IN THE SUPREME COURT OF THE STATE OF NEVADA

POPE INVESTMENTS, LLC, a Delaware Limited Liability Company; POPE INVESTMENTS II, LLC, a Delaware Limited Liability Company; and ANNUITY & LIFE REASSURANCE, LTD., an Unknown Limited Company,

Appellants

vs.

CHINA YIDA HOLDING, CO., A Nevada Corporation,

Respondent.

Nos.: 79807/80709
(**Consolidated**)

On Appeal from the Eighth Judicial District Court
State of Nevada, Clark County
The Honorable Nancy Alf
District Court Case No. A-16-746732-P

CHINA YIDA HOLDING, CO.'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities that must be disclosed by NRAP 26.1(a). These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Respondent China Yida Holding, Co., is a Nevada corporation. It is wholly owned by Mr. Minhua Chen and Mrs. Yanling Fan.

2. Holland & Hart, LLP is the only law firm that has appeared, both at the District Court and before this Court, on behalf of China Yida Holding, Co. The following attorneys from Holland & Hart LLP have appeared on behalf of China Yida Holding, Co.:

a. J. Robert Smith, Esq.

b. Joshua M. Halen, Esq.

c. Andrea Champion, Esq.

d. Susan M. Schwartz, Esq.

DATED this 9th day of December, 2020

Holland & Hart LLP

/s/J. Robert Smith

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES

ROUTING STATEMENT

This matter is not presumptively retained by the Supreme Court under NRAP 17(a) and not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).

ISSUES PRESENTED FOR REVIEW

1. Whether the District Court properly granted China Yida Holding Co. ("CYH") summary judgment after finding as a matter of law that CYH's shareholders were statutorily barred, pursuant to NRS 92A.390(1)(a), from pursuing dissenter's rights following a proposed merger when: (i) CYH's shares are a "covered security" by virtue of the shares being traded on the NASDAQ Capital Market; and (ii) CYH's Board of Directors did not pass a resolution expressly waiving its rights under NRS 92A.390(1)(a) and granting its shareholders the right to dissent.

2. Whether the District Court properly exercised its discretion in granting CYH's motion for attorney's fees based on CYH's NRCP 68 Offer of Judgment.

STATEMENT OF THE CASE

This is a dissenter's rights action brought pursuant to NRS Chapter 92A. On April 13, 2016, CYH publicly announced in filings with the Securities and Exchange Commission ("SEC") that it had entered into an Amended and Restated Agreement and Plan of Merger. Appellants Pope Investments, LLC; Pope Investments II, LLC; and Annuity & Life Reassurance, Ltd. (collectively "Pope"), asserted the right to dissent from CYH's proposed merger under NRS 92A.300, et. seq., and sought a fair value determination. On November 15, 2016, Respondent China Yida Holding, Co. ("CYH"), filed a petition for fair value determination, as required by NRS 92A.490(1). (Vol. 1, App. 0001-6.)

After the close of discovery, on May 22, 2019, CYH filed its Motion for Summary Judgment. (Vol. 1, App. 0036-50.) CYH argued that Pope was statutorily barred from pursuing dissenter's rights pursuant to NRS 92A.390(1). That statute codifies the market-out exception. (Vol. 1, App. 0042-49.) Generally, shareholders of a corporation have the right to dissent from certain corporate actions, including a merger, and seek a fair value determination of their shares by the District Court. The market-out exception, however, precludes a shareholder from pursuing dissenter's rights if the corporation's shares are a "covered security" that is traded on a national market system. The undisputed evidence established that CYH's shares were traded on the NASDAQ Capital Market at all relevant times, that the NASDAQ Capital Market is a national security market, and shares traded therein are covered securities. (Vol. 1, App. 0046-48; Vol. 2, App. 0421-36; Vol. 2, App. 0442.) The evidence also established that CYH's Board of

Directors ("Board") did not pass any resolution expressly waiving the market-out exception and granting its shareholders the right to dissent. (Vol. 2, App. 0448-54.)

The District Court granted CYH's motion for summary judgment on September 9, 2019. (Vol. 3, App. 0567.) The District Court held that CYH's shares are a covered security and that CYH's Board did not pass a resolution expressly providing its shareholders the right to dissent. (Vol. 3, App. 0575.) The District Court rejected Pope's argument that CYH's Board's subsequent approval of the Merger Agreement constituted a resolution of the Board to expressly provide dissenter's rights to its shareholders. (Vol. 3, App. 0575.)

After granting the motion for summary judgment, CYH moved for attorney's fees based on its Offer of Judgment that Pope rejected. (Vol. 6, App. 1195-1205.) CYH only requested fees incurred after the Offer of Judgment was served. *Id.* The District Court granted CYH's motion for attorney's fees, holding that CYH's NRCP 68 Offer of Judgment was made in good faith as to timing and amount and that Pope's rejection was grossly unreasonable. (Vol. 8, App. 1645-50.) The District Court awarded CYH its fees in the amount of $41,053.50. (Vol. 8, App. 1647-50.)

Pope filed its Notice of Appeal of the District Court's order granting the motion for summary judgment on October 9, 2019. (Vol. 6, App. 1377-79.) Pope filed its Notice of Appeal of the District Court's order granting CYH's motion for attorney's fees on February 26, 2020. (Vol. 8, App. 1656-1658.)

STATEMENT OF THE FACTS

A. CYH'S CORPORATE HISTORY & MERGER

CYH is a Nevada domestic corporation. (Vol. 1, App. 0069.) CYH developed, operated, managed, and marketed tourist destinations at various locations within the People's Republic of China. (Vol. 1, App. 0075.) At all relevant times herein, CYH's shares were listed and traded on the NASDAQ Capital Market under the ticker symbol "CNYD." (Vol. 1, App. 0052; Vol. 1, App. 0072; Vol. 1, App. 0103; Vol. 3, App. 0570.)

On March 10, 2016, CYH issued a press release announcing its entry into a Merger Agreement with China Yida Holding Acquisition Co. ("Acquisition"). (Vol. 1, App. 0156-59; *see also* Vol. 1, App. 0162-0166.) The day before the announcement of the Merger (March 9, 2016), CYH's shares closed at a price of $1.97 per share on the NASDAQ Capital Market. (Vol. 1, App. 0052; Vol. 1, App. 0168; Vol. 1, App. 0241.) In fact, between 2014 and the first quarter of 2016, CYH's shares traded on the NASDAQ Capital Market at a market high of $7.24 and market low of $1.35. (Vol. 1, App. 0241.)

On April 13, 2016, CYH filed its Form 8-K with the SEC publicly disclosing that CYH and Acquisition entered into an Amended and Restated Agreement and Plan of Merger ("Amended Merger Agreement"). (Vol. 2, App. 0315; Vol. 2, App. 0320-77.) The Amended Merger Agreement declared that

Acquisition "shall be merged with and into [CYH], the separate corporate existence of Acquisition shall thereupon cease and [CYH] shall continue as the surviving company of the Merger." (Vol. 2, App. 0334.) As a result of the Merger, "all of the property, rights, privileges, powers and franchises of [CYH] and Acquisition shall vest in the Surviving Company [CYH] and all debts, liabilities and duties of the [CYH] and [Acquisition] shall become the debts, liabilities and duties of [CYH]." (Vol. 2, App. 0335.) CYH provided in the Amended Merger Agreement that "[e]ach Company Share other than Excluded Shares that is issued and outstanding immediately prior to the Effective Time shall be canceled and cease to exist and automatically converted, subject to Section 2.7(b), into the right to receive $3.32 in cash without interest . . . ." (Vol. 2, App. 0336.)

To ensure the fairness to its shareholders of the $3.32 per share price, and prior to the announcement of the Merger, CYH obtained a Fairness Opinion by Roth Capital Partners, an investment banking and financial services provider for securities and brokerage activities, which was disclosed in the Schedule 14A filed with the SEC. (Vol. 1, App. 0198-214; Vol. 2, App. 0297-99; Vol. 1, App. 0052.) Roth concluded that the price of $3.32 per share to be received by CYH's shareholders pursuant to the Merger Agreement "is fair from a financial point of

view to such holders . . . ." (Vol. 2, App. 0299; *see also* Vol. 1, App. 0198-214; Vol. 2, App. 0297-99; Vol. 1, App. 0052.)

CYH's Board of Directors did not provide a resolution expressly providing shareholders with dissenter's rights regardless of Nevada's laws. (Vol. 1, App. 0053.) The Amended Merger Agreement and associated documents did not expressly provide CYH shareholders with the right to dissent. (*See* Vol. 2, App. 320-77.) Rather, the merger documents provided by CYH informed its shareholders of Nevada's dissenter's rights statutory scheme, that the shareholders may have the right to dissent, and encouraged each shareholder to consult with legal counsel regarding Nevada's statutorily right to dissent. (Vol. 1, App. 185; Vol. 1, App. 189; Vol. 1, App. 245.) Further, CYH provided its shareholders with a copy of NRS Ch. 92A, (Vol. 2, App. 0305-12), which is required when shareholders may have dissenter's rights. *See* NRS 92A.410(1). The documents provided to CYH shareholders informed them that "Nevada law provides that you [*i.e.* a shareholder] may dissent from the disposal of assets." (Vol. 1, App. 0189.) Similarly, the Amended Merger Agreement merely provided that to the extent a shareholder had "***validly exercised and not lost its rights to dissent from the Merger pursuant to the NRS"*** such shareholder would be paid fair value of his or her shares "***in accordance with NRS***." (Vol. 2, App. 0337) (emphasis added).

The Amended Merger Agreement also called for a special meeting of CYH's shareholders for a vote on the Merger. (Vol. 1, App. 0173; Vol. 1, App. 0052.) The shareholders would be notified of the special meeting if they held shares of the company as of the record date (Vol. 1, App. 0173.), which was set as the close of business on May 24, 2016 (Vol. 1, App. 0052; Vol. 1, App. 0171-74; Vol. 1, App. 0224-227). The shareholders of record as of May 24, 2016 were then notified of the Special Meeting of Shareholders to take place on June 28, 2016 for the sole purpose of voting on the merger. (Vol. 1, App. 0052.) The notice informed the shareholders that the June 28, 2016 meeting was only for shareholders to "consider and vote on a proposal to approve the Amended and Restated Agreement and Plan of Merger…." (Vol. 1, App. 0173.) In fact, the only corporate action needed to approve the Merger was the approval of the shareholders at the Special Meeting, where the only item during the Meeting was the consideration and voting by the shareholders on the Amended Merger Agreement. (Vol. 1, App. 0224; Vol. 2, App. 0342.)

On June 14, 2016, before the shareholders meeting, Pope sent a letter to CYH notifying the company of its intent to demand payment for their shares if the proposed merger transaction was approved at the special meeting of shareholders. (Vol. 2, App. 0379-81.)

B. SPECIAL MEETING OF CYH'S SHAREHOLDERS

At the Shareholders Special Meeting on June 28, 2016, CYH's shareholders approved and adopted the Amended Merger Agreement. (Vol 1, App. 0052; Vol. 2, App. 0383-84.) The June 28, 2016 meeting, was held only for CYH shareholders to review and vote on the Amended Merger Agreement, and "only holders of record of [CYH's] Common Stock on the record date [were] entitled to vote at the special meeting." (Vol. 1, App. 0224.) The Amended Merger Agreement was not approved by CYH's Board at the June 28, 2016 Special Meeting of Shareholders of CYH. (Vol 1, App. 0224; Vol. 2, APP. 0383; Vol. 1, App. 0052.) The minutes of the Special Shareholder Meeting list CYH's Board as "in attendance," but a quorum was called only for shareholders, and only one vote occurred during the meeting, the vote by the shareholders on the approval of the Amended Merger Agreement. (Vol. 2, App. 0383; Vol. 1, App. 0224.) Importantly, CYH's Board of Directors did not vote during the Shareholders' Meeting. (Vol. 2, App. 0383.) Nor did CYH's Board pass a resolution stating that CYH shareholders had a right of dissent. (Vol. 1, App. 0053.)

C. POST-SHAREHOLDER'S MEETING ACTIVITY

On July 8, 2016, CYH's shares were removed from listing on the NASDAQ Capital Market, pursuant to 17 C.F.R. §240.12d2-2(a)(3). (Vol. 2, App. 0386.)

On July 25, 2016, Pope sent CYH a signed "Demand for Payment Form" notifying CYH that it "elects to exercise dissenter's rights pursuant to Section 92A.300 to 92A.500, inclusive, of the Nevada Revised Statutes (the "NRS") with respect to the Merger, and demands payments for all shares of Company capital stock beneficially owned by the undersigned." (Vol. 2, App. 0388-93.)

Disappointed with the amount CYH paid for their shares, on September 21, 2016, Pope served CYH with a "Dissenter's Estimate of Fair Value and Demand for Payment" pursuant to NRS 92A.480. (Vol. 2, App. 0402-04.) Remarkably, and inexplicably, Pope estimated the fair value of CYH's shares to be $23.28 per share (Vol. 2, App. 0403), approximately seven times more than the publicly traded price of CYH's shares (Vol. 1, App. 0052; Vol. 1, App. 0168; Vol. 1, App. 0241). Thus, instead of accepting the $3.32 per share, Pope asserted that its shares were worth $23.28 per share, which equated to $21,767,306.41 for Pope's shares. (Vol. 2, App. 0404.) Even more remarkable, Pope asserted that its shares were worth $23.28 per share despite CYH's shares being publicly traded on the NASDAQ Capital Market at $1.97 the day before the announcement of the Merger (Vol. 1, App. 0052; Vol. 1, App. 0168; Vol. 1, App. 0241).

D. PROCEDURAL HISTORY

On November 15, 2016, CYH commenced this action pursuant to NRS 92A.490 (Vol. 1, App. 0001-6), which requires the subject corporation to petition a

district court to determine the fair value of the company's shares within 60 days after a demand is received. CYH filed a First Amended Petition on January 6, 2017, (Vol. 1, App. 0018-22), and Pope filed its Response to the First Amended Complaint on February 6, 2017 (Vol. 1, App. 0023-28). Pope asserted no affirmative defenses or counterclaims in its Response. (Vol. 1, App. 0023-28.)

The parties filed their Joint Case Conference Report on June 6, 2017 (Vol. 1, App. 0030), and engaged in discovery for approximately two years (Brief at 8). During discovery, CYH disclosed Christian Bendixen Haven, ASA, as both its testifying expert and one of its rebuttal experts. (Vol. 3, App. 0460; *see also* Vol. 6, App. 1231-85; Vol. 3, App. 0488-91.) Mr. Haven reported that Pope's expert report was "***not*** a valuation, and its conclusions should not be used as such in a court of law." (Vol. 3, App. 0488 (emphasis in original).) Mr. Haven reported that the fair value of CYH's shares was $2.80 per share. (Vol. 6, App. 1239.) During discovery, the evidence had placed the value of CYH's shares at the following prices:

- $1.62, representing the average price Pope paid for CYH's shares;[1]
- $1.97, representing the closing price of CYH's shares on the NASDAQ Capital Market the day before the announcement of the Merger;[2]

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[1] Vol. 2, App. 406.

[2] Vol. 1, App. 0052; Vol. 1, App. 0168; Vol. 1, App. 0241.

- $2.80, representing the fair value of CYH's shares as determined by Christian Bendixen Haven, ASA;[3]
- $3.32, representing the fair value of CYH's shares as determined by Roth Capital Partners;[4]

Pope and its expert, who used unreliable methods, are the only ones to have valued CYH's shares above $3.32 in 2016. (Vol. 3, App. 0488; *see also* Vol. 1, App. 0241.)

After the close of discovery, CYH moved for summary judgment. (Vol. 1, App. 0036-50.) CYH argued that Pope was statutorily barred from pursuing dissenter's rights pursuant to NRS 92A.390(1), which codifies the market-out exception. (Vol. 1, App. 0042-49.) The market-out exception provides that shareholders whose shares are publicly traded do not have the right to dissent from corporate actions. *See* NRS 92A.390(1)(a). The rationale behind the market-out exception is that a publicly traded security establishes a fair value of the shares based on what a willing buyer and seller would pay for such shares on the public market, and if shareholders are dissatisfied with the corporation's action, they can sell their shares on that public market. (*See* Vol. 2, App. 0443-48 (explaining rationale and legislative history of NRS 92A.390(1)(a)). CYH presented

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[3] Vol. 6, App. 1239.

[4] Vol. 2, App. 0299; *see also* Vol. 1, App. 0198-214; Vol. 1, App. 0297-99; Vol. 1, App. 0052.

undisputed evidence that CYH's shares were traded on the NASDAQ Capital Market and that shares traded on the NASDAQ Capital Market were "covered securities" pursuant to 15 U.S.C. §77r and the regulations promulgated under that statute. (Vol. 1, App. 0046-48; Vol. 2, App. 0421-36; Vol. 2, App. 0442.) CYH also presented undisputed evidence that CYH offered each shareholder cash in exchange for shares. (Vol. 1, App. 0048-49; Vol. 2, App. 0421-36; Vol. 2, App. 0442.) Finally, contrary to Pope's argument, CYH provided evidence that CYH's Board of Directors never passed any resolution expressly waiving the market-out exception and expressly providing its shareholders with the right to dissent. (Vol. 1, App. 0036-50; Vol. 1, App. 0053; Vol. 2, App. 0421-36; Vol. 2, App. 0442).

