowdfunding issuer described in subsection 1 wishes to offer the security beyond the initial 1-year period described in subsection 3, the crowdfunding issuer must, before the expiration of such period, submit to the Administrator:

(a) At least one of the following:

(1) A completed Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF) marked “renewal”; or

(2) A cover letter or other document requesting renewal;

(b) A fee in the amount prescribed by subsection 2 of NRS 90.500 to renew the unsold portion of securities for which a filing fee has previously been paid; and

(c) If the amount of securities subject to this section has been increased in accordance with subsection 5 since the initial period described in subsection 3, a fee in the amount prescribed by subsection 2 of NRS 90.500 to cover the increase in the amount of securities.

5. A crowdfunding issuer may increase the amount of securities offered in this State if the crowdfunding issuer, before selling additional securities in this State, submits to the Administrator:

(a) At least one of the following:

(1) Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF) marked “amendment”; or

(2) Any other document describing the transaction; and

(b) A fee in the amount prescribed by subsection 14 of NRS 90.500 to cover the increase in the amount of securities being offered by the crowdfunding issuer.

6. As used in this section, “crowdfunding issuer” means an issuer who offers and sells securities in this State where:

(a) The offering is made under:

(1) Regulation Crowdfunding, 17 C.F.R. Part 227; and

(2) Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933; and

(b) The issuer:

(1) Has its principal place of business in this State; or

(2) Sells 50 percent or more of the aggregate amount of the offering described in paragraph (a) to residents of this State.

Sec. 28. 1. A Tier 2 issuer planning to offer and sell securities in this State shall, not less than 21 calendar days before the initial sale of the securities in this State, submit to the Administrator:

(a) At least one of the following:

(1) A completed Uniform Notice of Regulation A – Tier 2 Offering notice filing form; or

(2) A copy of every document filed with the Securities and Exchange Commission;

(b) If the Tier 2 issuer submits the documents described in subparagraph (2) of paragraph (a), a completed Uniform Consent to Service of Process Form (Form U-2); and

(c) The fee prescribed by subsection 2 of NRS 90.500.

2. The submission required by subsection 1 is effective for 1 year after the date on which the documents and fee are received by the Administrator.

3. If the Tier 2 issuer described in subsection 1 wishes to offer a security beyond the initial 1-year period described in subsection 2, the Tier 2 issuer must, on or before the expiration of such period, submit to the Administrator:

(a) At least one of the following:

(1) A completed Uniform Notice of Regulation A – Tier 2 Offering notice filing form marked “renewal”; or

(2) A cover letter or other document requesting such renewal;

(b) A fee in the amount prescribed by subsection 2 of NRS 90.500 to renew the unsold portion of securities for which the fee described in subsection 2 was paid; and

(c) If the amount of securities subject to this section has been increased in accordance with subsection 4 since the initial period described in subsection 2, a fee in the amount prescribed by subsection 2 of NRS 90.500 to cover the increase in the amount of securities.

4. A Tier 2 issuer may increase the amount of securities offered in this State if the Tier 2 issuer, before offering the additional securities, submits to the Administrator:

(a) At least one of the following:

(1) A completed Uniform Notice of Regulation A – Tier 2 Offering notice filing form marked “amendment”; or

(2) Any other document describing the transaction; and

(b) The fee calculated pursuant to subsection 14 of NRS 90.500 to cover the increase in the amount of securities being offered.

5. As used in this section, “Tier 2 issuer” means an issuer who offers and sells securities in this State where the offerings are made under Tier 2 of Federal Regulation A and:

(a) Section 18(b)(3) and section 18(b)(4) of the Securities Act of 1933;

(b) Section 18(c)(2) of the Securities Act of 1933; or

(c) Both paragraphs (a) and (b).

