

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

LCB File No. R070-97

October 1, 1997

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

AUTHORITY: §§ 2, 3, 8, 13 and 18, NRS 90.750; §§ 4, 5 and 10, NRS 90.340; §§ 6, 7 and 10, NRS 90.320; §§ 9 and 17, NRS 90.390; §§ 11 to 15, inclusive, NRS 90.540.

Section 1. Chapter 90 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *“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; 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.

Sec. 3. *“Securities industry personnel” includes, without limitation, broker-dealers, sales representatives, investment advisers, representatives of investment advisers and any other person the administrator designates as securities industry personnel pursuant to a rule or order.*

Sec. 4. *The licensing requirements of NRS 90.330 do not apply to a federal covered adviser if the federal covered adviser:*

1. Has less than 6 clients in this state other than those clients listed pursuant to subparagraph (1) of paragraph (a) of subsection 1 of NRS 90.340; or

2. Files with the administrator Form ADV, as prescribed by the Securities Exchange Commission, and pays to the administrator a fee of \$150.

Sec. 5. *The licensing requirements of NRS 90.330 do not apply to a representative of an investment adviser who is a federal covered adviser if the representative does not have a place of business in this state.*

Sec. 6. *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 or subparagraph (D) of subparagraph (4) of paragraph (b) of section 18 of the Securities Act of 1933, and the sales representative is not paid, directly or indirectly, for soliciting any person in this state; or*

2. *The transactions in this state are limited to only those transactions set forth in subparagraph (2) of paragraph (h) of section 15 of the Securities Exchange Act of 1934.*

Sec. 7. 1. *A broker-dealer who:*

(a) *Is a resident of Canada; and*

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

is exempt from the licensing requirements of NRS 90.310.

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

Sec. 8. 1. *Except as otherwise provided in subsection 3, a federal covered adviser shall not employ, in order to engage in any activity related to the sale of securities in this state, any*

person having a place of business in this state who is suspended or barred from association with a broker-dealer or investment adviser by the administrator.

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

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

Sec. 9. *An investment adviser who has his principal place of business in a state other than this state shall maintain and preserve only such books and records as are required by the state in which the investment adviser maintains his principal place of business, if the investment adviser is licensed in that state and is in compliance with that state's requirements for the preservation of books and records.*

Sec. 10. *1. Securities industry personnel who use the Internet to distribute information on available products and services shall not be deemed to be transacting business in this state for the purposes of NRS 90.310 or 90.330 if the information so distributed:*

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

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

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

(d) Does not involve the rendering of personalized investment advice for compensation;
(e) Is limited to the dissemination of information about a product or service; and
(f) Prominently discloses the affiliation of the sales representative with the broker-dealer or the representative of an investment adviser with the investment adviser.

2. The broker-dealer or investment adviser shall:

(a) Review and approve the content of the information distributed on the Internet;
(b) Specifically authorize the distribution of that information regarding the product or service; and
(c) Recognize that the sales representative or representative of the investment adviser is acting within the scope of his authority.

Sec. 11. *An offering of securities is exempt from the provisions of NRS 90.460 and 90.560 if:*

1. The securities are set forth in subparagraph (2) of paragraph (b) of section 18 of the Securities Act of 1933; and

2. Before the initial offering in this state of the securities:

(a) A copy of the issuer's federal registration statement is filed with the Securities Exchange Commission; or

(b) A notice on Form NF or Form N-9, as prescribed by the administrator, is filed with the administrator with a fee of \$250.

Sec. 12. *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; 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 Exchange Commission, is filed with the administrator with a fee of \$150.*

Sec. 13. 1. *An offer to sell or purchase a security that is made over the Internet, World Wide Web, or other similar proprietary or common carrier electronic system into this state is an offer to sell or an offer to purchase pursuant to NRS 90.830.*

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

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

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

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

Sec. 14. 1. *Any offer to sell or the sale of a security by an issuer in a transaction that meets the requirements of this section is exempt from NRS 90.460 and 90.560 if the following conditions are met:*

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

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

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

2. This exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10 percent or more of any class of its equity securities, any of the issuer's promoters, promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A statement that:

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

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

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

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

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

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

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

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

8. The issuer shall file with the administrator a notice of the transaction, a consent to service of process, a copy of the general announcement, and a fee of \$250 within 15 days after the first sale in this state.

Sec. 15. *1. An offer to sell a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or its equivalent for the security is exempt from NRS 90.460 and 90.560 if:*

(a) The issuer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The offeror shall comply with the following requirements:

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

NOTICE

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

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

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

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

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

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

Failure to comply with these requirements will not result in the loss of the exemption from the requirements of NRS 90.460 and 90.560, but is a violation of the Securities Act of 1933, is

actionable by the administrator under NRS 90.630 and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

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

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

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

Sec. 16. 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 90.15 to 90.081, inclusive, *and sections 2 and 3 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 17. NAC 90.390 is hereby amended to read as follows:

90.390 1. Unless he is exempt from registration under the Investment Advisers Act of 1940, an investment adviser who is not registered under that Act, and who takes or retains custody of securities or money of a client, shall maintain net capital of not less than \$20,000 or a tangible net worth of not less than \$35,000.

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

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

(b) Deferred charges;

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

(d) In the case of a natural person, the value of his personal property which is not readily marketable and the fair market value of his homes, furnishings and automobiles, less any indebtedness secured by such property, to the extent that the indebtedness is not greater than the carrying value of the property;

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

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

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

Sec. 18. NAC 90.403 is hereby amended to read as follows:

90.403 1. The Small Corporate Offering Registration, (Form U-7), as adopted by the North American Securities Administrators Association, may be used as a prospectus for the purposes of any requirement for a prospectus contained in this chapter or chapter 90 of NRS if the minimum offering price per share is equal to or more than [~~\$5~~] *\$1* per share. An offering

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

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

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