At the conclusion of the hearing on CYH's motion for summary judgment, the District Court granted CYH's motion, finding that CYH's Board did not pass a resolution waiving the market-out exception and expressly giving CYH shareholders the right to dissent. (Vol. 3, App. 0565.) In its written Order, the District Court held that "the CYH Board of Directors did not expressly provide its stockholders with dissenter's rights or that CYH was waiving the market-out exception." (Vol. 3, App. 0575.) Additionally, the District Court held that the Amended Merger Agreement did not qualify as a resolution by CYH's Board and did not provide shareholders with the right to dissent. (Vol. 3, App. 0576.) Further, the District Court held that CYH's Notices provided to shareholders were

not resolutions and did not provide shareholders with the right to dissent. (Vol. 3, App. 0576.) Pope filed its Notice of Appeal of the District Court's Order on October 9, 2019. (Vol. 6, App. 1377.)

On June 13, 2019, after CYH filed its motion for summary judgment and before the opposition was due (Vol. 8, App. 1648), CYH served Pope with an offer of judgment pursuant to NRCP 68 (Vol. 2, App. 0418-19). CYH offered to have judgment entered against it and in favor of Pope in the amount of $10,000.00, inclusive of all prejudgment interest, attorney's fees, and costs. (Vol. 2, App. 0418-19.) Pope did not respond to the offer within 14 days of service, thus rejecting the offer pursuant to NRCP 68(e). (Vol. 6, App. 1207; Vol. 8, App. 1648.)

After the District Court entered its Order granting CYH's motion for summary judgment, CYH timely moved for attorney's fees, pursuant to NRS 18.010 and NRCP 54 and 68. (Vol. 6, App. 1195-1205.) CYH's motion for attorney's fees argued that CYH's offer was made in good faith as to timing and amount and Pope's rejection was unreasonable given the clear application of NRS 92A.390(1)(a). (Vol. 6, App. 1200-01.)

After a hearing on the motion for attorney's fees (Vol. 8, App. 1616-44), the District Court entered its Order granting CYH's motion on January 29, 2020 (Vol. 8, App. 1645-50). The District Court reviewed the *Beattie* factors and held that "at

the time the offer was made … CYH's Offer was reasonable and in good faith as to timing and amount, and [Pope's] decision to reject the offer was unreasonable." (Vol. 8, App. 1649.) The District Court also reviewed *Brunzell* factors and held that CYH's request for attorney's fees in the amount of $41,053.50, representing the amount of fees incurred after Pope's rejection of the offer, was reasonable and justified. (Vol. 8, App. 1649-50.) The District Court thus awarded CYH's attorney's fees in the amount of $41,053.50. (Vol. 8, App. 1650.) Pope filed its notice of appeal of the District Court's Order granting CYH's motion for attorney's fees on February 26, 2020. (Vol. 8, App. 1656.)

SUMMARY OF THE ARGUMENT

Pope never had a statutory right to dissent from CYH's Merger. Accordingly, the District Court did not err in granting CYH's motion for summary judgment.

Pope has never contested that CYH's shares are a covered security, thus triggering the market-out exception codified in NRS 92A.390(1)(a). Further, CYH's Board never passed a resolution expressly waiving the market-out exception and providing its shareholders with the right to exercise dissenter's rights. Moreover, contrary to Pope's contention, CYH's Board did not vote and approve the Amended Merger Agreement at the Special Shareholders Meeting. And regardless, a merger plan, on its own, does not constitute a resolution.

Accordingly, the District Court correctly concluded that Pope was statutorily barred from pursuing dissenter's rights and properly granted CYH summary judgment.

The District Court also did not abuse its discretion in granting CYH's motion for attorney's fees after Pope rejected CYH's Offer of Judgment. CYH's offer was made in good faith as to timing and amount, and the fees incurred after the offer was served were reasonably and necessarily incurred.

ARGUMENT

A. THE DISTRICT COURT DID NOT ERROR IN GRANTING SUMMARY JUDGMENT.

It is undisputed that CYH's shares are covered securities that were traded on the NASDAQ Capital Market at all relevant times before the Merger. Further, it is undisputed that CYH's shareholders were offered cash for their shares. The only question before this Court is whether CYH's Board of Directors passed a resolution "expressly" providing its shareholders with the right to pursue dissenter's rights despite the market-out exception. Because no such resolution exists, Pope argues that the June 28, 2016 Special Shareholders Meeting constituted (1) a vote by the board of directors, and (2) expressly provided CYH shareholders the right to dissent. The District Court rejected both of these arguments, and Pope's Brief fails to establish otherwise.

CYH agrees that a grant of summary judgment is subject to de novo review before this Court and generally agrees with the remaining representations made by Pope in its Brief regarding the legal standard for a motion for summary judgment (Brief at 10-11), with one addition. "The nonmoving party is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.2d 588, 621 (1992)). Pope's arguments regarding the existence of a resolution by CYH's Board restoring the right to dissent to shareholders is nothing more than speculation and conjecture, insufficient to create a genuine issue of material fact.

1. It Is Undisputed That NRS 92A.390(1)(a), The Market-Out Exception, Applies To CYH And The Merger.

Generally, NRS 92A.380 provides dissenter's rights to shareholders of corporations when corporations take certain corporate actions. NRS 92A.380(1). That statute, however, qualifies such rights by providing they exist ***"[e]xcept as otherwise provided in NRS 92A.370 and 92A.390***." *Id.* (emphasis added). NRS 92A.390 expressly prohibits a shareholder from pursuing dissenter's rights if the corporation's stock is a "covered security." As NRS 92A.390 states in relevant part:

> 1. ***There is no right of dissent with respect to a plan of merger***, conversion or exchange ***in favor of stockholders of any class or series which is:***

> ***(a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. §77r(b)(1)(A) or (B), as amended***;
>
> * * *
>
> unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

NRS 92A.390(1) (emphasis added). This is known as the market-out exception. *See City of N. Miami Gen. Emps. Ret. Plan v. Dr Pepper Snapple Grp., Inc.*, 189 A.3d 188, 201 (Del. Ch. 2018) (explaining that the market-out exception, as codified in the Delaware Corporate Code § 262(a), provides that shareholders are not entitled to dissenter's rights when shares are listed on a national securities exchange).[5]

15 U.S.C. §77r(b)(1)(A) defines the term "covered securities" to include any security that is traded on a national market system designated pursuant to 15 U.S.C. §78k-1(a)(2). 15 U.S.C. §78k-1(a)(2), authorizes the SEC to promulgate rules "to facilitate the establishment of a national market system . . . ." The SEC

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[5] This Court has applied Delaware corporate law to dissenter's rights cases arising under different provisions of NRS Ch. 92A. *See Smith v. Kisorin USA, Inc.*, 127 Nev. 444, 450, 254 P.3d 636, 641 (2011) (citing *Enstar Corp. v. Senouf*, 535 A.2d 1351 (Del. 1987)); *Am. Ethanol, Inc. v. Cordillera Fund, L.P.*, 127 Nev. 147, 153, 252 P.3d 663, 667 (2011) (looking to Delaware corporate law in determining fair value in dissenter's rights case) (citing *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206 (Del. 2005)).

added the NASDAQ Capital Market to its list of national market systems on April 24, 2007, pursuant to its authority provided by 15 U.S.C. §78k-1(a)(2). 17 C.F.R. §230.146(b)(1)(v).

Because CYH's shares were traded on the NASDAQ Capital Market, a national market system, at all relevant times, CYH's shares are a covered security and the market-out exception codified at NRS 92A.390(1)(a) applies. The District Court held that CYH's shares are a "covered security." (Vol. 3, App. 0574.) Both at the District Court and before this Court, Pope has not disputed that CYH's shares are a covered security, pursuant to 15 U.S.C. §77r(b)(1)(A). (Brief at 18; Vol. 2, App. 0426.)

Furthermore, Pope admitted before the District Court, and admits before this Court, that CYH shareholders were paid cash for their shares. (Brief at 7, 18; Vol. 2, App. 0426.) Pursuant to NRS 92A.390(3), known as the exception to the exception, shareholders are entitled to dissenter's rights even if the market-out exception applies if the shareholders of the surviving corporation are required to accept anything other than cash or shares in exchange for their shares. *See Krieger v. Wesco Fin. Corp.*, 30 A.3d 54, 57 (Del. Ch. 2011) (discussing Delaware's appraisal rights statutes, which are similar to Nevada's, and explaining the exception to the market-out exception). Because the shareholders of CYH were offered cash in the amount of $3.32 per share as a result of the Merger (Vol. 1,

App. 0198-214),[6] and as the District Court held, the exception to the exception provided for in NRS 92A.390(3) is inapplicable in this case. (Vol. 3, App. 0574.)

Pope argues at length that the second clause of NRS 92A.390(1) applies to restore dissenter's rights. Pope asserts that CYH's Board passed a resolution at the June 28, 2016 Special Shareholders Meeting adopting the Amended Merger Agreement, which itself provided shareholders with the right to dissent. (Brief at 18.) Pope also argues that the market-out exception is unfair, conflicts with the intent behind dissenter's rights statutes, and must be rejected. As to the first point, as will be discussed below, CYH's Board did not approve the Amended Merger Agreement at the June 28, 2016 meeting and never passed a resolution restoring dissenter's rights. As to Pope's second contention, the application of NRS 92A.390(1) is clear and unambiguously applies in this case. Pope's arguments regarding the alleged unfairness of the market-out exception lie with the Legislature, not with this Court.

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[6] *See also* Vol. 1, App. 0205; Vol. 1, App. 0205-214; Vol. 2, App. 0297-99; Vol. 1, App. 0052.

2. The Amended Merger Agreement Was Not An Express Resolution By CYH's Board, Did Not Expressly Provide Shareholders With The Right To Dissent, And Did Not Expressly Waive The Market-Out Exception.

i. *NRS 92A.390(1) Requires an Express Resolution from a Board of Directors Providing Shareholders with Dissenter's Rights.*

NRS 92A.390(1) states that the market-out exception deprives shareholders of the right to dissent from corporate action, "unless… the *resolution* of the board of directors approving the plan of merger, conversion or exchange *expressly* provide otherwise." (emphasis added). Pope attempts to equate the Amended Merger Agreement with a resolution by the Board expressly providing them with a right to dissent regardless of the market-out exception contained in NRS 92A.390(1)(a). (Brief at 14-15.) But CYH's Board did not vote at the Special Shareholders Meeting. Further, the Amended Merger Agreement is not a resolution expressly providing dissenter's rights. In fact, the Amended Merger Agreement does not even come close to expressly providing for dissenter's rights and/or waiving the provisions of NRS 92A.390(1)(a).

"In interpreting a statute, [courts] begin with its plain meaning and consider the statute as a whole, awarding meaning to each word, phrase, and provision, while striving to avoid interpretations that render any words superfluous or meaningless." *Knickmeyer v. State ex. rel. Eighth Judicial Dist. Ct.*, 408 P.3d 161,

166 (Nev. Ct. App. 2017) (citing *Haney v. State*, 124 Nev. 408, 411-12, 185 P.3d 350, 353 (2008)). While Pope argues that courts are to liberally construe dissenting rights statutes, the "canon of statutory construction providing for a liberal construction of a certain type of statute is not a license for the court to rewrite the statute in a manner that will defeat its overall purpose." *DeSimone v. Coatesville Area Sch. Dist.*, 248 F. Supp. 2d 387, 391 (E.D. Pa. 2003); *see also Outboard Marine Corp., v. Sup. Ct.*, 124 Cal. Rptr. 852 (Ct. App. 1975) ("A liberal construction does not permit [a court] to disregard or enlarge the plain provisions of the statute, nor does it go beyond the meaning of the words used when they are clear and unambiguous.") (citation omitted)).

A shareholder's right to dissent is governed solely by statute. *Am. Ethanol, Inc. v. Cordillera Fund, L.P.*, 127 Nev. 147, 151, 252 P.3d 663, 667 (2011) ("NRS 92A.300-.500 governs the rights of stockholders who dissent from certain corporate actions, such as mergers."); *see also Ala. By-Prods. Corp. v. Cede & Co. ex rel. Shearson Lehman Bros.*, 657 A.2d 254, 258 (Del. 1995) (stating that the appraisal remedy is entirely a creature of statute); *Heilbrunn v. Sun Chem. Corp.,* 150 A.2d 755, 758 (Del.1959) ("[T]he appraisal right is given to the stockholder in compensation for his former right at common law to prevent a merger.")

The plain language of NRS 92A.390(1) requires a resolution from a corporation's board of directors expressly and unequivocally waiving the

entitlements of NRS 92A.390(1)(a) and expressly providing its shareholders with dissenter's rights. The second clause of NRS 92A.390(1) has three requirements: 1) that the board of directors pass a resolution concerning the issue of dissenter's rights; 2) that the resolution expressly waive the corporation's rights provided by NRS 92A.390(1)(a)-(c); and 3) that the resolution expressly provide shareholders dissenter's rights. None of the three required conditions have been established in the record by Pope.

ii. *CYH's Board Did Not Vote, Nor Did They Participate, at the June 28, 2016 Special Meeting of the Shareholders.*

Pope's incorrect argument that it had the right to dissent from the Merger rests on two faulty propositions: first, that CYH's Board approved the Amended Merger Agreement at the June 28, 2016 Special Shareholders meeting (Brief at 17); and second, that the Amended Merger Agreement "expressly" provided shareholders with the right to dissent (*id.* at 14). Both propositions are untrue.

CYH's Board did not vote, approve, or participate during the June 28, 2016 Special Shareholder Meeting. As discussed above, the Special Shareholder Meeting was held just for CYH shareholders. The Amended Merger Agreement called for a special meeting of CYH's shareholders for a vote on the Merger. The Special Shareholders Meeting Minutes list the shareholders as present and quorum was called to determine whether enough shareholders were present. (Vol. 2, App. 0383.) Consistent with the description in the Amended Merger Agreement (Vol.

1, App. 0171-74), the only vote called for was the shareholder's vote on the Amended Merger Agreement. (Vol. 2, App. 0383; *see also* Vol. 1, App. 0188 (explaining that all shareholders of record are entitled to vote at the special meeting); Vol. 1, App. 0224 ("[O]nly holders of record of [CYH] Common Stock on the record date are entitled to vote at the special meeting.")). Importantly, CYH's Board is listed as in attendance at the Meeting, but did not vote during the Meeting. Only the shareholders voted at the meeting.

In order to restore dissenter's rights pursuant to NRS 92A.390(1), Pope must show that despite the market-out exception, CYH's Board passed a resolution that expressly granted its shareholders the right to dissent. Pope relies solely on the June 28, 2016 Special Shareholders Meeting, arguing that after the shareholders approved the Amended Merger Agreement, CYH's Board "proceeded to authorized, approve and adopt the Plan of Merger…. The Plan of Merger was approved and adopted by the resolution of" CYH's Board. (Brief at 17.) Pope's attempt to equate the approval and adoption of the Plan of Merger by the Board – after it was approved by the shareholders – with a resolution by the Board expressly providing its shareholders with dissenter's rights is misplaced. Not only is the resolution approving and adopting the Plan of Merger silent about dissenter's rights, but CYH's Board did not vote or participate at the shareholder's June 28, 2016 Meeting. (Vol. 2, App. 0383.) As testified to by Mr. Chen, CYH's Board

never passed a resolution expressly providing its shareholders with the right to dissent. (Vol. 1, App. 0053.) And Pope has never pointed to another resolution passed by CYH's Board that discusses dissenter's rights. Accordingly, the District Court did not err in ruling that CYH's Board did not expressly provide its shareholders with dissenter's rights or that CYH waived the market out exception. (Vol. 3, App. 0575.) Accordingly, Pope remained statutorily barred from pursuing dissenter's rights.

iii. *The Amended Merger Agreement Does Not Qualify as a Resolution Providing Shareholders with the Right to Dissent.*

Despite Pope failing to provide a resolution restoring the right to dissent, Pope claims that CYH's Amended Merger Agreement restored or retroactively granted the right to dissent. (Brief at 17, 18-20.) The District Court rejected this argument, relying on the plain language of NRS 92A.390 that the Amended Merger Agreement does not constitute a resolution by the Board. (Vol. 3, App. 576.) Pope's argument also conflicts with NRS 92A.390(1). As noted above, the plain language of NRS 92A.390(1) and its use of "expressly" means that the board of directors must pass a resolution that clearly and unmistakably provides dissenter's rights to its shareholders despite the shareholder's being precluded from doing so under the market-out exception. Black's Law Dictionary defines express to mean "[c]learly and unmistakably communicated; stated with directness and clarity." *Express*, Blacks' Law Dictionary (11th ed. 2019). Attempting to equate

provisions from the Amended Merger Agreement, that contains over 80 sections, with a resolution by the Board that clearly and unmistakably grants its shareholders the right to dissent is absurd. In fact, the provisions in the Amended Merger Agreement regarding dissenter's rights are anything but a clear and unmistakable waiver of the market-out exception and grant of dissenter's rights to its shareholders. The reality is that CYH's Board never approved a resolution expressly (clearly and unmistakably) providing dissenter's rights. (Vol. 1, App. 0053; Vol. 2, App. 0383.) Thus, Pope's arguments that the Amended Merger Agreement provided dissenter's rights is legally incorrect.