Sec. 29. 1. An issuer of securities or an agent acting on behalf of the issuer may deliver an offering document over the Internet or by other electronic means or in machine-readable format if:

(a) The offering document:

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

(2) Includes the following statement, “Clarity of text in this document may be affected by the size of the screen on which it is displayed”;

(3) Satisfies any formatting requirements applicable to printed documents, including, without limitation, a requirement relating to font size and typeface;

(4) Is identical in content to a printed version, except for any content relating to:

(I) Electronic-specific instructions or procedures; and

(II) Daily net asset value;

(5) Is delivered as a single, integrated document or file, or as a single package or list when multiple offering documents are delivered;

(6) Provides notices to investors or prospective investors that any document or content that is external to the offering document and is accessed through any hyperlink to the document or content is provided by an external source; and

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

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

(1) Obtains informed consent from the investor or prospective investor to electronically receive the offering document;

(2) Ensures that the investor or prospective investor receives timely, adequate and direct notice when an offering document has been delivered electronically;

(3) Employs safeguards to ensure that delivery of the offering document 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 the offering document and makes such records available on demand by the Administrator.

2. Informed consent to receive offering documents electronically 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 the consent at any time by informing the party to whom the consent was given or, if such party is no longer available, the issuer.

3. Investment opportunities shall not be conditioned on participation in any electronic initiative.

4. As used in this section, “delivery” means that the offering document was conveyed to and received by the investor or prospective investor, or that the storage media in which the offering document was stored is physically delivered to the investor or prospective investor.

Sec. 30. *In addition to any requirement prescribed by section 29 of this regulation, a subscription agreement may be provided by an issuer or an agent acting on behalf of the issuer electronically for review and completion if the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form and:*

1. Before completion of the subscription agreement, the issuer or agent acting on behalf of the issuer reviews with the prospective investor all appropriate documentation related to the prospective investment, including, without limitation, any document or instruction on how to complete the subscription agreement;

2. Mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety before initialing or signing; and

3. *Unless otherwise allowed by the Administrator, a single subscription agreement is used to subscribe a prospective investor in not more than one offering.*

Sec. 31. 1. *An investor or prospective investor who declines to participate in an electronic initiative for offering documents and subscription agreements pursuant to sections 29 and 30 of this regulation, respectively, is not subject to any higher costs for declining to participate in the initiative, except those relating to the actual direct cost of printing, mailing, processing and storing offering documents and subscription agreements. A discount must not be given for participating in the electronic initiative.*

2. *An entity participating in an electronic initiative described in subsection 1 shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers or other selling agents to maintain, written policies and procedures covering the use of electronic offering documents and subscription agreements in accordance with this section and sections 29 and 30 of this regulation, respectively.*

3. *An entity and its contractors and agents having custody and possession of any electronic offering documents, including, without limitation, electronic subscription agreements, shall store such documents in a non-rewritable and non-erasable format.*

4. *This section does not change or waive any other requirement of law concerning the registration or presale disclosure of a securities offering.*

Sec. 32. 1. *In the event of discovery of a security breach, 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 the security breach has been terminated; and

(d) Provide notice of the security breach to:

(1) The investor whose confidential personal information has been improperly accessed in connection with the security breach; and

(2) The Administrator of each state in which an affected investor resides.

2. The compliance of an issuer or its agent with this section after the discovery of a security breach, or any other breach of personal information, does not substitute, or in any way affect, any other requirement or obligation imposed on the issuer or its agent, including, without limitation, any notification requirement.

3. As used in this section, “security breach” means the unauthorized accessing, acquisition or disclosure of any data that compromises the security or confidentiality of personal information maintained by the person or business. The term is limited to systems, technologies or processes that are used in connection with or introduced into a securities offering in order to implement the use of an electronic offering document or an electronic signature.

Sec. 33. 1. *An issuer of securities or an agent acting on behalf of the issuer may provide for the use of electronic signatures if the process by which electronic signatures are obtained:*

(a) Is implemented in compliance with chapter 719 of NRS and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.;

(b) Includes, without limitation:

- (1) An appropriate level of security and assurances of accuracy; and*
 - (2) Any required federal disclosures;*
 - (c) Employs:*
 - (1) An authentication process to establish signer credentials; and*
 - (2) Security features that protect signed records from alteration; and*
 - (d) Provides for the retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer.*
- 2. An initiative for electronic signatures must be expressly opt-in and if an investor or prospective investor opts-in to such an initiative, participation may be terminated at any time.*
- 3. An investment opportunity may not be conditioned on participation in an initiative for electronic signatures.*
- 4. An entity that participates in an initiative for electronic signatures 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.*
- 5. An election to participate in an initiative for electronic signatures may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke such consent at any time by informing the party to whom the consent was given or, if such a party is no longer available, the issuer.*

Sec. 34. *1. The issuer of any security that is offered in this State and which is a covered security pursuant to Rule 506 of Regulation D of the Securities and Exchange Commission, 17 C.F.R. § 230.506, shall make a notice filing by:*

(a) Filing a copy of the most recent Form D, as prescribed by the Securities and Exchange Commission pursuant to 17 C.F.R. § 239.500, with the Administrator within 15 days after the first sale of the security in this State; and

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

2. The notice filing described in subsection 1 is effective for 1 year. If the issuer continues to offer the security in this State after the 1-year period, the issuer must again file the notice filing and fee described in subsection 1.

3. An issuer who is required to make a notice filing pursuant to this section must file with the Administrator a copy of any amendment to the Form D notice described in subsection 1. The Administrator may not charge a fee for the filing of the amendment.

Sec. 35. 1. Every representative of an investment adviser licensed under NRS 90.330 must complete the following continuing education for each reporting period:

(a) Six credits of ethics and professional responsibility offered by an authorized provider, at least three credits of which must cover the topic of ethics; and

(b) Six 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 broker-dealer member of the Financial Industry Regulatory Authority, or its successor, and who complies with the continuing education requirements of the Financial Industry Regulatory Authority, or its successor, is considered to be in compliance with paragraph (b) of subsection 1 so long as the continuing education content of the Financial Industry Regulatory Authority, or its successor, meets all of the following baseline criteria as determined by the North American Securities Administrator Association:

(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 participants demonstrate proficiency in the subject matter of the educational materials.

3. A representative of an investment advisor who was awarded and currently holds a credential that qualifies for an examination waiver under subsection 3 of NAC 90.391 shall be deemed to be in compliance with subsection 1 if 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. Every representative of an investment adviser is responsible for ensuring that the authorized provider reports completion of the continuing education.

5. *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 the excess credits to a subsequent reporting period.*

6. *A representative of an investment adviser who fails to comply with the requirements of this section 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 the investment adviser completes and reports all required continuing education credits for all reporting periods as required by this section. A representative who is CE Inactive at the close of the next calendar year is not eligible for licensing or renewal as an investment adviser.*

7. *The Administrator may, in his or her discretion, waive any requirements of this section.*

8. *A representative of an investment adviser licensed or required to be licensed under chapter 90 of NRS who is registered as a representative of an investment adviser in his or her home state shall be deemed to be in compliance with this section if:*

(a) The representative of an investment adviser’s home state has continuing education requirements that are at least as stringent as the requirements of this section; and

(b) The representative of an investment adviser is in compliance with the home state’s investment adviser representative continuing education requirements.

9. *A representative of an investment adviser who was previously licensed under chapter 90 of NRS and became unlicensed must complete continuing education for all reporting periods that occurred between the time that the representative became unlicensed and when the representative became licensed again under chapter 90 of NRS unless the representative*

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. As used in this section:

(a) “Approved continuing education content” means the materials, whether written, oral or otherwise, that have been approved by the North American Securities Administrators Association, or its designee, and which make up the educational program provided to a representative of an investment adviser.

(b) “Authorized provider” means a person who is authorized by the North American Securities Administrators Association, or its designee, to provide continuing education content.

(c) “Credit” means a unit that has been designated by the North American Securities Administrators Association, or its designee, as at least 50 minutes of educational instruction.

(d) “Home state” means the state in which the representative of an investment adviser has its principal office and place of business.

(e) “North American Securities Administrators Association” includes a committee designated by the Board of Directors of the North American Securities Administrators Association.

(f) “Products and practice content” means approved continuing education content that addresses the continuing skills and knowledge of a representative of an investment adviser relating to financial products, investment features and practices in the investment advisory industry.

