

PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF SECURITIES

ADOPTED AMENDMENTS TO NGC REGULATION 16.430-INSTITUTIONAL INVESTORS

PURPOSE OF AMENDMENTS: To allow institutional investors to beneficially own more than 15 percent, but not more than 19 percent, of a publicly traded corporation's outstanding voting securities resulting from a stock repurchase program; to prohibit an institutional investor from acquiring additional voting securities of such publicly traded corporation; to require an institutional investor to reduce its holdings in such publicly traded corporation within one year from the date it receives constructive notice that it has exceeded the 15 percent threshold; to amend certain statutory references within the provisions of NGC Regulation 16.430; to correct references within current NGC Regulation 16.430 which became incorrect because of statutory amendments to NRS 463.643; to reference the provisions of NRS 463.643(4) instead of 463.643(3); to take such additional actions as may be necessary or appropriate to effectuate these purposes.

(Draft date: 5/2/02)

16.430 Institutional investors.

1. An institutional investor that becomes or intends to become subject to [NRS 463.643(3)] **NRS 463.643(4)** as a result of its beneficial ownership of voting securities of a publicly traded corporation registered with the commission may apply to the commission for a waiver of the requirements of [NRS 463.643(3)] **NRS 463.643(4)** with respect to the beneficial ownership of the voting securities of such publicly traded corporation if such institutional investor holds the securities for investment purposes only; provided, however, that an institutional investor shall not be eligible to receive or hold a waiver if the institutional investor beneficially owns, directly or indirectly, **except as otherwise provided in subsection 2**, more than 15 percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring. Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise or conversion, after a debt restructuring, of any securities issued to the institutional investor through a debt restructuring, shall be deemed to have been acquired through a debt restructuring. A waiver granted under this section shall be effective only as long as the institutional investor's direct or indirect beneficial ownership interest in such voting securities meets the limitations set forth above, and should the institutional investor's interest exceed such limitations at any time, it shall be subject to [NRS 463.643(3)] **NRS 463.643(4)**.

2. An institutional investor that has been granted a waiver pursuant to subsection 1, may beneficially own more than 15 percent, but not more than 19

percent, of the voting securities of a publicly traded corporation registered with the commission, only if such additional ownership results from a stock repurchase program conducted by such publicly traded corporation, upon the conditions that:

(a) Such institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage, and

(b) Such institutional investor reduces its ownership percentage of the publicly traded corporation to 15 percent or less within one year from the date the institutional investor receives constructive notice that it exceeded the 15 percent threshold, based on any public filing by the publicly traded corporation with the Securities and Exchange Commission. The one-year time period may be extended for a reasonable time upon administrative approval by the chairman of the board.

[2] **3.** NO CHANGE TO TEXT.

[3] **4.** NO CHANGE TO TEXT.

[4] **5.** NO CHANGE TO TEXT.

[5] **6.** NO CHANGE TO TEXT.

[6] **7.** A waiver of the requirements of [NRS 463.643(3)] **NRS 463.643(4)** that has been granted pursuant to this section and NRS 463.489(2) shall not be construed as a waiver of or exemption from the prior approval requirements of Regulation 16.200. An institutional investor that intends to apply for a waiver of the requirements of [NRS 463.643(3)] **NRS 463.643(4)** pursuant to this section must also simultaneously apply to the commission for an exemption from the prior approval requirements of Regulation 16.200 if the proposed acquisition would give the institutional investor, directly or indirectly, the power to direct or cause the direction of the management and policies of the publicly traded corporation.

[7] **8.** NO CHANGE TO TEXT.

[8] **9.** NO CHANGE TO TEXT.

(Effective date: 06/20/02).