Additionally, NRS 92A.390(1)'s use of the term "resolution" unequivocally means that a company's plan of merger cannot be used as the mechanism for providing dissenter's rights to shareholders when they would have none. NRS 92A.100 provides a definition and requirements for a plan of merger. "If the Legislature has independently defined any word or phrase contained within a statute, [courts] must apply that definition wherever the Legislature intended it to apply because '[a] statute's express definition of a term controls the construction of that term no matter where the term appears in the statute.'" *Knickmeyer*, 408 P.3d at 166 (quoting *Williams v. Clark Cnty. Dist. Attorney*, 118 Nev. 473, 485, 50 P.3d 536, 544 (2002)). The Legislature could have said that a board of directors can provide for dissenter's rights in its plan of merger or by a resolution; however, it

did not. Instead, it used only the term "resolution." Additionally, "resolution" is not defined to include the term "plan of merger." *See* NRS 92A.100. The term "resolution" is defined by Black's Law Dictionary to mean "a main motion that formally expresses the sense, will, or action of a deliberative assembly." *Resolution*, Blacks' Law Dictionary (11th ed. 2019). The plain language of NRS 92A.390(1) requires a board of directors to vote on and pass a resolution concerning only the granting of dissenter's rights. A plan of merger, on its own, cannot provide dissenter's rights.

Pope also claims that CYH's Proxy Statement and Notice of Meeting given to shareholders provided for dissenter's rights. Pope, however, does not claim that CYH's Board passed the Proxy Statement via a resolution. Because CYH's Board did not pass a resolution dedicated to the issue of granting dissenter's rights, Pope has no right to a determination of fair value.

Pope further argues that it is inequitable to permit a corporation to represent that its shareholders may have the right to dissent in its merger plan, only for the corporation to later claim that the market-out exception bars the right to dissent. Pope creates a hypothetical to support its position that the District Court and CYH's construction of NRS 92A.390(1) is incorrect. In the hypothetical, Pope offers that a corporation would be able to create a plan of merger "with dissenter's rights an essential component of its terms, mislead shareholders about the

availability of those rights, and actually approve a merger which included those rights in the merger plan, yet escape responsibly of litigating those rights." (Brief at 19.)

First, as discussed below, CYH never passed a resolution or provided in any documents, including the Amended Merger Agreement, that shareholders would be provided the right to dissent despite the market-out exception. Second, and more importantly, Pope's hypothetical is contrary to Nevada law as a shareholder cannot vote for a plan of merger and then exercise the right to dissent. NRS 92A.420(1)(b) states:

> [i]f a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares:…
>
> (b) Must not vote, or cause or permit to be voted, any of his or her shares of such class or series in favor of the proposed action.

Accordingly, Pope's argument that a shareholder may be duped into approving a plan of merger based on the promise of dissenter's rights is not possible as a shareholder cannot vote for a plan of merger and dissent from the same merger.

iv. *Pope's Attempt to Shift the Burden is Contrary to NRS 92A.390(1).*

Pope incorrectly seeks to shift the burden onto CYH that it must affirmatively state that no dissenter's rights are available. Pope argues, "[n]owhere in the Plan of Merger or the summary regarding that Plan does CHINA YIDA state

that section 92A.390 deprives shareholders of…" the right to dissent. (Brief at 20.) Pope's argument to shift the burden to CYH to affirmatively state that no right to dissent exists both conflicts with the statutory language and with the record.

As has been discussed above, NRS 92A.390 provides that no right to dissent exists from a corporate action when the corporation's shares are a covered security, "*unless*" a resolution by the board of directors provides otherwise. NRS 92A.390(1)(a). Reviewing NRS 92A.390(1) as a whole, the Legislature provided that no right to dissent exists if one of the three conditions are met, and then sought to restore the right *only if* the board of directors expressly passed a resolution restoring such rights.

Construing NRS 92A.390 as drafted by the Legislature, NRS 92A.390(1) creates a presumption, that no right to dissent exists, and then provides an exception, "unless… the resolution of the board of directors approving the plan of merger… expressly provide otherwise." As used in NRS 92A.390(1), the term "unless" is used to create an exception only if a condition is met, i.e., the right to dissent does not exist, unless the board passes a resolution providing otherwise. *See generally*, *Walton v. People*, 451 P.3d 1212, 1216 (Colo. 2019) (holding that statute "creates exceptions to this presumption by use of the word 'unless.'"); *Ugrin v. Town of Cheshire*, 54 A.3d 532, 544 (Conn. 2012) (construing the word "unless" as providing for exceptions to the rule described in statute); *People v.*

Perkins, 703 N.W.2d 448, 460 (Mich. 2005) ("By using the term 'unless,' it demonstrated its intent to create an exception. 'Unless' is an exclusionary term."). Pope's reading of the statute seeks to flip it on its head, requiring a board to invoke the market-out exception via a resolution if the subject shares are a covered security. Such a reading violates the plain terms of the statute and renders "unless" superfluous. CYH is not required to expressly invoke the market-out exception, and Pope's attempt to require otherwise is incorrect.

Pope, as the party seeking to restore dissenter's rights, has the burden to establish that CYH's Board passed a resolution expressly restoring the right to dissent. Pope failed to meet this burden both in the District Court and before this Court. CYH's Board never passed a resolution restoring dissenter's rights and no representation to the shareholders restored the right to dissent.

In an extension of its burden shifting argument, Pope argues that the District Court did not examine whether CYH intended to give its shareholders the right to dissent and the supposed "logical" inferences associated with the Board's actions.[7]

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[7] While Pope argues that remand is proper to further develop the factual record before the District Court to support its arguments, Pope did not request or comply with NRCP 56(d) in requesting additional discovery to oppose the motion for summary judgment. Pope had the opportunity to conduct discovery related to all aspects of the Merger and in fact filed its opposition believing, incorrectly, that it created an issue of fact. It is improper for Pope to argue before this Court that it is entitled to additional discovery when it failed to make the argument below. *See Dermody v. City of Reno*, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997)

(Brief at 19-20.) In fact, the District Court did not examine CYH's Board's intent, because such intent is irrelevant NRS 92A.390(1). The only relevant question after a court determines that the market-out exception applies is whether the board of directors either did or did not pass a resolution restoring dissenter's rights. The record establishes that CYH's Board did not pass a resolution restoring dissenter's rights. (Vol. 1, App. 0053.) Thus, the District Court completed its analysis under NRS 92A.390(1) upon such a finding and there is no need to remand for further factual development.[8]

v. ***No Resolution or Representation From CYH's Board Expressly Provided that Shareholders had the Statutory Right to Dissent from the Merger.***

Finally, even if a plan of merger approved by the board at the shareholders meeting could constitute a "resolution" as Pope claims, Pope's arguments still fail.

("Arguments raised for the first time on appeal need not be considered by this [C]ourt.") (citations omitted); *see also Avila v. Travelers Ins. Co.*, 651 F.2d 658, 660 (9th Cir. 1981) (explaining that a party opposing summary judgment claiming that he did not have sufficient time to present opposition "normally cannot be successfully made for the first time on appeal").

[8] In concluding their burden shifting argument, Pope speculates as to why it thinks CYH would provide the right to dissent, arguing that its lack of financial controls and reliability of its books and records motivated it to provide dissenter's rights to gain approval of the Merger. (Brief at 21.) As discussed above, the argument that a corporation includes the right to dissent in a plan of merger to obtain the approval of shareholders is illogical and is contrary to NRS 92A.420(1)(b), thus Pope's speculation is irrelevant.

Pope's argues that the Amended Merger Agreement expressly granted shareholders the right to dissent fails to meet the second requirement of NRS 92A.390(1) as CYH's Amended Merger Agreement and other merger documents did not expressly waive the rights provide by NRS 92A.390(1)(a). NRS 92A.390(1) requires a board of directors of a corporation subject to NRS 92A.390(1)(a) seeking to provide dissenter's rights to shareholders to pass a resolution to "expressly provide otherwise." CYH's Board was required to expressly provide *otherwise*, *i.e.* that despite the statutory rights provided by NRS 92A.390(1)(a), CYH expressly waived those rights and provided dissenter's rights to its shareholders.

NRS 92A.390(1)'s use of the terms "expressly" and "otherwise" is a requirement for a corporation to waive the market-out exception to avoid any confusion regarding the applicability of dissenter's rights. The District Court held that the Amended Merger Agreement does not qualify as a resolution by the Board, that CYH did not waive the right to dissent, and that Pope lacked the right to dissent. (Vol. 3, App. 0576-77.) There is nothing in the record that shows that CYH's Board expressly waived the statutory protections afforded to it by NRS 92A.390(1)(a). Pope's misinterpretation of NRS 92A.390(1) that omits the waiver requirements again renders the second clause of the statute meaningless and must

be rejected. Thus, Pope has failed to establish the requirements of NRS 92A.390(1) and had no right to dissent.

As to the third requirement of NRS 92A.390(1), CYH's Amended Merger Agreement and other merger documents did not expressly provide for dissenter's rights notwithstanding the market-out exception codified at NRS 92A.390(1)(a). In fact, the Amended Merger Agreement retained the market-out exception as the Agreement stated that only shareholders who *validly exercised* and not lost the right to dissent will not receive the Per Share Merger Consideration, but will be entitled to payment *in accordance with NRS Ch. 92A*. As the Amended Merger Agreement states:

> (c) Statutory Dissenters Rights. Notwithstanding anything in this Agreement to the contrary, any Company Shares that are issued and outstanding immediately prior to the Effective Time and are held by a Company Shareholder (each, a "Dissenting Shareholder") ***who has validly exercised and not lost its rights to dissent from the Merger pursuant to the NRS (collectively, the "Dissenting Shares") shall not be converted into or exchangeable for or represent the right to receive the Per Share Merger Consideration (except as provided in this Section 2.7(c)), and shall entitle such Dissenting Shareholder only to payment of the fair value of such Dissenting Shares as determined in accordance with the NRS***. If any Dissenting Shareholder shall have effectively withdrawn (in accordance with the NRS) or lost the right to dissent, then upon the occurrence of such event, the Dissenting Shares held by such Dissenting Shareholder shall cease to be Excluded Shares, and shall be cancelled and converted into and represent the right to receive the Per Share Merger Consideration at the Effective Time, pursuant to Section 2.7(a)(ii).

(Vol. 2, App. 0337) (emphasis added).

Thus, the Amended Merger Agreement did not provide shareholders any additional rights from those set forth in the NRS. Rather, the Amended Merger Agreement simply explained that if a shareholder validly holds and exercises such rights, then they are entitled to the fair value of their shares in accordance with the NRS. But significantly, a shareholder cannot validly exercise dissenter's rights if they did not have the right to dissent in the first place pursuant to NRS 92A.390(1)(a). Moreover, the language that a shareholder would be paid only in "accordance with the NRS" would necessarily include the market-out exception contained in NRS 92A.390(1)(a). In fact, because NRS 92A.390(1) states that shareholders of a publicly traded company have no right to dissent, any judicial appraisal proceeding performed "*in accordance with the NRS"* would result in finding that CYH's shareholders had no right to dissent. Because NRS 92A.390(1) provides that shareholders of publicly traded companies do not have dissenter's rights, the Amended Merger Agreement did not provide shareholders any additional rights, including the right to dissent. The District Court confirmed such a reading, and Pope has never offered any rationale for "in accordance" language contained in the Amended Merger Agreement. Accordingly, the provision upon which Pope relies does nothing to support its position that the Board expressly provided shareholders with dissenter's rights.

In addition, CYH's Notice to Shareholders further confirms that CYH shareholders, including Pope, were informed that they may have dissenter's rights in accordance with NRS Ch. 92A, but there was no explicit granting of dissenter's rights or a disregard of NRS 92A.390(1)(a).[9] (Vols. 1 & 2, App. 0169-312.) The Notice to Shareholders simply repeated Nevada law that shareholders "have a statutory right to dissent from the Merger and demand payment of the fair value of [their] shares of Company Common Stock *as determined in a judicial appraisal proceeding in accordance with Chapter 92A* (Section 300 through 500 inclusive) of the NRS…. Shareholders seeking to exercise their statutory right of dissent are encouraged to seek advice from legal counsel." (Vol. 1, App. 0185.) The Notice to Shareholders also stated that shareholders may dissent and further encouraged them to seek advice from legal counsel. (Vol. 1, App. 0185; Vol. 1, App. 0189.) And the fact that the Proxy Statement identified "Section 300 through 500" of NRS 92A, necessarily included the market-out exception codified in NRS 92A.390(1)(a). (Vol. 1, App. 0185.)

Pope's arguments that the right to dissent did not exist until the Amended Merger Agreement was approved by the shareholders at the June 28, 2016 meeting

[9] For the reasons stated above, a Notice to Shareholders is not a "resolution" of a board of directors just as a plan of merger is not a resolution.

is also inconsistent with NRS 92A.420(1)(a). Pope argues that as a result of the Special Shareholders Meeting and the approval of the Amended Merger Agreement, CYH waived NRS 92A.390(1)(a) and the shareholders gained the right to dissent. However, NRS 92A.420(1)(a) requires that a shareholder wishing to dissent must submit its notice of intent to dissent before the shareholders meeting on the plan of merger. How could Pope comply with NRS 92A.420(1)(a) and legally start the dissenter's rights process if CYH had not provided Pope with the right to dissent? The short answer is that it could not. CYH would have had to grant Pope and the other shareholders the right to dissent before the shareholder's vote on the Merger. Again, Pope cannot rely on the June 28, 2016 Special Shareholders Meeting as its "resolution" by CYH's Board expressly granting the right to dissent. As Pope makes no other arguments that CYH's Board granted them the right to dissent, and the record establishes that no such event took place, Pope cannot overcome the market-out exception.

Pope also relies on the fact that a copy of NRS Ch. 92A is attached to the Notice to support their argument (Brief at 15); however, CYH was required to provide a copy of these statutes, which were attached to the Notice of Shareholder Meeting (Vol. 1, App. 0305-12.) NRS 92A.410(1) states:

> [i]f a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are, are not or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic corporation concludes

> that dissenter's rights are or may be available, a copy of NRS 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those record stockholders entitled to exercise dissenter's rights.

The documents informed Pope that they may have dissenter's rights and encouraged them to seek the advice of legal counsel. (Vol. 1, App. 0185; Vol. 1, App. 0189.) In providing copies of NRS Ch. 92A, CYH did not represent that the shareholders had the legal or valid right to exercise the rights outlined therein. (Vol. 2, App. 0305-12.) CYH followed Nevada law by merely providing that its shareholders *may* have dissenter's rights and provided them a copy of NRS Ch. 92A. CYH did not expressly state that its shareholders do or do not have dissenter's rights as such statements could expose the company to liability. *See Krieger*, 30 A.3d at 59 (discussing generally breaches of fiduciary duties by board of directors for informing shareholders that they do not have dissenter's rights when such rights existed) (citing *Berger v. Pubco Corp.*, 976 A.2d 132 (Del. 2009)). Instead of providing affirmative statements as to the shareholder's rights, it was the responsibility of CYH's shareholders to seek legal advice regarding the availability of dissenter's rights provided by NRS Ch. 92A.

Further, Pope argues that CYH and its attorneys could have affirmatively stated that no right to dissent exists based on the market-out exception. (Brief at 20.) This argument misses the mark for two reasons. First, as discussed above, NRS 92A.410(1) permits a corporation to inform its shareholders that they may

have the right to dissent and does not require an affirmative position on dissenter's rights. CYH complied with NRS 92A.410(1) by informing its shareholders of the right to dissent and encouraged each of them to seek legal counsel who should have informed them of all provisions of NRS Ch. 92A, including the market-out exception. (Vol. 1, App. 0185; Vol. 1, App. 0189.) Second, no case, published or unpublished, from this Court has interpreted or applied any provision of NRS 92A.390, including the market-out exception. Informing shareholders of the right to dissent and telling them that they may have the right to dissent while encouraging them to seek legal advice, and then litigating the issue of the market-out exception was the more prudent approach with the lack of decisional law on the issue and CYH should not be punished for such an approach. As explained by the Delaware Chancery Court:

> When disclosure is required about an unsettled question of law, a disclosure document can express the filer's view. *See Gen. DataComm Indus., Inc. v. State of Wis. Inv. Bd.*, 731 A.2d 818, 820 (Del. Ch. 1999). The defendants had strong statutory bases for concluding that appraisal rights were not available, but recognized the absence of specific decisional law on point. The defendants therefore expressed their own belief and, after the plaintiff filed suit, noted the plaintiff's contrary view.

Krieger, 30 A.3d at 59–60. CYH's disclosures informed its shareholders of the right to dissent, but did not expressly or implicitly grant them the right to dissent, nor did it waive the market-out exception. Pope's attempt to imply some waiver or wrongdoing on the part of CYH is without support.

Ultimately, Pope's selective interpretation of the Amended Merger Agreement and other merger documents is incorrect. None of the statements in Proxy Materials or the Amended Merger Agreement are clear and unequivocal statements granting dissenter's rights as NRS 92A.390(1) requires. CYH's Board did not pass a resolution waiving the market-out exception and expressly restoring the right to dissent. The Amended Merger Agreement simply repeated Nevada law regarding dissenter's rights, without affirmatively concluding one way or the other on whether a dissenting shareholder could continue to maintain dissenting rights even if such action was barred by NRS 92A.390(1)(a). Moreover, the Amended Merger Agreement is not equivalent to a resolution by the Board expressly providing for dissenter's rights notwithstanding the market out exception. Thus, the statements in the Proxy Materials and Amended Merger Agreement simply informed shareholders of their rights under NRS Ch. 92A and advised them to seek advice from legal counsel. Contrary to Pope's representations in its Brief, these issues were presented to the District Court and the District Court found that CYH's Board did not pass a resolution expressly providing shareholders with the right to dissent. (Vol. 1, App. 0053; Vol. 2, App. 0383.) There are no factual issues to clean up at the District Court level as Pope suggests. (Brief at 22.) Because Pope has failed to provide a resolution from CYH's Board of Directors expressly waiving the statutory benefits provided by NRS 92A.390(1)(a) and providing

shareholders with dissenters' rights, the District Court's Order granting the motion for summary judgment must be affirmed.