(g) “Ethics and professional responsibility” means approved continuing education content that addresses ethical and regulatory obligations of representatives of investment advisers.

(h) “Reporting period” means a 12-month period as determined by the North American Securities Administrators Association. The initial reporting period of an investment adviser with this State commences the first day of the first full reporting period after the individual is licensed or required to be licensed in this State.

(i) “Representative of an investment adviser” means an individual who meets the definition of:

(1) “Representative of an investment adviser” pursuant to NRS 90.278; and

(2) “Investment adviser representative” pursuant to 17 C.F.R. § 275.203A-3.

Sec. 36. 1. A broker-dealer or investment adviser may delay a transaction or disbursement from an account of an older person or vulnerable person or from an account from which an older person or vulnerable person is a beneficiary if:

(a) The broker-dealer, investment adviser or designated reporter reasonably believes, after initiating an internal review of the requested transaction or disbursement and the suspected exploitation, that the requested transaction or disbursement may result in the exploitation of the older person or vulnerable person.

(b) The broker-dealer or investment adviser:

(1) Immediately, but not later than 2 business days after the date of the delayed requested transaction or disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, other than

any party that is reasonably believed to have engaged in the suspected or attempted exploitation of the older person or vulnerable person;

(2) Immediately, but not later than 2 business days after the date of the delayed requested transaction or disbursement, notifies the Administrator of the Securities Division of the Office of the Secretary of State and the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services; and

(3) Continues its internal review of the suspected or attempted exploitation of the older person or vulnerable person, as necessary, and provides status updates to the Administrator of the Securities Division and the Administrator of the Aging and Disability Services Division, respectively, upon request.

2. Any delay of a transaction or disbursement authorized by this section will expire upon the sooner of:

(a) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in the exploitation of an older person or vulnerable person; or

(b) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed a transaction or 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 must expire not more than 25 business days after the date on which the broker-dealer or investment adviser first delayed a transaction or disbursement of the funds unless otherwise terminated or further extended by the Securities Division, Aging and Disability Services Division or an order of a court of competent jurisdiction.

3. A court of competent jurisdiction may enter an order extending the delay of a transaction or the disbursement of funds or may order other protective relief based on the petition of:

(a) The Administrator of the Securities Division or the Administrator of the Aging and Disability Services Division, respectively;

(b) The broker-dealer or investment adviser that initiated the delay under this section; or

(c) Any other interested party.

4. A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with this section shall not be penalized or sanctioned by the Administrator of the Securities Division for a delay in a transaction or disbursement.

5. As used in this section:

(a) "Exploitation" has the meaning ascribed to it in NRS 200.5092.

(b) "Older person" has the meaning ascribed to it in NRS 200.5092.

(c) "Vulnerable person" has the meaning ascribed to it in NRS 200.5092.

Sec. 37. 1. Except as otherwise provided in subsection 2, a broker-dealer may not make or maintain the registration of a sales representative if the registration is for:

(a) A person who is no longer active in the security business of the broker-dealer;

(b) A person who no longer functions as a sales representative; or

(c) The sole purpose of avoiding any applicable examination requirement.

2. A broker-dealer may make or maintain the registration of a sales representative if the registration is for a person who performs legal, compliance, internal audit, back-office

operations or similar responsibilities for the broker-dealer or other sales representative of the broker-dealer.

Sec. 38. *Notwithstanding the Financial Industry Regulatory Authority Rules adopted by reference in NAC 90.321, any sales representative located in and working from this State must be affiliated with an associated registered branch office that is physically located in this State.*

Sec. 39. *1. Before a hearing, the Administrator may issue an order for a prehearing conference.*

2. The order described in subsection 1 must provide:

(a) The time and place of the prehearing conference; and

(b) The issues to be resolved at the prehearing conference.

3. The Administrator may enter any reasonable order governing the conduct of the prehearing conference, including, without limitation, authorizing a party, for good cause shown, to attend the prehearing conference by telephone.

