

**PROPOSED REGULATION OF THE
ADMINISTRATOR OF THE SECURITIES DIVISION OF THE
OFFICE OF THE SECRETARY OF STATE**

LCB File No. R163-24

July 30, 2024

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

AUTHORITY: § 1, NRS 90.533.

A REGULATION relating to securities; setting forth certain requirements for certain transactions involving an offer to sell or sale of a security to a Nevada certified investor to qualify for an exemption from registration requirements; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal law, with certain exceptions, prohibits a person from engaging in certain activities relating to offering to sell or selling a security unless the security is registered with the Securities and Exchange Commission. (15 U.S.C. § 77e) Existing federal law creates an exemption from this requirement for a security which is part of an issue offered or sold only to persons who are residents of the same state of which the issuer is also a resident and doing business within or, if the issuer is a corporation, incorporated by and doing business within. (15 U.S.C. § 77c(a)(11)) Existing federal regulations set forth: (1) requirements that an issuer must meet to be deemed to be a resident of and doing business within a state where the issuer offers and sells securities; and (2) various other requirements for transactions involving intrastate offers or sales of securities for the transaction to qualify for the exemption from the federal registration requirements. (17 C.F.R. §§ 230.147, 230.147A)

Existing state law prohibits a person from offering to sell or selling any security in this State unless the security meets certain registration requirements or the security transaction is exempt under existing law from the registration requirements. (NRS 90.460) Existing state law creates an exemption from those registration requirements for a transaction involving an offer to sell or sale of a security to a Nevada certified investor if certain conditions are satisfied. Such a transaction is exempt from the registration requirements provided under existing state law if: (1) the transaction meets the requirements for the federal exemption for intrastate offers and sales of securities; (2) the transaction meets any other requirements established by regulations adopted by the Administrator of the Securities Division of the Office of the Secretary of State; (3) the transaction would not result in the Nevada certified investor investing more than 10 percent of the net worth of the investor in securities purchased in such exempt transactions; and (4) the person offering to sell or selling the security first undergoes a criminal background check,

submits certain information to the Administrator and makes certain information available to Nevada certified investors. (NRS 90.530) Existing state law additionally authorizes the Administrator to adopt regulations establishing additional requirements for such exempt transactions. (NRS 90.533)

Section 1 of this regulation requires, for an offer to sell or sale of a security to a Nevada certified investor to qualify for such an exemption, an issuer to: (1) file a notice of the sale of a security to a Nevada certified investor on a form prescribed by the Administrator which includes certain information; and (2) receive a notice of effectiveness from the Administrator. **Section 1** also provides that the reports on the criminal history of the person offering to sell or selling the security that are obtained from the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation are valid for all offerings that occur for 3 years.

Existing state law provides grounds for the Administrator to, by order, deny, suspend or revoke any license, limit the activities of certain persons in activities relating to securities and bar certain persons from employment or association with a licensed broker-dealer or investment adviser. (NRS 90.420) **Section 1** authorizes the Administrator to refuse to issue or revoke a notice of effectiveness for any of the grounds set forth in existing law for such disciplinary action.

Section 1. Chapter 90 of NAC is hereby amended by adding thereto a new section to read as follows:

1. An offer to sell or the sale of a security to a Nevada certified investor qualifies for an exemption from NRS 90.460 and 90.560, if, in addition to the meeting the requirements set forth in subsection 22 of NRS 90.530, the issuer:

(a) Files a notice of the sale of a security to a Nevada certified investor on the form prescribed by the Administrator; and

(b) Receives a notice of effectiveness from the Administrator pursuant to subsection 4.

2. A notice of the sale of a security to a Nevada certified investor filed pursuant to subsection 1 must include, without limitation, the following:

(a) With respect to the issuer and any significant subsidiary:

(1) Its name, address and form of organization;

(2) The state or foreign jurisdiction and date of its organization; and

(3) The general character and location of its business;

(b) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

(1) Name, address and principal occupation for the last 5 years;

(2) The amount of securities of the issuer held by the person as of a specified date within 30 days before the filing of the notice;

(3) The amount of the securities covered by the notice to which the person has indicated an intention to subscribe; and

(4) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected.

(c) With respect to persons covered by paragraph (b), the compensation paid or given, directly or indirectly, during the last 12 months and estimated to be paid during the next 12 months by the issuer together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate;

(d) With respect to a promoter, if such a promoter exists, and if the issuer was organized within the last 3 years:

(1) The information specified in paragraph (b);

(2) The amount paid to the person within that period or intended to be paid; and

(3) The consideration for the payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer;

(f) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed and a description of the plan of distribution of securities that are to be offered;

(g) The estimated cash proceeds to be received by the issuer from the offering;

(h) A description of any pending litigation or proceedings to which the issuer is a party and that materially affect its business or assets, including any litigation or proceeding known to be contemplated by a governmental authority;

(i) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering, if such materials exist;

(j) A copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, as currently in effect;

(k) A statement of financial condition of the issuer as of a date within 4 months before the filing of the notice for each of the 3 fiscal years preceding the date of the statement of financial condition, or for the period of the issuer's and any predecessors' existence if less than 3 years, and, if part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements which would be required if that business were the issuer;

(l) Consent to service of process pursuant to NRS 90.770; and

(m) An affirmative declaration that the transaction qualifies for an intrastate exemption under section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77(c)(a)(11) and Rule 147 or Rule 147A of the Securities and Exchange Commission, 17 C.F.R. § 230.147 or 230.147A.

3. The reports on the criminal history obtained pursuant to subparagraph (1) of paragraph (d) of subsection 22 of NRS 90.530 are valid for all offerings that occur for 3 years.

4. Except as otherwise provided in subsection 5, the Administrator will provide to an issuer a notice of effectiveness within 30 days after the submission of all documentation required to be submitted to the Administrator pursuant to this section and subsection 22 of NRS 90.530.

5. The Administrator may refuse to issue or revoke a notice of effectiveness for any of the grounds set forth in paragraphs (a) to (l), inclusive, of subsection 1 of NRS 90.420.