B. IN LIGHT OF THE CLEAR STATUTORY COMMAND THAT POPE LACKED DISSENTER'S RIGHTS, ITS REJECTION OF THE OFFER OF JUDGMENT WAS UNREASONABLE, AND THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY'S FEES TO CYH.

A district court's decision awarding attorney's fees "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Attorney General v. NOS Commc'ns*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004) (quotation marks and citation omitted). In this case, Pope has failed to demonstrate that the District Court abuse its discretion in granting CYH's motion for attorney's fees.

Initially, Pope's argument that the District Court's order granting attorney's fees is in error because the District Court erred in granting summary judgment is incorrect. (Brief at 23.) Pope had no right to dissent from the Merger pursuant to NRS 92A.390(1)(a) and the District Court's order granting summary judgment should be affirmed. Because CYH made its offer of judgment in good faith regarding timing and amount, and Pope's rejection was unreasonable, the District Court's order granting CYH's attorney's fees should also be affirmed.

As discussed in the Statement of Facts, CYH served Pope with an offer of judgment on June 13, 2019, after CYH filed its motion for summary judgment.

(Vol. 2, App. 0418-19.) CYH offered to have judgment entered against it and in favor of Pope in the amount of $10,000. (Vol. 2, App. 0418-19.) Pope did not respond to the offer within 14 days. After the District Court granted CYH's motion for summary judgment, CYH sought to recover the attorney's fees incurred after Pope's rejection of the offer, which amounted to $41,053.50. (Vol. 6, App. 1195-1205.) The District Court considered the *Beattie* factors, and held that CYH's offer was made in good faith as to timing and amount and that Pope's decision to reject the offer was unreasonable. (Vol. 8, App. 1649.) The District Court further considered the *Brunzell* factors and held that CYH's request for attorney's fees was reasonable and justified. (Vol. 8, App. 1649-50.)

1. NRCP 68 And *Beattie* Are Controlling.

Pope makes a threshold argument that corporations should be required to show that a shareholder acted vexatiously, arbitrarily, or in bad faith in asserting dissenter's rights in order to obtain the benefits of NRCP 68, thus departing from the traditional *Beattie* factors. (Brief at 28-29.) Pope then claims that because the District Court held that it did not act in such a manner, the award of fees must be reversed. Pope's argument again conflicts with the statutory language approved by the Legislature.

Nevada Rule of Civil Procedure 68 provides that a party may "serve an offer in writing to allow judgment to be taken in accordance with its terms and

conditions." NRCP 68(a). If the offeree does not accept the offer and thereafter fails to obtain a more favorable judgment in that action, the offeree "must" pay the costs and reasonable attorneys' fees actually incurred by the offeror from the time of the offer. NRCP 68(f)(1)(B).

In awarding attorneys' fees and costs to a successful offeror, this Court considers the following *Beattie* factors: (1) whether the plaintiff brought his claims in good faith; (2) whether the defendant's offer of judgment was reasonable and made in good faith as to both amount and timing; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the attorneys' fees the offeror seeks are reasonable and justified in amount. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

NRS 92A.500(1) requires a district court to assess costs in a proceeding to determine fair value against a corporation, unless the court finds that the "dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment." NRS 92A.500(2) permits a court to assess the legal fees incurred in such a proceeding, against the corporation if it failed to comply with the requirements of NRS 92A.300 to NRS 92A.500, or "[a]gainst either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily,

vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive."

While NRS 92A.500(1)-(5) addresses generally the assignment of costs and fees, NRS 92A.500(6) states that "[t]his section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of NRS 17.117 or N.R.C.P. 68." NRS 92A.500(6) thus makes clear the Legislature's intent that NRS 17.117 and NRCP 68 apply as normally employed in civil litigation and with full force. As this Court stated, "'where one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted, the effect is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute.'" *In re Steven Daniel P.*, 129 Nev. 692, 699, 309 P.3d 1041, 1046 (2013) (quoting *Hassett v. Welch*, 303 U.S. 303, 314 (1938)).

Pope's argument that this Court should incorporate sections 1 and 2 of NRS 92A.500 into section 6 of the statute, and thus incorporate a vexatious or arbitrary standard into NRCP 68, conflicts with the plan language of the statute. The Legislature's incorporation of NRS 17.117 and NRCP 68 and instruction that a party may avail themselves of these rules indicates its intent that these rules operate in their traditional manner in fair value proceedings without any additional requirements. The Legislature could have added the arbitrarily, vexatiously or not

in good faith language to section 6, but decided not to do so. Again, Pope's arguments to change NRS Ch. 92A lie with the Legislature, not this Court.

Furthermore, as this Court has held in other contexts, statutes do not "preclude application of the penalty provisions of NRCP 68…." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006) (discussing NRS 40.655 and holding that it does not preclude the application of NRCP 68). This Court also applies traditional rules concerning NRCP 68, including the *Beattie* factors, even when a statute has a fee shifting provision. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80-81, 319 P.3d 606, 615-16 (2014) (applying *Beattie* factors in construction defect case brought pursuant to NRS Ch. 40, even though NRS 40.655 has fee shifting provisions). Pope's request for a departure from NRCP 68 jurisprudence and for the application of new factors in fair value proceedings is inconsistent with the language of NRS 92A.500(6) and this Court's case law. Accordingly, whether Pope acted arbitrarily, vexatiously or not in good faith is not relevant to the review of the District Court's order granting attorney's fees.

2. The District Court Did Not Abuse Its Discretion In Holding That CYH's Offer Was Reasonable And Pope's Rejection Was Unreasonable.

Applying the traditional framework of NRCP 68 and this Court's case law, it is clear the District Court did not abuse its discretion in awarding CYH's its post-

offer fees. Pope concedes that "the result ultimately achieved by POPE in the district court litigation (so far) was less favorable (barely so) than the additional payment of a penny per share of stock offered by CHINA YIDA." (Brief at 24). Pope takes issue with the timing of the offer of judgment and the finding that its rejection was unreasonable.

Pope attempts to rationalize its decision to reject CYH's offer of judgment in the amount of $10,000 by painting CYH as the unreasonable party in filing its petition with the District Court. (Brief at 26-27.) This argument is a non-starter, as CYH was **required** to file a petition after Pope initiated the dissenter's rights process. NRS 92A.490(1) requires a corporation to file a petition in district court within 60 days of receiving a shareholder's demand. Accordingly, as soon as Pope served its demand pursuant to NRS 92A.480, regardless of the merits of the demand, Nevada law required CYH to file a petition, notwithstanding CYH's shares being a covered security, there being no grant of the right to dissent, and CYH instructing its shareholders to seek legal counsel, who would preassembly have informed his or clients about the market-out exception.

Pope next argues that its rejection of the offer was reasonable given the timing the offer, and accuses CYH of hiding the ball in not raising the market-out exception earlier. (Brief at 25.) Pope's argument is akin to the argument made in *LaForge v. State, University & Community College System of Nevada*, 116 Nev.

415, 997 P.2d 130 (2000), which this Court rejected. In *LaForge*, the appellant argued attorney's fees should not have been awarded because the respondent did not provide notice about the issue preclusion defense and respondent could have filed the motion for summary judgment earlier in the case, thus avoiding extensive discovery costs and attorney's fees. *Id*. at 423, 997 P.2d at 135. In rejecting this argument, this Court stated:

> Upon reviewing the record, we conclude that the district court did not abuse its discretion in applying the *Beattie* factors and awarding attorney's fees to respondents. Respondents' failure to bring the issue preclusion defense earlier did not constitute a withholding of information that rendered appellant's rejection of the offer of judgment reasonable, because respondents did not actually withhold any information about the federal case from appellant. Appellant had just as much information about the federal dismissal as did respondents. Appellant's failure to anticipate respondents' defense does not amount to a withholding of information as occurred in *Trustees*. Therefore, we disagree that the district court abused its discretion in concluding that appellant unreasonably rejected the offer of judgment.

Id. at 423-24, 997 P.2d at 135.

Similar to *LaForge*, the fact that CYH filed its motion for summary judgment after the parties conducted discovery was not averse to Pope. Pope had the opportunity to conduct discovery into all issues regarding the Merger, including the application of NRS 92A.390(1)(a). CYH did not hide the fact that its shares were traded on the NASDAQ Capital Market from Pope, as Pope purchased CYH's shares. Additionally, CYH filed its summary judgment motion and attached 349 pages of exhibits and two declarations to show that Pope had no right

to dissent. (Vols. 1, 2, App. 0036-418.) Further, CYH served its offer of judgment after Pope had the opportunity to conduct discovery and before the opposition to the motion was due, thus providing Pope with the opportunity to review the motion and its discovery and accept the offer before the opposition was due. Pope "had just as much information about" the market out exception as CYH; however, Pope decided to gamble by rejecting the offer. Pope's "failure to anticipate" CYH's legal argument codified in statute did not make CYH's offer unreasonable.

Next, Pope claims that CYH's offer was unreasonable "[i]n light of the vast difference between the valuations assigned by the parties to share value ($3.32 by CHINA YIDA and in excess of $23.00 by POPE)…." (Brief at 27.) Pope's argument is meritless for three reasons. First, where the offeror obtains a judgment more favorable than its offer, the judgment constitutes *prima fasciae* evidence demonstrating the offer of judgment was reasonable and that the offeror should be awarded its fees and costs. *See Santantonio v. Westing-House Broad. Co.*, 30 Cal. Rptr. 2d. 486, 491-93 (Ct. App. 1994). In fact, as one court has correctly pointed out, obtaining a defense verdict strongly undermines a plaintiff's claim that a "$10,000 settlement offer was unreasonable" and that "$10,000, once you've won the case, looks like you're overpaying." *Adams v. Ford Motor Co.*, 132 Cal. Rptr.

3d 424, 431–32 (Ct. App. 2011).[10] CYH made an offer for $10,000, which Pope rejected, and then recovered nothing once summary judgment was granted. Given CYH's offer and the result, the District Court did not abuse its decision in finding the offer reasonable and Pope's rejection unreasonable.

Second, Pope's position would lead to an absurd result. In essence, Pope argues that an offer of judgment must be compared to what the offeree demands, regardless of the merits of the demand and the offeror's evaluation of the case, and that an offer that fails to meet the offeree's demand is *per se* unreasonable. Such a result would render NRCP 68 toothless. If such a rule is to be followed, it would lead to situations where plaintiffs demand $1 million in damages in a routine fender-binder in order to avoid NRCP 68 and its fee-shifting provision. A plaintiff would be permitted to point to its demand, regardless of the merits, and deny a reasonable offer of judgment without fear because it did not meet its demand. Such a rule would defeat the purpose of NRCP 68.

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[10] Similar to Nevada caselaw, the purpose of California's offer of judgment rule "is to encourage settlements, and it 'achieves its aim by punishing a party who fails to accept a reasonable offer from the other party.'" *Santantonio*, 30 Cal. Rptr. 2d at 491 (quoting *Elrod v. Or. Cummins Diesel, Inc.*, 241 Cal. Rptr. 108, 112 (Ct. App. 1987)); *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993) (explaining that purpose of offer of judgment rule is to encourage settlement).

Finally, CYH's demand of $23.00 per share was baseless and could not be relied on in determining whether CYH's offer was reasonable. As discussed in the Statement of Facts, Pope purchased CYH shares between 2008 and 2014 at an average price of $1.62 per share. (Vol. 2, App. 406). During discovery, the evidence had placed the value of CYH's shares at the following prices:

- $1.97, representing the closing price of CYH's shares on the NASDAQ Capital Market the day before the announcement of the Merger;[11]
- $2.80, representing the fair value of CYH's shares as determined by Christian Bendixen Haven, ASA;[12]
- $3.32, representing the fair value of CYH's shares as determined by Roth Capital Partners;[13]

Further, at the time the offer was made on June 13, 2019 (Vol. 2, App. 418), Pope had been served with CYH's expert and rebuttal reports, which both established that Pope's valuation was flawed and over-inflated (Vol. 6, App. 1231-85; Vol. 3, App. 0488-91) and had attended its expert's deposition, where the expert testified that his initial report did not constitute a business valuation. (Vol. 3, App. 515-16) Additionally, CYH had filed its motion for summary judgment establishing that Pope had no right to dissent. While Pope's assertion that it had the right to dissent may not have been made in bad faith, its demand for $23.00 per share was

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[11] Vol. 1, App. 0052; Vol. 1, App. 0168; Vol. 1, App. 0241.

[12] Vol. 6, App. 1239.

[13] Vol. 2, App. 0299; *see also* Vol. 1, App. 0198-214; Vol. 1, App. 0205; Vol. 1, App. 0205-214; Vol. 1, App. 0297-99; Vol. 1, App. 0052.

unreasonable. Accordingly, the District Court did not abuse its discretion in holding that CYH's offer for $10,000 was made in good faith.

Given CYH's legal position that Pope had no right to dissent and was entitled to recover nothing pursuant to NRS 92A.390(1)(a) and that Pope vastly overestimated the value of CYH's shares, CYH's offer of judgment in the amount of $10,000 was reasonable and Pope's rejection was unreasonable.

3. The Amount Of Attorney's Fees Incurred After The Offer Were Reasonable.

"When considering the amount of attorney fees to award, the analysis turns on the factors set forth in *Brunzell*." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 668 (Ct. App. 2018). The *Brunzell* factors are as follows:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 124 P.3d 530, 533 (2005).

Pope concedes factors 1, 2, and 4, and takes issue only with the District Court's holding that CYH's preparation of the motion to strike its expert was necessary, and seeks a reduction in fees in the amount of $9,715.00. (Brief at 30-

31.) As presented by Pope, CYH's continued preparation for trial after the motion for summary judgment was unnecessary as the case was ultimately resolved via a dispositive motion. Pope's hindsight approach to attorney's fees is unpersuasive. At the time CYH's prepared its motion to strike, this case was still scheduled for trial. CYH's attorneys had an ethical obligation to continue to prepare for trial and could not just assume that their motion for summary judgment would be granted, regardless of how clear the application of NRS 92A.390(1) was.

Additionally, CYH's motion was not merely an admissibility issue as Pope suggests. (Brief at 30.) CYH's motion sought to strike Pope's expert pursuant to NRCP 37(c)(1) based on Pope's failure to comply with NRCP 16.1. (Vol. 3, App. 459-69; *see also* Vol. 3, App. 463.) NRCP 37 contains specific sanctions for a party's failure to comply with discovery rules, and CYH sought to enforce those rules with its motion. CYH should not have been required to incur the costs of having its attorneys and expert prepare to address the contentions of an opposing party's expert witness when that expert was not properly disclosed. At the time the motion to strike was prepared by CYH's attorneys, the motion was important to the litigation and the fees incurred were recoverable.

Further, Pope's hindsight approach to determining what fees were reasonable is without merit. Pope would have this Court review every award of attorney's fees based on whether the fees were reasonable after knowing the

disposition of the case and not by determining whether the fees were reasonably incurred at the time. Such an approach has been rejected by other courts when reviewing what costs are recoverable. As explained by the Tenth Circuit Court of Appeals, courts should not employ "'the benefit of hindsight' in determining whether [the requested] costs are reasonably necessary to the litigation of the case." *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1144, 1148 (10th Cir. 2009). Further, courts should not "penalize a party who happens to prevail on a dispositive motion by not awarding costs associated with that portion of discovery which had no bearing on the dispositive motion, but which appeared otherwise necessary at the time it was taken for proper preparation of the case." *In re Patel*, 559 B.R. 534, 539 n.2 (Bankr. N.M. 2016) (quoting *Callicrate v. Farmland Indus., Inc.*, 139 F.3d 1336, 1340 (10th Cir. 1998)).

Such rationale should be employed in this case. While CYH ultimately prevailed on summary judgment, its fees incurred after the summary judgment motion was filed were still necessary to the litigation at the time as the case was still scheduled to proceed to trail. Accordingly, the District Court did not abuse its discretion and its order granting attorney's fees should be affirmed in full.

CONCLUSION

For the foregoing reasons, the District Court's Orders granting summary judgment and awarding attorney's fees should be affirmed, in full.

RESPECTFULLY SUBMITTED this 9th day of December, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, in Times New Roman 14-point font, double spaced.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 12,337 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Holland & Hart LLP, and that on December 9, 2020, I electronically filed and served through the Nevada Supreme Court's E-Filing System (Eflex) a true and correct copy of the above and foregoing **STIPULATION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF**, addressed to the following:

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ADDENDUM

CHAPTER 92A - MERGERS, CONVERSIONS, EXCHANGES AND DOMESTICATIONS

GENERAL PROVISIONS

AUTHORITY, PROCEDURE AND EFFECT

RIGHTS OF DISSENTING OWNERS

GENERAL PROVISIONS

NRS 92A.005 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.092, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2079; A 1997, 726; 1999, 1626; 2001, 1406, 3199; 2003, 3181; 2007, 2702; 2009, 1717; 2011, 2812; 2013, 774)

NRS 92A.007 "Approval" and "vote" defined. "Approval" and "vote" as describing action by directors or stockholders mean the vote by directors in person or by written consent, or action of stockholders in person, by proxy or by written consent.