4. If a party is represented by counsel, the counsel must be present at the prehearing conference.

Sec. 40. *1. Except as otherwise provided by the Administrator and subsection 2, the parties to a hearing must, not later than 10 days before the date of the hearing:*

(a) Exchange written lists of witnesses and exhibits; and

(b) Provide a copy of each exhibit.

2. On the date of the hearing, each party must be prepared to identify any exhibit to be admitted by the stipulation of the parties.

Sec. 41. NAC 90.011 is hereby amended to read as follows:

90.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 90.015 to 90.078, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 42. NAC 90.042 is hereby amended to read as follows:

90.042 “Federal covered adviser” means a person who is:

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

Sec. 43. NAC 90.051 is hereby amended to read as follows:

90.051 “Insider” includes a person who:

1. Owns or controls 10 percent or more of ~~the voting~~ :
 - (a) *The voting* stock of a corporation;
 - (b) *The membership interest of a limited-liability company; or*
 - (c) *Any other equity interest in another type of entity;*
2. Is ~~an~~ :
 - (a) *An* officer or director of a corporation; or
 - (b) *A manager or managing member of a limited-liability company; or*
3. Is a spouse or other member of ~~an officer’s or director’s~~ *the* household ~~of~~ :
 - (a) *An officer or director of a corporation; or*
 - (b) *A manager or managing member of a limited-liability company.*

Sec. 44. NAC 90.088 is hereby amended to read as follows:

90.088 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~~ **501(a)(1)-(4), (7) and (8)** of Regulation D of the Securities Act of 1933 . ~~17 C.F.R. § 230.501.~~

Sec. 45. NAC 90.315 is hereby amended to read as follows:

90.315 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 **Internet website of 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.~~

2. The Small Company Offering Registration Form (Form U-7) , ~~and~~ 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), the Uniform Form of Corporate Resolution (Form U-2A), the Uniform Notice of Federal Crowdfunding Offering (Form U-CF) and the Regulation A -Tier 2 notice filing form** may be obtained from ~~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/. 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~~ :

~~(a) The Office of the Administrator~~ ~~by submitting a check payable to the “Secretary of State” in the amount of \$3.~~

~~—2.] ; or~~

~~(b) The Internet website of the Office of the Secretary of State.~~

3. Any form pertaining to the licensing of broker-dealers and sales representatives *and any form relating to branch offices* may be obtained from the *Internet website of 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.~~

~~—3.] 4.~~ The forms prescribed and authorized by the Administrator for use in ~~{Nevada}~~ *this State* are:

~~(a) {The Application for Licensing of a Branch Office (Nevada Form 360-2).~~

~~—(b) The Amendment to Registration of a Branch Office (Nevada Form 360-2A).~~

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

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

~~{(e)}~~ *(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) The Nevada Child Support Statement.

↪ Any of these forms may be obtained from the Office of the Administrator or from the *Internet website of the* Secretary of State . ~~{at the Internet address~~
~~http://sos.state.nv.us/licensing/securities/forms.asp.}~~

Sec. 46. NAC 90.321 is hereby amended to read as follows:

90.321 1. The Administrator hereby adopts by reference *chapters 2000 to 7000, inclusive,* of the ~~{Conduct}~~ *Financial Industry Regulatory Authority* Rules ~~{adopted by the Financial Industry Regulatory Authority as}~~ *which are* 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}~~ *and available, free of charge, on* the Internet ~~{address~~
~~http://finra.complinet.com/finra/}~~ *website of the Financial Industry Regulatory Authority.*

2. The Administrator will periodically review the ~~{Conduct}~~ *Financial Industry Regulatory Authority* 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.

Sec. 47. NAC 90.325 is hereby amended to read as follows:

90.325 Registration ~~{materials}~~ *information* for ~~{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)}~~ *appropriate Financial Industry*

Regulatory Authority examinations may be obtained from the *Internet website of the* Financial Industry Regulatory Authority . ~~1, 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>~~

Sec. 48. NAC 90.327 is hereby amended to read as follows:

90.327 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.

(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~~ Financial Industry Regulatory Authority Rules as adopted by reference in NAC 90.321; or

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

(I) The Securities and Exchange Commission;

(II) ~~A~~ The Financial Industry Regulatory Authority or 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.