(Added to NRS by 1997, 726)

NRS 92A.0075 "Articles," "articles of incorporation" and "certificate of incorporation" defined. "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and, unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.1955, 78.209, 78.380, 78.385 and 78.390 and any articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, or 92A.270. Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

(Added to NRS by 2003, 3180)

NRS 92A.008 "Business trust" defined. "Business trust" means:

1. A domestic business trust; or
2. An unincorporated association formed pursuant to, existing under or governed by the law of a jurisdiction other than this State and generally described by NRS 88A.030.

(Added to NRS by 1999, 1626)

NRS 92A.009 "Charter document" defined. "Charter document" means the articles of incorporation of a foreign corporation, whether or not for profit, the articles of incorporation of a domestic corporation and a domestic nonprofit corporation, the articles of organization of a limited-liability company, the certificate of limited partnership of a limited partnership or the certificate of trust of a business trust and all amendments thereto.

(Added to NRS by 2003, 3180)

NRS 92A.010 "Constituent document" defined. "Constituent document" means the articles of incorporation or bylaws of a corporation, whether or not for profit, the articles of organization or operating agreement of a limited-liability company, the certificate of limited partnership or partnership agreement of a limited partnership, or the certificate of trust or governing instrument of a business trust.

(Added to NRS by 1995, 2079; A 2001, 1406, 3199)

NRS 92A.015 "Constituent entity" defined. "Constituent entity" means:

1. With respect to a merger, each merging or surviving entity;
2. With respect to an exchange, each entity whose owner's interests will be acquired or each entity acquiring those interests; and
3. With respect to the conversion of an entity or a general partnership, the entity or general partnership that will be converted into another entity.

(Added to NRS by 1995, 2079; A 2001, 1407, 3199)

NRS 92A.020 "Domestic" defined. "Domestic" as applied to an entity means one organized and existing under the laws of this State.

(Added to NRS by 1995, 2079)

NRS 92A.022 "Domestic business trust" defined. "Domestic business trust" means a business trust formed and existing pursuant to the provisions of chapter 88A of NRS.

(Added to NRS by 1999, 1626)

NRS 92A.025 "Domestic corporation" defined. "Domestic corporation" means a corporation organized and existing under chapter 78, 78A, 78B or 89 of NRS.

(Added to NRS by 1995, 2079; A 1997, 726; 2013, 418, 774)

NRS 92A.027 "Domestic general partnership" defined. "Domestic general partnership" means a general partnership governed by the provisions of chapter 87 of NRS.

(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.030 "Domestic limited-liability company" defined. "Domestic limited-liability company" means a limited-liability company organized and existing under chapter 86 of NRS.

(Added to NRS by 1995, 2079)

NRS 92A.035 "Domestic limited partnership" defined. "Domestic limited partnership" means a limited partnership organized and existing under chapter 87A or 88 of NRS.

(Added to NRS by 1995, 2079; A 2007, 483)

NRS 92A.040 "Domestic nonprofit corporation" defined. "Domestic nonprofit corporation" means a corporation organized or existing under chapter 82 of NRS, including those listed in NRS 82.051.

(Added to NRS by 1995, 2079)

NRS 92A.045 "Entity" defined. "Entity" means a foreign or domestic:

1. Corporation, whether or not for profit;
2. Limited-liability company;
3. Limited partnership; or
4. Business trust.

(Added to NRS by 1995, 2079; A 1999, 1626; 2003, 3181)

NRS 92A.050 "Exchange" defined. "Exchange" means the acquisition by one or more foreign or domestic entities of all an owner's interests or one or more classes or series of an owner's interests of one or more foreign or domestic entities.

(Added to NRS by 1995, 2079)

NRS 92A.055 "Foreign" defined. "Foreign" as applied to an entity means one not organized or existing under the laws of this State.

(Added to NRS by 1995, 2079)

NRS 92A.060 "Limited partner" defined. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(Added to NRS by 1995, 2079)

NRS 92A.070 "Member" defined. "Member" means:

1. A member of a limited-liability company, as defined in NRS 86.081; or
2. A member of a nonprofit corporation which has members.

(Added to NRS by 1995, 2080; A 2001, 1407, 3199)

NRS 92A.073 "Nonprofit cooperative corporation" defined. "Nonprofit cooperative corporation" means a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.

(Added to NRS by 2013, 773)

NRS 92A.075 "Owner" defined. "Owner" means the holder of an interest described in NRS 92A.080 or a noneconomic member of a limited-liability company described in NRS 86.095.

(Added to NRS by 1995, 2080; A 2001, 1407, 3199)

NRS 92A.080 "Owner's interest" defined. "Owner's interest" means shares of stock in a corporation, membership in a nonprofit corporation, the interest of a member of a limited-liability company or a beneficial owner of a business trust, or the partnership interest of a general or limited partner of a limited partnership.
(Added to NRS by 1995, 2080; A 1999, 1626)

NRS 92A.083 "Principal office" defined. "Principal office" has the meaning ascribed to it in NRS 78.010.
(Added to NRS by 2007, 2702)

NRS 92A.090 "Resulting entity" defined. "Resulting entity" means, with respect to a conversion, the entity that results from conversion of the constituent entity.
(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.092 "Senior executive" defined. "Senior executive" means the chief executive officer, chief operating officer, chief financial officer or anyone in charge of a principal business unit or function of a domestic corporation.
(Added to NRS by 2009, 1717)

NRS 92A.098 Notice and other communications. Any notice or other communication sent pursuant to any provision of this chapter may be delivered by electronic transmission pursuant to NRS 75.150.
(Added to NRS by 2011, 2812)

AUTHORITY, PROCEDURE AND EFFECT

NRS 92A.100 Authority for merger; approval, contents and form of plan of merger.
1. Except as limited by NRS 78.411 to 78.444, inclusive, one or more domestic entities may merge into another entity if the plan of merger is approved pursuant to the provisions of this chapter.
2. Except as otherwise provided in NRS 92A.180, the plan of merger must set forth:
(a) The name and jurisdiction of organization of each constituent entity;
(b) The name, jurisdiction of organization and kind of entity or entities that will survive the merger;
(c) The terms and conditions of the merger; and
(d) The manner and basis, if any, of converting the owner's interests of each constituent entity into owner's interests, rights to purchase owner's interests, or other securities of the surviving or other entity or into cash or other property in whole or in part or cancelling such owner's interests in whole or in part.
3. The plan of merger may set forth:
(a) Amendments to the constituent documents of the surviving entity; and
(b) Other provisions relating to the merger.
4. The plan of merger must be in writing.
(Added to NRS by 1995, 2080; A 1997, 726; 2003, 3181; 2005, 2200)

NRS 92A.105 Authority for conversion; approval, form and contents of plan of conversion.
1. Except as limited by NRS 78.411 to 78.444, inclusive, one domestic general partnership or one domestic entity, except a domestic nonprofit corporation, may convert into a domestic entity of a different type or into a foreign entity if a plan of conversion is approved pursuant to the provisions of this chapter.
2. The plan of conversion must be in writing and set forth the:
(a) Name of the constituent entity and the proposed name for the resulting entity;
(b) Jurisdiction of the law that governs the constituent entity;
(c) Jurisdiction of the law that will govern the resulting entity;
(d) Terms and conditions of the conversion;
(e) Manner and basis, if any, of converting the owner's interest of the constituent entity or the interest of a partner in a general partnership that is the constituent entity into owner's interests, rights of purchase and other securities in the resulting entity or cancelling such owner's interests in whole or in part; and
(f) Full text of the charter documents of the resulting entity.
3. The plan of conversion may set forth other provisions relating to the conversion.
(Added to NRS by 2001, 1403; A 2001, 3199; 2003, 3181; 2005, 2200; 2011, 2812)

NRS 92A.110 Authority for exchange; approval, contents and form of plan of exchange.
1. Except as a corporation is limited by NRS 78.411 to 78.444, inclusive, one or more domestic entities may acquire all of the outstanding owner's interests of one or more classes or series of another entity not already owned by the acquiring entity or an affiliate thereof if the plan of exchange is approved pursuant to the provisions of this chapter.
2. The plan of exchange must set forth:
(a) The name and jurisdiction of organization of each constituent entity;
(b) The name, jurisdiction of organization and kind of each entity whose owner's interests will be acquired by one or more other entities;
(c) The terms and conditions of the exchange; and
(d) The manner and basis, if any, of exchanging the owner's interests to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring or any other entity or for cash or other property in whole or in part or cancelling such owner's interests in whole or in part.
3. The plan of exchange may set forth other provisions relating to the exchange.

4. This section does not limit the power of a domestic entity to acquire all or part of the owner's interests or one or more class or series of owner's interests of another person through a voluntary exchange or otherwise.

5. The plan of exchange must be in writing.

(Added to NRS by 1995, 2080; A 1997, 726; 2005, 2201)

NRS 92A.120 Approval of plan of merger, conversion or exchange for domestic corporation.

1. After adopting a plan of merger, exchange or conversion, the board of directors of each domestic corporation that is a constituent entity in the merger or conversion, or the board of directors of the domestic corporation whose shares will be acquired in the exchange, must submit the plan of merger, except as otherwise provided in NRS 92A.130 and 92A.180, the plan of conversion or the plan of exchange for approval by its stockholders who are entitled to vote on the plan in accordance with the provisions of this section.

2. For a plan of merger, conversion or exchange to be approved:

(a) The board of directors must recommend the plan of merger, conversion or exchange to the stockholders, unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan; and

(b) The stockholders entitled to vote must approve the plan.

3. The board of directors may condition its submission of the proposed merger, conversion or exchange on any basis. The provisions of this section or this chapter must not be construed to permit a board of directors to submit, or to agree to submit, a plan of merger, conversion or exchange to the stockholders without the recommendation of the board required pursuant to paragraph (a) of subsection 2 unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan. Any agreement of the board of directors to submit a plan of merger, conversion or exchange to the stockholders notwithstanding an adverse recommendation of the board of directors shall be deemed to be of no force or effect.

4. Unless the plan of merger, conversion or exchange is approved by the written consent of stockholders pursuant to subsection 7, the domestic corporation must notify each stockholder, whether or not the stockholder is entitled to vote, of the proposed stockholders' meeting in accordance with NRS 78.370. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger, conversion or exchange and must contain or be accompanied by a copy or summary of the plan.

5. Unless this chapter, the articles of incorporation, the resolutions of the board of directors establishing the class or series of stock or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of stockholders, the plan of merger or conversion must be approved by a majority of the voting power of the stockholders.

6. Unless the articles of incorporation or the resolution of the board of directors establishing a class or series of stock provide otherwise, or unless the board of directors acting pursuant to subsection 3 requires a greater vote, the plan of exchange must be approved by a majority of the voting power of each class and each series to be exchanged pursuant to the plan of exchange.

7. Unless otherwise provided in the articles of incorporation or the bylaws of the domestic corporation, the plan of merger, conversion or exchange may be approved by written consent as provided in NRS 78.320.

8. If an officer, director or stockholder of a domestic corporation, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the officer, director or stockholder will be the owner of an owner's interest in the resulting entity, then that officer, director or stockholder must also approve the plan of conversion.

9. Unless otherwise provided in the articles of incorporation or bylaws of a domestic corporation, a plan of merger, conversion or exchange may contain a provision that permits amendment of the plan of merger, conversion or exchange at any time after the stockholders of the domestic corporation approve the plan of merger, conversion or exchange, but before the articles of merger, conversion or exchange become effective, without obtaining the approval of the stockholders of the domestic corporation for the amendment if the amendment does not:

(a) Alter or change the manner or basis of exchanging an owner's interest to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring entity or any other entity, or for cash or other property in whole or in part; or

(b) Alter or change any of the terms and conditions of the plan of merger, conversion or exchange in a manner that adversely affects the stockholders of the domestic corporation.

10. A board of directors shall cancel the proposed meeting or remove the plan of merger, conversion or exchange from consideration at the meeting if the board of directors determines that it is not advisable to submit the plan of merger, conversion or exchange to the stockholders for approval.

(Added to NRS by 1995, 2081; A 2001, 1407, 3199; 2003, 3182; 2005, 2201)

NRS 92A.130 Approval of plan of merger for domestic corporation: Conditions under which action by stockholders of surviving corporation is not required.

1. Action by the stockholders of a surviving domestic corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving domestic corporation will not differ from its articles before the merger;

(b) Each stockholder of the surviving domestic corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights immediately after the merger;

(c) The number of voting shares issued and issuable as a result of the merger will not exceed 20 percent of the total number of voting shares of the surviving domestic corporation outstanding immediately before the merger; and

(d) The number of participating shares issued and issuable as a result of the merger will not exceed 20 percent of the total number of participating shares outstanding immediately before the merger.

2. As used in this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(Added to NRS by 1995, 2082; A 2011, 2813)

NRS 92A.133 Circumstances under which vote of stockholders of publicly traded corporation not required to authorize merger in which publicly traded corporation is constituent entity.

1. Unless otherwise expressly required by the articles of incorporation, no vote of the stockholders of a publicly traded corporation is necessary to authorize a merger in which the publicly traded corporation is a constituent entity if the plan of merger expressly permits or requires the merger to be effected under this section and:

(a) The ownership threshold requirement is satisfied without any offer, subject to the provisions of subsection 2; or

(b) The ownership threshold requirement is satisfied in whole or in part by way of an offer and the plan of merger requires that:

(1) The merger must be effected as soon as practicable following the consummation of the offer if the merger is effected under this section; and

(2) Each outstanding share of each class or series of stock of the publicly traded corporation that is the subject of, and not irrevocably accepted for purchase or exchange in, the offer must be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of the publicly traded corporation irrevocably accepted for purchase or exchange in the offer. The plan of merger may expressly provide that the requirements of this subparagraph must not apply to specified categories of excluded shares.

2. If a merger pursuant to this section is to be effectuated without any offer:

(a) The ownership threshold requirement must be satisfied without counting the voting power of any shares of the stock of the publicly traded corporation acquired from the publicly traded corporation, or any of the directors, officers, affiliates or associates thereof, within the 6 months immediately preceding the adoption of the plan of merger; and

(b) The publicly traded corporation must provide notice of the merger to all of its stockholders not less than 30 days before the effective date of the merger.

3. This section does not apply to circumvent or contravene the provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to 78.444, inclusive.

4. As used in this section:

(a) "Affiliate" has the meaning ascribed to it in NRS 78.412.

(b) "Associate" has the meaning ascribed to it in NRS 78.413.

(c) "Consummation" means the irrevocable acceptance for purchase or exchange of shares tendered pursuant to an offer.

(d) "Excluded shares" means:

(1) Rollover shares; and

(2) Shares of the publicly traded corporation that are owned beneficially or of record at the commencement of an offer by:

(I) The publicly traded corporation;

(II) The constituent entity making the offer;

(III) Any person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity making the offer; or

(IV) Any direct or indirect wholly owned subsidiary of any of the foregoing.

(e) "Offer" means an offer made by the other constituent entity in the merger for all of the outstanding shares of each class or series of stock of the publicly traded corporation listed on a national securities exchange, on the terms provided in the plan of merger that, absent this section, would be entitled to vote on the adoption of the plan of merger. The other constituent entity in the merger may, but is not required to, engage in the consummation of separate offers for separate classes or series of the stock of the publicly traded corporation. An offer may, but is not required to:

(1) Exclude any excluded shares; and

(2) Be conditioned on the tender of a minimum number or proportion of shares of any class or series of the stock of the publicly traded corporation.

(f) "Owned affiliate" means, with respect to a constituent entity, any other person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity, or any direct or indirect wholly owned subsidiary of the constituent entity or other person.

(g) "Ownership threshold requirement" means that the voting power of the stock of the publicly traded corporation otherwise owned beneficially or of record by the other constituent entity in the merger or any of the owned affiliates of the other constituent entity, together with the voting power of any rollover shares and any shares irrevocably accepted for purchase or exchange pursuant to any offer and received before the expiration of the offer by the agent or depositary appointed to facilitate the consummation of the offer, equals at least that proportion of the voting power of the stock, and of each class or series thereof, of the publicly traded corporation that, absent this section, would be required to approve the plan of merger under this chapter and the articles of incorporation and bylaws of the publicly traded corporation. For the purposes of this paragraph, shares are received:

(1) If the shares are certificated shares, upon physical receipt by the agent or depositary of a stock certificate with an executed letter of transmittal or other instrument of transfer;

(2) If the shares are uncertificated shares held of record by a clearing corporation as nominee, upon transfer into the account of the agent or depositary by way of an agent's message; and

(3) If the shares are uncertificated shares held of record by a person other than a clearing corporation as nominee, upon physical receipt by the agent or depositary of an executed letter of transmittal or other instrument of transfer.

(h) "Publicly traded corporation" means a domestic corporation that has a class or series of voting shares which is a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended.

(i) "Rollover shares" means any shares of any class or series of the capital stock of the publicly traded corporation that are the subject of a written agreement requiring such shares to be contributed or otherwise transferred to the other constituent entity in the merger or any of the owned affiliates of the other constituent entity in exchange for shares or other equity interest in the other constituent entity or any of its owned affiliates. Shares must cease to be rollover shares if, as of the effective time of the merger, the shares have not been contributed or otherwise transferred pursuant to the written agreement.