Sec. 49. NAC 90.3294 is hereby amended to read as follows:

90.3294 1. ~~The licensing requirements of NRS 90.330 do not apply to a federal covered adviser if the federal covered adviser complies with the requirements set forth in this section.~~

~~2.~~ Except as otherwise provided in subsection ~~3.~~ **2**, 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. *The provisions of this section do not apply to a federal covered adviser that is exempt from the licensing requirements pursuant to paragraph (a) of subsection 1 of NRS 90.340.*

Sec. 50. NAC 90.330 is hereby amended to read as follows:

90.330 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 ~~†~~

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

~~—(2) Any principal†~~ *the appropriate* examination required by the Financial Industry Regulatory Authority for ~~†registration of the applicant.†~~ *a principal.*

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), inclusive, *and paragraphs (f) and (g)* of subsection 1; and

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

Sec. 51. NAC 90.342 is hereby amended to read as follows:

90.342 For the purposes of subsection 5 of NRS 90.390, each licensed broker-dealer shall comply with the provisions of ~~†Rule 3110†~~ *Rules 4511 to 4515, inclusive, and 7440* of the ~~†Conduct†~~ *Financial Industry Regulatory Authority Rules*, as adopted by reference in NAC 90.321, whether or not he or she is a member of the Financial Industry Regulatory Authority.

Sec. 52. NAC 90.345 is hereby amended to read as follows:

90.345 1. The license of a broker-dealer expires on December 31 of each year. A broker-dealer must renew his or her license annually by paying the fee required by NRS 90.360 and, if the provisions of subsection 2 are applicable to the broker-dealer, by filing the documents required by that subsection. Except as otherwise provided in subsection 3, the fee must be paid to and the documents must be filed with the Office of the Administrator on or before December 31.

2. A broker-dealer who is not registered with the Financial Industry Regulatory Authority, or who is not registered under the Securities Exchange Act of 1934 , ~~15 U.S.C. §§ 78a et seq.,~~ must file with the Office of the Administrator:

(a) A written request for renewal of his or her 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 Financial Industry Regulatory Authority must pay the fee required by NRS 90.360 to the Central Registration Depository on or before December 31.

Sec. 53. NAC 90.355 is hereby amended to read as follows:

90.355 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 ~~1~~

~~(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 *appropriate* Financial Industry Regulatory Authority ~~for sales representatives;~~ *examination*; 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. § 78e,~~ 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.

Sec. 54. NAC 90.369 is hereby amended to read as follows:

90.369 The provisions of NRS 90.310 do not apply to a sales representative acting for an issuer effecting offers to sell or sales of securities if:

1. The securities are set forth in subparagraph (3) of paragraph (b) of section 18 of the Securities Act of 1933, ~~15 U.S.C. § 77r(b)(3),~~ or subparagraph (D) of subparagraph (4) of

paragraph (b) of section 18 of the Securities Act of 1933, ~~{15 U.S.C. § 77r(b)(4)(D)}~~ and the sales representative is not paid ~~{}~~ *a 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)}~~

Sec. 55. NAC 90.3745 is hereby amended to read as follows:

90.3745 Each licensed transfer agent shall comply with the provisions of ~~{Rule 3110}~~ *Rules 4511 to 4515, inclusive, and 7440* of the ~~{Conduct}~~ *Financial Industry Regulatory Authority Rules*, as adopted by reference in NAC 90.321, whether or not the transfer agent is a member of the Financial Industry Regulatory Authority.

Sec. 56. NAC 90.392 is hereby amended to read as follows:

90.392 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)}~~; *a Uniform Branch Office Registration Form (Form BR) with the Central Registration Depository;*

(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 Uniform Branch Office Registration Form (Form BR)*, the applicant shall, within

30 days after the change ~~to file an Amendment to Registration of a Branch Office (Nevada Form 360-2A)~~:

(a) *File an updated Uniform Branch Office Registration Form (Form BR) with the Central Registration Depository; and pay*

(b) *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.