(Added to NRS by 2019, 107)

NRS 92A.135 Approval of plan of conversion for domestic general partnership. Unless otherwise provided in the partnership agreement, all partners must approve a plan of conversion involving a domestic general partnership.

(Added to NRS by 2001, 1403; A 2001, 3199)

NRS 92A.140 Approval of plan of merger, conversion or exchange for domestic limited partnership.

1. Unless otherwise provided in the partnership agreement or the certificate of limited partnership, a plan of merger, conversion or exchange involving a domestic limited partnership must be approved by all general partners and by limited partners who own a majority in interest of the partnership then owned by all the limited partners. If the partnership has more than one class of limited partners, the plan of merger, conversion or exchange must be approved by those limited partners who own a majority in interest of the partnership then owned by the limited partners in each class.

2. For the purposes of this section, "majority in interest of the partnership" means a majority of the interests in capital and profits of the limited partners of a domestic limited partnership which:

(a) In the case of capital, is determined as of the date of the approval of the plan of merger, conversion or exchange.

(b) In the case of profits, is based on any reasonable estimate of profits for the period beginning on the date of the approval of the plan of merger, conversion or exchange and ending on the anticipated date of the termination of the domestic limited partnership, including any present or future division of profits distributed pursuant to the partnership agreement.

3. If any partner of a domestic limited partnership, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the partner will be the owner of an owner's interest in the resulting entity, then that partner must also approve the plan of conversion.

(Added to NRS by 1995, 2082; A 1997, 727; 2001, 1409, 3199)

NRS 92A.150 Approval of plan of merger, conversion or exchange for domestic limited-liability company.

1. Unless otherwise provided in the articles of organization or an operating agreement:

(a) A plan of merger, conversion or exchange involving a domestic limited-liability company must be approved by members who own a majority of the interests in the current profits of the company then owned by all of the members; and

(b) If the company has more than one class of members, the plan of merger, conversion or exchange must be approved by those members who own a majority of the interests in the current profits of the company then owned by the members in each class.

2. If any manager or member of a domestic limited-liability company, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the manager or member will be the owner of an owner's interest in the resulting entity, then that manager or member must also approve the plan of conversion.

(Added to NRS by 1995, 2082; A 1997, 727; 1999, 1627; 2001, 1409, 3199)

NRS 92A.160 Approval of plan of merger or exchange for domestic nonprofit corporation.

1. A plan of merger or exchange involving a domestic nonprofit corporation must be adopted by the board of directors. The plan must also be approved by each public officer or other person whose approval of a plan of merger or exchange is required by the articles of incorporation of the domestic nonprofit corporation.

2. If the domestic nonprofit corporation has members entitled to vote on plans of merger or exchange, the board of directors of the domestic nonprofit corporation must recommend the plan of merger or exchange to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the members with the plan.

3. The board of directors may condition its submission of the proposed merger or exchange on any basis.

4. The members entitled to vote on a plan of merger or exchange must approve the plan at a meeting of members called for that purpose, by written consent pursuant to NRS 82.276, or by a vote by written ballot pursuant to NRS 82.326.

5. The corporation must notify, in the manner required by NRS 82.336, each nonprofit member of the time and place of the meeting of members at which the plan of merger or exchange will be submitted for a vote.

6. Unless the articles of incorporation of the domestic nonprofit corporation or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of members, the plan of merger or exchange to be authorized must be approved by a majority of a quorum of the members unless a class of members is entitled to vote thereon as a class. If a class of members is so entitled, the plan must be approved by a majority of a quorum of the votes entitled to be cast on the plan by each class.

7. Separate voting by a class of members is required:

(a) On a plan of merger if the plan contains a provision that, if contained in the proposed amendment to articles of incorporation, would entitle particular members to vote as a class on the proposed amendment; and

(b) On a plan of exchange by each class or series of memberships included in the exchange, with each class or series constituting a separate voting class.

(Added to NRS by 1995, 2082)

NRS 92A.162 Approval of plan of merger, conversion or exchange for nonprofit cooperative corporation. Unless otherwise provided in the articles of incorporation, a plan of merger, conversion or exchange involving a nonprofit cooperative corporation must be approved and adopted by the board of directors.

(Added to NRS by 2013, 774)

NRS 92A.165 Approval of plan of merger, conversion or exchange for domestic business trust. Unless otherwise provided in the certificate of trust or governing instrument of a domestic business trust, a plan of merger, conversion or exchange must be approved by all the trustees and beneficial owners of each domestic business trust that is a constituent entity in the merger.

(Added to NRS by 1999, 1626; A 2001, 1409, 3199; 2003, 3183)

NRS 92A.170 Abandonment of planned merger, conversion or exchange before filing of articles. After a merger, conversion or exchange is approved, and at any time before the articles of merger, conversion or exchange are filed, the planned merger, conversion or exchange may be abandoned, subject to any contractual rights, without further action, in accordance with the procedure set forth in the plan of merger, conversion or exchange or, if none is set forth, in the case of:

1. A domestic corporation, whether or not for profit, by the board of directors;
2. A domestic limited partnership, unless otherwise provided in the partnership agreement or certificate of limited partnership, by all general partners;
3. A domestic limited-liability company, unless otherwise provided in the articles of organization or an operating agreement, by members who own a majority in interest in the current profits of the company then owned by all of the members or, if the company has more than one class of members, by members who own a majority in interest in the current profits of the company then owned by the members in each class;
4. A domestic business trust, unless otherwise provided in the certificate of trust or governing instrument, by all the trustees;
5. A domestic general partnership, unless otherwise provided in the partnership agreement, by all the partners; and
6. A nonprofit cooperative corporation, unless otherwise provided in the articles of incorporation, by the board of directors.

(Added to NRS by 1995, 2083; A 1999, 1627; 2001, 1409, 3199; 2013, 774)

NRS 92A.175 Termination of planned merger, conversion or exchange after filing of articles. After a merger, conversion or exchange is approved, at any time after the articles of merger, conversion or exchange are filed but before an effective date specified in the articles which is later than the date of filing the articles, the planned merger, conversion or exchange may be terminated in accordance with a procedure set forth in the plan of merger, conversion or exchange by filing articles of termination pursuant to the provisions of NRS 92A.240.

(Added to NRS by 1999, 1626; A 2001, 1410, 3199)

NRS 92A.180 Merger of subsidiary into parent or parent into subsidiary.

1. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization or operating agreement, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation entitled to vote on a merger, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members entitled to vote on a merger or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners entitled to vote on a merger may merge the subsidiary into itself without approval of the owners of the owner's interests of the parent domestic corporation, parent domestic limited-liability company or parent domestic limited partnership or the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.
2. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization or operating agreement, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation entitled to vote on a merger, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members entitled to vote on a merger, or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners entitled to vote on a merger may merge with and into the subsidiary without approval of the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.
3. The board of directors of a parent corporation, the managers of a parent limited-liability company with managers unless otherwise provided in the operating agreement, all members of a parent limited-liability company without managers unless otherwise provided in the operating agreement, or all general partners of a parent limited partnership shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the owner's interests of the disappearing entity into the owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property in whole or in part.

4. The surviving entity shall mail a copy or summary of the plan of merger to each owner of the subsidiary who does not waive the mailing requirement in writing.

5. Articles of merger under this section may not contain amendments to the constituent documents of the surviving entity except that the name of the surviving entity may be changed.

6. The articles of incorporation of a domestic corporation, the articles of organization of a domestic limited-liability company, the certificate of limited partnership of a domestic limited partnership or the certificate of trust of a domestic business trust may forbid that entity from entering into a merger pursuant to this section.

(Added to NRS by 1995, 2083; A 1997, 727; 1999, 1627; 2001, 1410, 3199; 2005, 2203; 2009, 1717; 2015, 3242)

NRS 92A.190 Merger or exchange with foreign entity.

1. One or more foreign entities may merge or enter into an exchange of owner's interests with one or more domestic entities if:

(a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each foreign entity is organized and governed and each foreign entity complies with that law in effecting the merger;

(b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity, whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under whose law the acquiring entity is organized;

(c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of merger or exchange its address where copies of process may be sent by the Secretary of State; and

(d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the exchange, with NRS 92A.200 to 92A.240, inclusive.

2. When the merger or exchange takes effect, the surviving foreign entity in a merger and the acquiring foreign entity in an exchange shall be deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation which accrued before the merger or exchange became effective or the rights of dissenting owners of each domestic entity that was a party to the merger or exchange. Service of such process must be made by personally delivering to and leaving with the Secretary of State duplicate copies of the process and the payment of a fee of $100 for accepting and transmitting the process. The Secretary of State shall forthwith send by registered or certified mail one of the copies to the surviving or acquiring entity at its specified address, unless the surviving or acquiring entity has designated in writing to the Secretary of State a different address for that purpose, in which case it must be mailed to the last address so designated.

(b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is a party to the merger or exchange the amount, if any, to which they are entitled under or created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. This section does not limit the power of a foreign entity to acquire all or part of the owner's interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

(Added to NRS by 1995, 2086; A 1997, 728; 1999, 1628; 2001, 3192; 2003, 3183; 2003, 20th Special Session, 125)

NRS 92A.195 Conversion of foreign or domestic entity or foreign or domestic general partnership.

1. One foreign entity or foreign general partnership may convert into one domestic entity if:

(a) The conversion is permitted by the law of the jurisdiction governing the foreign entity or foreign general partnership and the foreign entity or foreign general partnership complies with that law in effecting the conversion;

(b) The foreign entity or foreign general partnership complies with the applicable provisions of NRS 92A.205, 92A.207, 92A.210, 92A.230 and 92A.240; and

(c) The resulting domestic entity complies with the applicable provisions of NRS 92A.205 and 92A.220.

2. One domestic entity or domestic general partnership may convert into one foreign entity if:

(a) The conversion is permitted by the law of the jurisdiction governing the resulting foreign entity and the resulting foreign entity complies with that law in effecting the conversion; and

(b) The domestic entity complies with the applicable provisions of NRS 92A.105, 92A.120, 92A.135, 92A.140, 92A.165, 92A.205, 92A.207, 92A.210, 92A.230 and 92A.240.

3. When a conversion pursuant to subsection 2 takes effect, the resulting foreign entity shall be deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation. Service of process must be made personally by delivering to and leaving with the Secretary of State duplicate copies of the process and the payment of a fee of $100 for accepting and transmitting the process. The Secretary of State shall send one of the copies of the process by registered or certified mail to the resulting entity at its specified address, unless the resulting entity has designated in writing to the Secretary of State a different address for that purpose, in which case it must be mailed to the last address so designated.

(Added to NRS by 2001, 1403; A 2001, 3199; 2003, 20th Special Session, 126; 2011, 2813)

NRS 92A.200 Filing requirements for mergers or exchanges; dependency of terms of plan of merger, conversion or exchange on extrinsic facts.

1. After a plan of merger or exchange is approved as required by this chapter, the surviving or acquiring entity shall deliver to the Secretary of State for filing articles of merger or exchange setting forth:

(a) The name and jurisdiction of organization of each constituent entity;

(b) That a plan of merger or exchange has been adopted by each constituent entity or the parent domestic entity only, if the merger is pursuant to NRS 92A.180;

(c) If approval of the owners of one or more constituent entities was not required, a statement to that effect and the name of each entity;

(d) If approval of owners of one or more constituent entities was required, the name of each entity and a statement for each entity that the plan was approved by the required consent of the owners;

(e) In the case of a merger, the amendment, if any, to the charter document of the surviving entity, which amendment may be set forth in the articles of merger as a specific amendment or in the form of an amended and restated charter document or attached in that form as an exhibit; and

(f) If the entire plan of merger or exchange is not set forth, a statement that the complete signed plan of merger or plan of exchange is on file at the principal office or with the custodian of records if a corporation, limited-liability company or business trust, or at the principal office or with the custodian of records, as described in paragraph (a) of subsection 1 of NRS 87A.215 or paragraph (a) of subsection 1 of NRS 88.330, if a limited partnership, or other place of business of the surviving entity or the acquiring entity, respectively.

2. Any of the terms of the plan of merger, conversion or exchange may be made dependent upon facts ascertainable outside of the plan of merger, conversion or exchange, provided that the plan of merger, conversion or exchange clearly and expressly sets forth the manner in which such facts shall operate upon the terms of the plan. As used in this section, the term "facts" includes, without limitation, the occurrence of an event, including a determination or action by a person or body, including a constituent entity.

(Added to NRS by 1995, 2084; A 1997, 729; 1999, 1629; 2001, 1411, 3199; 2003, 3184; 2003, 20th Special Session, 126; 2007, 483; 2015, 1319)

NRS 92A.205 Filing requirements for conversions.

1. After a plan of conversion is approved as required by this chapter, if the resulting entity is a domestic entity, the constituent entity shall, at the time of filing the articles of conversion, deliver to the Secretary of State for filing:

(a) Articles of conversion setting forth:

(1) The name and jurisdiction of organization of the constituent entity and the resulting entity; and

(2) That a plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

(b) The charter document of the domestic resulting entity required by the applicable provisions of chapter 78, 78A, 78B, 82, 86, 87A, 88, 88A or 89 of NRS.

(c) The information required pursuant to NRS 77.310.

2. After a plan of conversion is approved as required by this chapter, if the resulting entity is a foreign entity, the constituent entity shall deliver to the Secretary of State for filing articles of conversion setting forth:

(a) The name and jurisdiction of organization of the constituent entity and the resulting entity;

(b) That a plan of conversion has been adopted by the constituent entity in compliance with the laws of this State; and

(c) The address of the resulting entity where copies of process may be sent by the Secretary of State.

3. If the entire plan of conversion is not set forth in the articles of conversion, the filing party must include in the articles of conversion a statement that the complete signed plan of conversion is on file at the principal office or with the custodian of records of the resulting entity or, if the resulting entity is a domestic limited partnership, at the principal office or with the custodian of records, as described in paragraph (a) of subsection 1 of NRS 87A.215 or paragraph (a) of subsection 1 of NRS 88.330.

4. If the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the charter document to be filed with the Secretary of State pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any records filed with the Secretary of State pursuant to this section must be accompanied by the fees required pursuant to this title for filing the charter document.

(Added to NRS by 2001, 1404; A 2001, 3199; 2003, 3185; 2003, 20th Special Session, 127; 2007, 484, 1343, 2702; 2009, 1718; 2013, 418; 2015, 1320)

NRS 92A.207 Form required for filing of records.

1. Each record filed with the Secretary of State pursuant to this chapter must be on or accompanied by a form prescribed by the Secretary of State.

2. The Secretary of State may refuse to file a record which does not comply with subsection 1 or which does not contain all of the information required by statute for filing the record.

3. If the provisions of the form prescribed by the Secretary of State conflict with the provisions of any record that is submitted for filing with the form:

(a) The provisions of the form control for all purposes with respect to the information that is required by statute to appear in the record in order for the record to be filed; and

(b) Unless otherwise provided in the record, the provisions of the record control in every other situation.

4. The Secretary of State may by regulation provide for the electronic filing of records with the Office of the Secretary of State.

(Added to NRS by 2003, 20th Special Session, 125)

NRS 92A.210 Filing fees.

1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is $350. The fee for filing the charter documents of a domestic resulting entity is the fee for filing the charter documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations, including, without limitation, a nonprofit cooperative corporation, is the difference between the fee computed at the rates specified in NRS 78.760 upon

the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations, including, without limitation, a nonprofit cooperative corporation, with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic corporations, including, without limitation, nonprofit cooperative corporations, or foreign corporations must not be less than $350. The amount paid pursuant to subsection 3 must not exceed $35,000.

(Added to NRS by 1995, 2085; A 1999, 1629; 2001, 1412, 3192, 3199; 2003, 3186; 2003, 20th Special Session, 128; 2013, 774)

NRS 92A.220 Duty when entire plan of merger, conversion or exchange is not set forth in articles. If the entire plan of merger, conversion or exchange is not set forth in the articles of merger, conversion or exchange, a copy of the plan of merger, conversion or exchange must be furnished by the surviving, acquiring or resulting entity, on request and without cost, to any owner of any entity which is a party to the merger, conversion or exchange.

(Added to NRS by 1995, 2085; A 2001, 1413, 3199)

NRS 92A.230 Signing of articles of merger, conversion or exchange. Articles of merger, conversion or exchange must be signed by each foreign and domestic constituent entity as follows:

1. By an officer of a corporation, whether or not for profit;
2. By one of the general partners of a limited partnership;
3. By a manager of a limited-liability company with managers or by one member of a limited-liability company without managers;
4. By a trustee of a business trust; and
5. By one general partner of a general partnership.

(Added to NRS by 1995, 2085; A 1997, 730; 1999, 1630; 2001, 101, 1413, 2726, 3199; 2003, 48, 3186)

NRS 92A.240 Effective date and time of merger, conversion or exchange; articles of termination.

1. A merger, conversion or exchange takes effect:

(a) At the time of the filing of the articles of merger, conversion or exchange with the Secretary of State;

(b) Upon a later date and time as specified in the articles, which date must not be more than 90 days after the date on which the articles are filed; or

(c) If the articles specify a later effective date but do not specify an effective time, at 12:01 a.m. in the Pacific time zone on the specified later date.

2. If the filed articles of merger, conversion or exchange specify such a later effective date or effective date and time, the constituent entity or entities may file articles of termination before the effective time, setting forth:

(a) The name of each constituent entity and, for a conversion, the resulting entity; and

(b) That the merger, conversion or exchange has been terminated pursuant to the plan of merger, conversion or exchange.

3. The articles of termination must be signed in the manner provided in NRS 92A.230.

(Added to NRS by 1995, 2085; A 1999, 1630; 2001, 1413, 3199; 2003, 3187; 2011, 2814)

NRS 92A.250 Effect of merger, conversion or exchange.

1. When a merger takes effect:

(a) Every other entity that is a constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases;

(b) The title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment;

(c) An owner of a constituent entity remains liable for all the obligations of such constituent entity existing at the time of the merger to the extent the owner was liable before the merger;

(d) The surviving entity has all of the liabilities of each other constituent entity;

(e) A proceeding pending against any constituent entity may be continued as if the merger had not occurred or the surviving entity may be substituted in the proceeding for the entity whose existence has ceased;

(f) The articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity are amended to the extent provided in the plan of merger; and

(g) The owner's interests of each constituent entity that are to be converted into owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the owner's interests are entitled only to the rights provided in the articles of merger or any created pursuant to NRS 92A.300 to 92A.500, inclusive.

2. When an exchange takes effect, the owner's interests of each acquired entity are exchanged as provided in the plan, and the former holders of the owner's interests are entitled only to the rights provided in the articles of exchange or any rights created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. When a conversion takes effect:

(a) The constituent entity is converted into the resulting entity and is governed by and subject to the law of the jurisdiction of the resulting entity;

(b) The conversion is a continuation of the existence of the constituent entity;

(c) The title to all real estate and other property owned by the constituent entity is vested in the resulting entity without reversion or impairment;

(d) The resulting entity has all the liabilities of the constituent entity;

(e) A proceeding pending against the constituent entity may be continued as if the conversion had not occurred or the resulting entity may be substituted in the proceeding for the constituent entity;

(f) The owner's interests of the constituent entity that are to be converted into the owner's interests of the resulting entity are converted;

(g) An owner of the resulting entity remains liable for all the obligations of the constituent entity existing at the time of the conversion to the extent the owner was liable before the conversion; and

(h) The domestic constituent entity is not required to wind up its affairs, pay its liabilities, distribute its assets or dissolve, and the conversion is not deemed a dissolution of the domestic constituent entity.

(Added to NRS by 1995, 2085; A 1999, 1630; 2001, 1413, 3199; 2015, 3243)

NRS 92A.260 Liability of owner after merger, conversion or exchange. An owner that is not personally liable for the debts, liabilities or obligations of the entity pursuant to the laws and constituent documents under which the entity was organized does not become personally liable for the debts, liabilities or obligations of the surviving entity or entities of the merger or exchange or the resulting entity of the conversion unless the owner consents to becoming personally liable by action taken in connection with the plan of merger, conversion or exchange.

(Added to NRS by 1995, 2081; A 2001, 1414, 3199)

NRS 92A.270 Domestication of undomesticated organization.

1. Any undomesticated organization may become domesticated in this State as a domestic entity by:

(a) Paying to the Secretary of State the fees required pursuant to this title for filing the charter document; and

(b) Filing with the Secretary of State:

(1) Articles of domestication which must be signed by an authorized representative of the undomesticated organization approved in compliance with subsection 6;

(2) The appropriate charter document for the type of domestic entity;

(3) The information required pursuant to NRS 77.310;

(4) A certified copy of the charter document, or the equivalent, if any, of the undomesticated organization; and

(5) A certificate of good standing, or the equivalent, from the jurisdiction where the undomesticated organization was chartered immediately before filing the articles of domestication pursuant to subparagraph (1).

2. The articles of domestication must set forth the:

(a) Date when and the jurisdiction where the undomesticated organization was first formed, incorporated, organized or otherwise created and, if applicable, any date when and jurisdiction where the undomesticated organization was chartered after its formation;

(b) Name of the undomesticated organization immediately before filing the articles of domestication;

(c) Name and type of domestic entity as set forth in its charter document pursuant to subsection 1; and

(d) Jurisdiction that constituted the principal place of business or central administration of the undomesticated organization, or any other equivalent thereto pursuant to applicable law, immediately before filing the articles of domestication.

3. Upon filing the articles of domestication and the charter document with the Secretary of State, and the payment of the requisite fee for filing the charter document of the domestic entity, the undomesticated organization is domesticated in this State as the domestic entity described in the charter document filed pursuant to subsection 1. The existence of the domestic entity begins on the date the undomesticated organization began its existence in the jurisdiction in which the undomesticated organization was first formed, incorporated, organized or otherwise created.

4. The domestication of any undomesticated organization does not affect any obligations or liabilities of the undomesticated organization incurred before its domestication.

5. The filing of the charter document of the domestic entity pursuant to subsection 1 does not affect the choice of law applicable to the undomesticated organization. From the date the charter document of the domestic entity is filed, the law of this State applies to the domestic entity to the same extent as if the undomesticated organization was organized and created as a domestic entity on that date.

6. Before filing articles of domestication, the domestication must be approved in the manner required by:

(a) The document, instrument, agreement or other writing governing the internal affairs of the undomesticated organization and the conduct of its business; and

(b) Applicable foreign law.

7. When a domestication becomes effective, all rights, privileges and powers of the undomesticated organization, all property owned by the undomesticated organization, all debts due to the undomesticated organization, and all causes of action belonging to the undomesticated organization are vested in the domestic entity and become the property of the domestic entity to the same extent as vested in the undomesticated organization immediately before domestication. The title to any real property vested by deed or otherwise in the undomesticated organization is not reverted or impaired by the domestication. All rights of creditors and all liens upon any property of the undomesticated organization are preserved unimpaired and all debts, liabilities and duties of an undomesticated organization that has been domesticated attach to the domestic entity resulting from the domestication and may be enforced against it to the same extent as if the debts, liability and duties had been incurred or contracted by the domestic entity.

8. When an undomesticated organization is domesticated, the domestic entity resulting from the domestication is for all purposes deemed to be the same entity as the undomesticated organization. Unless otherwise agreed by the owners of the undomesticated organization or as required pursuant to applicable foreign law, the domestic entity resulting from the domestication is not required to wind up its affairs, pay its liabilities or distribute its assets. The domestication of an

undomesticated organization does not constitute the dissolution of the undomesticated organization. The domestication constitutes a continuation of the existence of the undomesticated organization in the form of a domestic entity. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section continues its existence in the foreign country or foreign jurisdiction in which it was existing immediately before the domestication, the domestic entity and the undomesticated organization are for all purposes a single entity formed, incorporated, organized or otherwise created and existing pursuant to the laws of this State and the laws of the foreign country or other foreign jurisdiction. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section does not continue its existence in the foreign country or foreign jurisdiction in which it existed immediately before the domestication, the domestic entity resulting from the domestication continues and is not required to wind up its affairs, pay its liabilities or distribute its assets.

9. The owner liability of an undomesticated organization that is domesticated in this State:

(a) Is not discharged, pursuant to the laws of the previous jurisdiction of the organization, to the extent the owner liability arose before the effective date of the articles of domestication;

(b) Does not attach, pursuant to the laws of the previous jurisdiction of the organization, to any debt, obligation or liability of the organization that arises after the effective date of the articles of domestication;

(c) Is governed by the law of the previous jurisdiction of the organization, as if the domestication has not occurred, for the collection or discharge of owner liability not discharged pursuant to paragraph (a);

(d) Is subject to the right of contribution from any other shareholder, member, trustee, partner, limited partner or other owner of the undomesticated organization pursuant to the laws of the previous jurisdiction of the organization, as if the domestication has not occurred, for the collection or discharge of owner liability not discharged pursuant to paragraph (a); and

(e) Applies only to the debts, obligations or liabilities of the organization that arise after the effective date of the articles of domestication if the owner becomes subject to owner liability or some or all of the debts, obligations or liabilities of the undomesticated entity as a result of its domestication in this State.

10. As used in this section:

(a) "Owner liability" means the liability of a shareholder, member, trustee, partner, limited partner or other owner of an organization for debts of the organization, including the responsibility to make additional capital contributions to cover such debts.

(b) "Undomesticated organization" means any incorporated organization, private law corporation, whether or not organized for business purposes, public law corporation, limited-liability company, general partnership, registered limited-liability partnership, limited partnership or registered limited-liability limited partnership, proprietorship, joint venture, foundation, business trust, real estate investment trust, common-law trust or any other unincorporated business formed, organized, created or the internal affairs of which are governed by the laws of any foreign country or jurisdiction other than this State.

(Added to NRS by 2001, 1405; A 2001, 3199; 2003, 3187; 2007, 2702; 2009, 1719, 2859; 2013, 1283)

NRS 92A.280 Cancellation of filings. If an entity has made a filing with the Secretary of State pursuant to this chapter and the Secretary of State has not processed the filing and placed the filing into the public record, the entity may cancel the filing by:

1. Filing a statement of cancellation with the Secretary of State; and
2. Paying a fee of $50.

(Added to NRS by 2009, 2859)

RIGHTS OF DISSENTING OWNERS

NRS 92A.300 Definitions. As used in NRS 92A.300 to 92A.500, inclusive, unless the context otherwise requires, the words and terms defined in NRS 92A.305 to 92A.335, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2086)

NRS 92A.305 "Beneficial stockholder" defined. "Beneficial stockholder" means a person who is a beneficial owner of shares held in a voting trust or by a nominee as the stockholder of record.

(Added to NRS by 1995, 2087)

NRS 92A.310 "Corporate action" defined. "Corporate action" means the action of a domestic corporation.

(Added to NRS by 1995, 2087)

NRS 92A.315 "Dissenter" defined. "Dissenter" means a stockholder who is entitled to dissent from a domestic corporation's action under NRS 92A.380 and who exercises that right when and in the manner required by NRS 92A.400 to 92A.480, inclusive.

(Added to NRS by 1995, 2087; A 1999, 1631)

NRS 92A.320 "Fair value" defined. "Fair value," with respect to a dissenter's shares, means the value of the shares determined:

1. Immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;
2. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
3. Without discounting for lack of marketability or minority status.

(Added to NRS by 1995, 2087; A 2009, 1720)

NRS 92A.325 "Stockholder" defined. "Stockholder" means a stockholder of record or a beneficial stockholder of a domestic corporation.
(Added to NRS by 1995, 2087)

NRS 92A.330 "Stockholder of record" defined. "Stockholder of record" means the person in whose name shares are registered in the records of a domestic corporation or the beneficial owner of shares to the extent of the rights granted by a nominee's certificate on file with the domestic corporation.
(Added to NRS by 1995, 2087)

NRS 92A.335 "Subject corporation" defined. "Subject corporation" means the domestic corporation which is the issuer of the shares held by a dissenter before the corporate action creating the dissenter's rights becomes effective or the surviving or acquiring entity of that issuer after the corporate action becomes effective.
(Added to NRS by 1995, 2087)

NRS 92A.340 Computation of interest. Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the rate of interest most recently established pursuant to NRS 99.040.
(Added to NRS by 1995, 2087; A 2009, 1721)

NRS 92A.350 Rights of dissenting partner of domestic limited partnership. A partnership agreement of a domestic limited partnership or, unless otherwise provided in the partnership agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the partnership interest of a dissenting general or limited partner of a domestic limited partnership are available for any class or group of partnership interests in connection with any merger or exchange in which the domestic limited partnership is a constituent entity.
(Added to NRS by 1995, 2088)

NRS 92A.360 Rights of dissenting member of domestic limited-liability company. The articles of organization or operating agreement of a domestic limited-liability company or, unless otherwise provided in the articles of organization or operating agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the interest of a dissenting member are available in connection with any merger or exchange in which the domestic limited-liability company is a constituent entity.
(Added to NRS by 1995, 2088)

NRS 92A.370 Rights of dissenting member of domestic nonprofit corporation.

1. Except as otherwise provided in subsection 2, and unless otherwise provided in the articles or bylaws, any member of any constituent domestic nonprofit corporation who voted against the merger may, without prior notice, but within 30 days after the effective date of the merger, resign from membership and is thereby excused from all contractual obligations to the constituent or surviving corporations which did not occur before the member's resignation and is thereby entitled to those rights, if any, which would have existed if there had been no merger and the membership had been terminated or the member had been expelled.

2. Unless otherwise provided in its articles of incorporation or bylaws, no member of a domestic nonprofit corporation, including, but not limited to, a cooperative corporation, which supplies services described in chapter 704 of NRS to its members only, and no person who is a member of a domestic nonprofit corporation as a condition of or by reason of the ownership of an interest in real property, may resign and dissent pursuant to subsection 1.

(Added to NRS by 1995, 2088)

NRS 92A.380 Right of stockholder to dissent from certain corporate actions and to obtain payment for shares.

1. Except as otherwise provided in NRS 92A.370 and 92A.390 and subject to the limitation in paragraph (f), any stockholder is entitled to dissent from, and obtain payment of the fair value of the stockholder's shares in the event of any of the following corporate actions:

(a) Consummation of a plan of merger to which the domestic corporation is a constituent entity:

(1) If approval by the stockholders is required for the merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of whether the stockholder is entitled to vote on the plan of merger;

(2) If the domestic corporation is a subsidiary and is merged with its parent pursuant to NRS 92A.180; or

(3) If the domestic corporation is a constituent entity in a merger pursuant to NRS 92A.133.

(b) Consummation of a plan of conversion to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be converted.

(c) Consummation of a plan of exchange to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be acquired, if the stockholder's shares are to be acquired in the plan of exchange.

(d) Any corporate action taken pursuant to a vote of the stockholders to the extent that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

(e) Accordance of full voting rights to control shares, as defined in NRS 78.3784, only to the extent provided for pursuant to NRS 78.3793.

(f) Any corporate action not described in this subsection pursuant to which the stockholder would be obligated, as a result of the corporate action, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all the stockholder's outstanding shares, except where the stockholder would not be entitled to receive such payment pursuant to NRS 78.205, 78.2055 or 78.207. A dissent pursuant to this paragraph applies only to the fraction of a share, and the stockholder is entitled only to obtain payment of the fair value of the fraction of a share.

2. A stockholder who is entitled to dissent and obtain payment pursuant to NRS 92A.300 to 92A.500, inclusive, must not challenge the corporate action creating the entitlement unless the action is unlawful or constitutes or is the result of actual fraud against the stockholder or the domestic corporation.

3. Subject to the limitations in this subsection, from and after the effective date of any corporate action described in subsection 1, no stockholder who has exercised the right to dissent pursuant to NRS 92A.300 to 92A.500, inclusive, is entitled to vote his or her shares for any purpose or to receive payment of dividends or any other distributions on shares. This subsection does not apply to dividends or other distributions payable to stockholders on a date before the effective date of any corporate action from which the stockholder has dissented. If a stockholder exercises the right to dissent with respect to a corporate action described in paragraph (f) of subsection 1, the restrictions of this subsection apply only to the shares to be converted into a fraction of a share and the dividends and distributions to those shares.

(Added to NRS by 1995, 2087; A 2001, 1414, 3199; 2003, 3189; 2005, 2204; 2007, 2438; 2009, 1721; 2011, 2814; 2019, 109)

NRS 92A.390 Limitations on right of dissent: Stockholders of certain classes or series; action of stockholders not required for plan of merger; shares of stock not issued and outstanding on date of first announcement of proposed action.

1. There is no right of dissent pursuant to paragraph (a), (b), (c) or (f) of subsection 1 of NRS 92A.380 in favor of stockholders of any class or series which is:

(a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;

(b) Traded in an organized market and has at least 2,000 stockholders and a market value of at least $20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares; or

(c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the option of the holder at net asset value,

➥ unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

2. The applicability of subsection 1 must be determined as of:

(a) The record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the corporate action requiring dissenter's rights; or

(b) The day before the effective date of such corporate action if there is no meeting of stockholders.

3. Subsection 1 is not applicable and dissenter's rights are available pursuant to NRS 92A.380 for the holders of any class or series of shares who are required by the terms of the corporate action to accept for such shares anything other than:

(a) Cash;

(b) Any security or other proprietary interest of any other entity, including, without limitation, shares, equity interests or contingent value rights, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective; or

(c) Any combination of paragraphs (a) and (b).

4. There is no right of dissent for any holders of stock of the surviving domestic corporation if the plan of merger does not require action of the stockholders of the surviving domestic corporation under NRS 92A.130.

5. There is no right of dissent for any holders of stock of the parent domestic corporation if the plan of merger does not require action of the stockholders of the parent domestic corporation under NRS 92A.180.

6. There is no right of dissent with respect to any share of stock that was not issued and outstanding on the date of the first announcement to the news media or to the stockholders of the terms of the proposed action requiring dissenter's rights.

(Added to NRS by 1995, 2088; A 2009, 1722; 2013, 1285; 2019, 110, 2495)

NRS 92A.400 Limitations on right of dissent: Assertion as to portions only to shares registered to stockholder; assertion by beneficial stockholder.

1. A stockholder of record may assert dissenter's rights as to fewer than all of the shares registered in his or her name only if the stockholder of record dissents with respect to all shares of the class or series beneficially owned by any one person and notifies the subject corporation in writing of the name and address of each person on whose behalf the stockholder of record asserts dissenter's rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the partial dissenter dissents and his or her other shares were registered in the names of different stockholders.