Sec. 57. NAC 90.3925 is hereby amended to read as follows:

90.3925 1. A person who files ~~an application~~ *a Uniform Branch Office Registration Form (Form BR)* pursuant to NAC 90.392 must designate the branch office as an office of supervisory jurisdiction if required to do so by the requirements of the Financial Industry Regulatory Authority, regardless of whether he or she is a member of that Authority.

2. ~~A manager for~~ *Every registered broker-dealer must employ at its principal office and at each branch office must be in this State at least one person designated to act in a supervisory capacity* and licensed with the Division as a principal.

3. If ~~the~~ *a* branch office is not designated as an office of supervisory jurisdiction, ~~the manager~~ *a supervisor* need not be located at any office for which he or she is given supervisory responsibility. ~~In any such case, the applicant must specify in writing to the Division the name of each associated person designated as the manager in charge.~~

Sec. 58. NAC 90.3945 is hereby amended to read as follows:

90.3945 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)~~ *Uniform Branch Office Registration Form (Form BR) with the Central Registration Depository.*

Sec. 59. NAC 90.413 is hereby amended to read as follows:

90.413 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~~ *to 90.500 , inclusive,* and NAC 90.420 ~~+~~ *, 90.440 and 90.460.*

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.

Sec. 60. NAC 90.495 is hereby amended to read as follows:

90.495 1. ~~{Except as otherwise provided in this section,}~~ *If* a person ~~{who}~~ claims ~~{an}~~ *a statutory* exemption from the registration requirement of NRS 90.460 *and if the person is required to file a notice with the Administrator in order to claim the exemption, the person 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 (e).....	\$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
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~~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

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

~~3. An~~ *Regardless of whether an* exemption from registration ~~not listed in this section does not require~~ *requires* 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~~ *the* exemption is on the person claiming the exemption.

Sec. 61. NAC 90.500 is hereby amended to read as follows:

90.500 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.

Sec. 62. NAC 90.510 is hereby amended to read as follows:

90.510 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 order of the Administrator.*

Sec. 63. NAC 90.516 is hereby amended to read as follows:

90.516 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.

Sec. 64. NAC 90.534 is hereby amended to read as follows:

90.534 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;}~~ *this State*; and

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

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

Sec. 65. NAC 90.550 is hereby amended to read as follows:

90.550 **1.** Any party to a proceeding before the Administrator is entitled to be represented by counsel. ~~{A}~~

2. Before filing an answer, 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}~~ **comply with Nevada Supreme Court Rule 42, including, without limitation:**

(a) Filing an application for admittance under the Rule with the Nevada Supreme Court;

(b) Associating with an active member of the State Bar of Nevada as counsel of record ~~{H}~~;

and

(c) Receiving the approval of the Nevada Supreme Court to appear before the Administrator pursuant to the Rule.

3. An active member of the State Bar of Nevada shall file with the Administrator a copy of the motion to associate filed with the Nevada Supreme Court pursuant to Supreme Court Rule 42.

Sec. 66. NAC 90.560 is hereby amended to read as follows:

90.560 **1.** ~~{Pleadings}~~ **Initial pleadings** before the Administrator must be entitled complaint and answer.

2. ~~{Within 20 days after service of the complaint upon a respondent, he or she}~~ **The complaint described in subsection 1 must be served with a summons which sets forth:**

(a) The location for filing an answer;

(b) The person representing the Division in the proceedings; and

(c) A statement that:

(1) An answer must be received not later than 20 days after service of the complaint and summons; and

(2) Failing to answer will result in a default order on the complaint and may result in an award of any relief sought in the complaint.

3. *The respondent shall file ~~with the Administrator~~ an answer to the complaint ~~not~~ later than 20 days after service of the complaint and summons upon the respondent, unless an extension of time is granted by the Administrator.* Matters alleged by way of affirmative defense must be separately stated and numbered.

~~3.1~~ 4. *If, after service of the complaint and summons, the respondent fails to answer the complaint in accordance with subsection 3, the Division may file a default order and apply for a judgment on any or all of the claims in the complaint. Upon the filing of a default order, the Administrator shall set the default order for a hearing and determine the appropriate relief based on the complaint.*

5. Except as otherwise provided in NRS 90.800 ~~3~~ and subsection 4, 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.