2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf only if the beneficial stockholder:

(a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

(b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote.

(Added to NRS by 1995, 2089; A 2009, 1723)

NRS 92A.410 Notification of stockholders regarding right of dissent.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are, are not or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic corporation concludes that dissenter's rights are or may be available, a copy of NRS 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those stockholders of record entitled to exercise dissenter's rights.

2. If the corporate action creating dissenter's rights is taken by written consent of the stockholders or without a vote of the stockholders, the domestic corporation shall notify in writing all stockholders of record entitled to assert dissenter's rights that the action was taken and send them the dissenter's notice described in NRS 92A.430.

(Added to NRS by 1995, 2089; A 1997, 730; 2009, 1723; 2013, 1286; 2019, 111)

NRS 92A.420 Prerequisites to demand for payment for shares.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares:

(a) Must deliver to the subject corporation, before the vote is taken, written notice of the stockholder's intent to demand payment for his or her shares if the proposed action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any of his or her shares of such class or series in favor of the proposed action.

2. If a proposed corporate action creating dissenter's rights is taken by written consent of the stockholders, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares must not consent to or approve the proposed corporate action with respect to such class or series.

3. A stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2089; A 1999, 1631; 2005, 2204; 2009, 1723; 2013, 1286)

NRS 92A.430 Dissenter's notice: Delivery to stockholders entitled to assert rights; contents.

1. The subject corporation shall deliver a written dissenter's notice to all stockholders of record entitled to assert dissenter's rights in whole or in part, and any beneficial stockholder who has previously asserted dissenter's rights pursuant to NRS 92A.400.

2. The dissenter's notice must be sent no later than 10 days after the effective date of the corporate action specified in NRS 92A.380, and must:

(a) State where the demand for payment must be sent and where and when certificates, if any, for shares must be deposited;

(b) Inform the holders of shares not represented by certificates to what extent the transfer of the shares will be restricted after the demand for payment is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to the news media or to the stockholders of the terms of the proposed action and requires that the person asserting dissenter's rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the subject corporation must receive the demand for payment, which may not be less than 30 nor more than 60 days after the date the notice is delivered and state that the stockholder shall be deemed to have waived the right to demand payment with respect to the shares unless the form is received by the subject corporation by such specified date; and

(e) Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive.

(Added to NRS by 1995, 2089; A 2005, 2205; 2009, 1724; 2013, 1286)

NRS 92A.440 Demand for payment and deposit of certificates; loss of rights of stockholder; withdrawal from appraisal process.

1. A stockholder who receives a dissenter's notice pursuant to NRS 92A.430 and who wishes to exercise dissenter's rights must:

(a) Demand payment;

(b) Certify whether the stockholder or the beneficial owner on whose behalf he or she is dissenting, as the case may be, acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice for this certification; and

(c) Deposit the stockholder's certificates, if any, in accordance with the terms of the notice.

2. If a stockholder fails to make the certification required by paragraph (b) of subsection 1, the subject corporation may elect to treat the stockholder's shares as after-acquired shares under NRS 92A.470.

3. Once a stockholder deposits that stockholder's certificates or, in the case of uncertified shares makes demand for payment, that stockholder loses all rights as a stockholder, unless the stockholder withdraws pursuant to subsection 4.

4. A stockholder who has complied with subsection 1 may nevertheless decline to exercise dissenter's rights and withdraw from the appraisal process by so notifying the subject corporation in writing by the date set forth in the dissenter's notice pursuant to NRS 92A.430. A stockholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the subject corporation's written consent.

5. The stockholder who does not demand payment or deposit his or her certificates where required, each by the date set forth in the dissenter's notice, is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2090; A 1997, 730; 2003, 3189; 2009, 1724)

NRS 92A.450 Uncertificated shares: Authority to restrict transfer after demand for payment. The subject corporation may restrict the transfer of shares not represented by a certificate from the date the demand for their payment is received.

(Added to NRS by 1995, 2090; A 2009, 1725)

NRS 92A.460 Payment for shares: General requirements.

1. Except as otherwise provided in NRS 92A.470, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall pay in cash to each dissenter who complied with NRS 92A.440 the amount the subject corporation estimates to be the fair value of the dissenter's shares, plus accrued interest. The obligation of the subject corporation under this subsection may be enforced by the district court:

(a) Of the county where the subject corporation's principal office is located;

(b) If the subject corporation's principal office is not located in this State, in the county in which the corporation's registered office is located; or

(c) At the election of any dissenter residing or having its principal or registered office in this State, of the county where the dissenter resides or has its principal or registered office.

➥ The court shall dispose of the complaint promptly.

2. The payment must be accompanied by:

(a) The subject corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, a statement of income for that year, a statement of changes in the stockholders' equity for that year or, where such financial statements are not reasonably available, then such reasonably equivalent financial information and the latest available quarterly financial statements, if any;

(b) A statement of the subject corporation's estimate of the fair value of the shares; and

(c) A statement of the dissenter's rights to demand payment under NRS 92A.480 and that if any such stockholder does not do so within the period specified, such stockholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this chapter.

(Added to NRS by 1995, 2090; A 2007, 2704; 2009, 1725; 2013, 1287)

NRS 92A.470 Withholding payment for shares acquired on or after date of dissenter's notice: General requirements.

1. A subject corporation may elect to withhold payment from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenter's notice as the first date of any announcement to the news media or to the stockholders of the terms of the proposed action.

2. To the extent the subject corporation elects to withhold payment, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall notify the dissenters described in subsection 1:

(a) Of the information required by paragraph (a) of subsection 2 of NRS 92A.460;

(b) Of the subject corporation's estimate of fair value pursuant to paragraph (b) of subsection 2 of NRS 92A.460;

(c) That they may accept the subject corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under NRS 92A.480;

(d) That those stockholders who wish to accept such an offer must so notify the subject corporation of their acceptance of the offer within 30 days after receipt of such offer; and

(e) That those stockholders who do not satisfy the requirements for demanding appraisal under NRS 92A.480 shall be deemed to have accepted the subject corporation's offer.

3. Within 10 days after receiving the stockholder's acceptance pursuant to subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder who agreed to accept the subject corporation's offer in full satisfaction of the stockholder's demand.

4. Within 40 days after sending the notice described in subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder described in paragraph (e) of subsection 2.

(Added to NRS by 1995, 2091; A 2009, 1725; 2013, 1287)

NRS 92A.480 Dissenter's estimate of fair value: Notification of subject corporation; demand for payment of estimate.

1. A dissenter paid pursuant to NRS 92A.460 who is dissatisfied with the amount of the payment may notify the subject corporation in writing of the dissenter's own estimate of the fair value of his or her shares and the amount of interest due, and demand payment of such estimate, less any payment pursuant to NRS 92A.460. A dissenter offered payment pursuant to NRS 92A.470 who is dissatisfied with the offer may reject the offer pursuant to NRS 92A.470 and demand payment of the fair value of his or her shares and interest due.

2. A dissenter waives the right to demand payment pursuant to this section unless the dissenter notifies the subject corporation of his or her demand to be paid the dissenter's stated estimate of fair value plus interest under subsection 1 in writing within 30 days after receiving the subject corporation's payment or offer of payment under NRS 92A.460 or 92A.470 and is entitled only to the payment made or offered.

(Added to NRS by 1995, 2091; A 2009, 1726)

NRS 92A.490 Legal proceeding to determine fair value: Duties of subject corporation; powers of court; rights of dissenter.

1. If a demand for payment pursuant to NRS 92A.480 remains unsettled, the subject corporation shall commence a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the subject corporation does not commence the proceeding within the 60-day period, it shall pay each

dissenter whose demand remains unsettled the amount demanded by each dissenter pursuant to NRS 92A.480 plus interest.

2. A subject corporation shall commence the proceeding in the district court of the county where its principal office is located in this State. If the principal office of the subject corporation is not located in this State, the right to dissent arose from a merger, conversion or exchange and the principal office of the surviving entity, resulting entity or the entity whose shares were acquired, whichever is applicable, is located in this State, it shall commence the proceeding in the county where the principal office of the surviving entity, resulting entity or the entity whose shares were acquired is located. In all other cases, if the principal office of the subject corporation is not located in this State, the subject corporation shall commence the proceeding in the district court in the county in which the corporation's registered office is located.

3. The subject corporation shall make all dissenters, whether or not residents of Nevada, whose demands remain unsettled, parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter who is made a party to the proceeding is entitled to a judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the subject corporation; or

(b) For the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the subject corporation elected to withhold payment pursuant to NRS 92A.470.

(Added to NRS by 1995, 2091; A 2007, 2705; 2009, 1727; 2011, 2815; 2013, 1288)

NRS 92A.500 Assessment of costs and fees in certain legal proceedings.

1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment.

2. The court may also assess the fees and expenses of the counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the subject corporation and in favor of all dissenters if the court finds the subject corporation did not substantially comply with the requirements of NRS 92A.300 to 92A.500, inclusive; or

(b) Against either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the subject corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

4. In a proceeding commenced pursuant to NRS 92A.460, the court may assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.

5. To the extent the subject corporation fails to make a required payment pursuant to NRS 92A.460, 92A.470 or 92A.480, the dissenter may bring a cause of action directly for the amount owed and, to the extent the dissenter prevails, is entitled to recover all expenses of the suit.

6. This section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of NRS 17.117 or N.R.C.P. 68.

(Added to NRS by 1995, 2092; A 2009, 1727; 2015, 2566; 2019, 276)

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 15. Commerce and Trade
Chapter 2A. Securities and Trust Indentures (Refs & Annos)
Subchapter I. Domestic Securities (Refs & Annos)

15 U.S.C.A. § 77r

§ 77r. Exemption from State regulation of securities offerings

Effective: May 24, 2018
Currentness

(a)Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof--

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that--

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of--

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78*o*-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b)Covered securities

For purposes of this section, the following are covered securities:

(1)Exclusive Federal registration of nationally traded securities

A security is a covered security if such security is--

(A) a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2)Exclusive Federal registration of investment companies

A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3)Sales to qualified purchasers

A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4)Exemption in connection with certain exempt offerings

A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to--

(A)paragraph (1) or (3) of section 77d[1] of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78*o*(d) of this title;

(B)section 77d(4)[1] of this title;

(C)section 77d(6)[1] of this title;

(D) a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is--

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E)section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 77d(2)[1] of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2)[1] of this title that are in effect on September 1, 1996; or

(G)section 77d(a)(7) of this title.

(c)Preservation of authority

(1)Fraud authority

Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions[2]

(A) with respect to--

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to[3] a transaction described under section 77d(6)[1] of this title, with respect to--

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2)Preservation of filing requirements

(A)Notice filings permitted

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B)Preservation of fees

(i)In general

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

(ii)Schedule

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C)Availability of preemption contingent on payment of fees

(i)In general

During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii)Delays

For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D)Fees not permitted on listed securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F)[4]Fees not permitted on crowdfunded securities

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3)Enforcement of requirements

Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d)Definitions

For purposes of this section, the following definitions shall apply:

(1)Offering document

The term "offering document"--

(A) has the meaning given the term "prospectus" in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2)Prepared by or on behalf of the issuer

Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3)State

The term "State" has the same meaning as in section 78c of this title.

(4)Senior security

The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

CREDIT(S)

(May 27, 1933, c. 38, Title I, § 18, 48 Stat. 85; Pub.L. 104-290, Title I, § 102(a), Oct. 11, 1996, 110 Stat. 3417; Pub.L. 105-353, Title III, §§ 301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub.L. 111-203, Title IX, § 985(a)(2), July 21, 2010, 124 Stat. 1933; Pub.L. 112-106, Title III, § 305(a), (b)(2), (c), (d)(2), Title IV, § 401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325; Pub.L. 114-94, Div. G, Title LXXVI, § 76001(b), Dec. 4, 2015, 129 Stat. 1789; Pub.L. 115-174, Title V, § 501, May 24, 2018, 132 Stat. 1361.)

Notes of Decisions (20)

Footnotes

1 See References in Text note set out under this section.

2 So in original. The words “in connection with securities or securities transactions” probably should be part of subpar. (A).

3 So in original. Probably should be “with”.

4 So in original. No subpar. (E) has been enacted.

15 U.S.C.A. § 77r, 15 USCA § 77r

Current through P.L. 116-193.

End of Document

United States Code Annotated
Title 15. Commerce and Trade
Chapter 2B. Securities Exchanges (Refs & Annos)

15 U.S.C.A. § 78k-1

§ 78k-1. National market system for securities; securities information processors

Effective: April 5, 2012
Currentness

(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities

(1) The Congress finds that--

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure--

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter[1] in this section referred to as "qualified securities".)

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection--

(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

(b) Securities information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: *Provided, however*, That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations for and

transactions in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall--

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to--

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with

respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78*l*(b) of this title otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that--

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

(6) Tick size

(A) Study and report

The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these securities in penny increments. Not later than 90 days after April 5, 2012, the Commission shall submit to Congress a report on the findings of the study.

(B) Designation

If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after April 5, 2012, designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.

(d) National Market Advisory Board

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to

administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

(i) the point in time at which a Regulatory Board should be established;

(ii) the composition of a Regulatory Board;

(iii) the scope of the authority of a Regulatory Board;

(iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

(v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

(e) National markets system for security futures products

(1) Consultation and cooperation required

With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

(2) Application of rules by order of CFTC

No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 78f(g) of this title unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.

CREDIT(S)

(June 6, 1934, c. 404, Title I, § 11A, as added Pub.L. 94-29, § 7, June 4, 1975, 89 Stat. 111; amended Pub.L. 98-620, Title IV, § 402(14), Nov. 8, 1984, 98 Stat. 3358; Pub.L. 100-181, Title III, §§ 313, 314, Dec. 4, 1987, 101 Stat. 1256; Pub.L. 106-554, § 1(a)(5) [Title II, § 206(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-430; Pub.L. 112-106, Title I, § 106(b), Apr. 5, 2012, 126 Stat. 312.)

Notes of Decisions (9)

Footnotes

1 So in original. Probably should be “are hereinafter”.

15 U.S.C.A. § 78k-1, 15 USCA § 78k-1

Current through P.L. 116-193.

End of Document

Code of Federal Regulations
Title 17. Commodity and Securities Exchanges
Chapter II. Securities and Exchange Commission
Part 230. General Rules and Regulations, Securities Act of 1933 (Refs & Annos)
General (Refs & Annos)

17 C.F.R. § 230.146

§ 230.146 Rules under section 18 of the Act.

Effective: November 29, 2017
Currentness

(a) Prepared by or on behalf of the issuer. An offering document (as defined in Section 18(d)(1) of the Act [15 U.S.C. 77r(d)(1)]) is "prepared by or on behalf of the issuer" for purposes of Section 18 of the Act, if the issuer or an agent or representative:

(1) Authorizes the document's production, and

(2) Approves the document before its use.

(b) Covered securities for purposes of Section 18.

(1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange ("NYSE"), the NYSE American LLC ("NYSE American"), or the National Market System of the Nasdaq Stock Market ("Nasdaq/NGM"), and that securities listed, or authorized for listing, on such exchanges shall be deemed covered securities:

(i) Tier I of the NYSE Arca, Inc.;

(ii) Tier I of the NASDAQ PHLX LLC;

(iii) The Chicago Board Options Exchange, Incorporated;

(iv) Options listed on Nasdaq ISE, LLC;

(v) The Nasdaq Capital Market;

(vi) Tier I and Tier II of Bats BZX Exchange, Inc.; and

(vii) Investors Exchange LLC.

(2) The designation of securities in paragraphs (b)(1)(i) through (vii) of this section as covered securities is conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, NYSE American, or Nasdaq/NGM.

(c) [Reserved by 76 FR 40229]

Credits

[62 FR 24573, May 6, 1997; 63 FR 3035, Jan. 21, 1998; 69 FR 43298, July 20, 2004; 72 FR 20414, April 24, 2007; 74 FR 3974, Jan. 22, 2009; 74 FR 47724, Sept. 17, 2009; 75 FR 72664, Nov. 26, 2010; 76 FR 40229, July 8, 2011; 77 FR 3597, Jan. 25, 2012; 82 FR 50069, Oct. 30, 2017]

SOURCE: 62 FR 24573, May 6, 1997; 63 FR 6384, Feb. 6, 1998; 63 FR 13943, 13984, March 23, 1998; 64 FR 61449, Nov. 10, 1999; 65 FR 47284, Aug. 2, 2000; 66 FR 8896, 9017, Feb. 5, 2001; 67 FR 230, Jan. 2, 2002; 67 FR 13536, March 22, 2002; 67 FR 19673, April 23, 2002; 68 FR 57777, Oct. 6, 2003; 72 FR 20414, April 24, 2007; 72 FR 71566, Dec. 17, 2007; 76 FR 4243, Jan. 25, 2011; 76 FR 46617, Aug. 3, 2011; 76 FR 71876, Nov. 21, 2011; 76 FR 81805, Dec. 29, 2011; 78 FR 44769, July 24, 2013; 78 FR 44804, July 24, 2013; 80 FR 21894, April 20, 2015; 84 FR 50739, Sept. 26, 2019, unless otherwise noted.

AUTHORITY: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub.L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.; Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).; Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

Notes of Decisions (124)

Current through Dec. 8, 2020; 85 FR 78963.

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