Sec. 67. NAC 90.565 is hereby amended to read as follows:

90.565 1. Any motion ~~3~~ and any reply thereto, except for a motion or any reply made during a hearing, must:

(a) Be in writing;

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

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

2. *A motion or opposition must not be more than 10 pages in length.*

3. *A reply to any opposition must not be more than 5 pages in length.*

4. 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.

5. 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.

Sec. 68. NAC 90.570 is hereby amended to read as follows:

90.570 1. An original and two legible copies of any pleading, motion, *opposition, reply* or other paper must be ~~filed~~ :

(a) *Filed* with the Administrator ~~H~~ ; and

(b) *Served on all parties to the proceeding.*

2. *A motion must be filed and served in accordance with subsection 1 not later than 20 days before a hearing.*

3. *An opposition to a motion must be filed and served in accordance with subsection 1 not later than 10 days before a hearing.*

4. *A reply to an opposition to a motion must be filed and served in accordance with subsection 1 not later than 5 days before a hearing.*

5. Upon good cause shown, the Administrator may shorten or extend any period of time described in subsection 2, 3 or 4.

6. Any opinion, decision, order, motion , *opposition, reply* 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 ~~Ⓜ~~ , *unless the party consents to accept service by electronic means.*

7. 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.

~~Ⓜ~~ 8. Any document served by the Administrator or any party must contain an acknowledgment or certificate of service.

Sec. 69. NAC 90.585 is hereby amended to read as follows:

90.585 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.

Sec. 70. NAC 90.3864, 90.3866, 90.3868, 90.387, 90.390, 90.515 and 90.532 are hereby repealed.

TEXT OF REPEALED SECTIONS

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

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

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

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

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

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

1. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association and Model Rule 203(a)(2), as adopted by reference in subsections 1 and 2 of NAC 90.3864, are available, free of charge, from the North American Securities Administrators Association, 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 Government Printing Office at the Internet address <http://www.access.gpo.gov/nara/cfr/index.html>.

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

1. The Statement of Policy on Unethical Business Practices of Investment Advisers of the North American Securities Administrators Association, as adopted by reference in subsection 1 of NAC 90.3864;
2. Model Rule 203(a)(2), as adopted by reference in subsection 2 of NAC 90.3864;
3. The provisions of 17 C.F.R. § 275.204-2, as adopted by reference in subsection 3 of NAC 90.3864; and
4. The provisions of 17 C.F.R. § 275.204-3, as adopted by reference in subsection 4 of NAC 90.3864,

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

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

1. Except as otherwise provided in subsection 2, an investment adviser licensed or required to be licensed pursuant to NRS 90.330 shall comply with the provisions of:
 - (a) Model Rule 203(a)(2), as adopted by reference in subsection 2 of NAC 90.3864;
 - (b) 17 C.F.R. § 275.204-2, as adopted by reference in subsection 3 of NAC 90.3864; and
 - (c) 17 C.F.R. § 275.204-3, as adopted by reference in subsection 4 of NAC 90.3864.

2. An investment adviser who has his 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.

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

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.

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

(NRS 90.540, 90.750) An offering is exempt from the registration requirements of NRS 90.460 if:

1. It complies with the requirements of Regulation D of the Securities and Exchange Commission, 17 C.F.R. §§ 230.501 to 230.506, inclusive, except for Rule 504 of that Regulation, 17 C.F.R. § 230.504;

2. A manually signed copy of a notice of sale of securities pursuant to Regulation D (Form D) is filed with the Administrator as provided in 17 C.F.R. § 230.503;

3. A fee of \$300 is paid to the Administrator; and

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

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

1. The securities are set forth in subsubparagraph (D) of subparagraph (4) of paragraph (b) of section 18 of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D); and
2. Within 15 days after the first sale in this State of the security, a notice on Form D, as prescribed by the Securities and Exchange Commission, is filed with the Administrator with a fee of \$300.