

PROPOSED REGULATION OF THE STATE TREASURER

LCB File No. R141-18

September 27, 2018

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

AUTHORITY: §§1-7, NRS 355.350.

A REGULATION relating to governmental financial administration; requiring the State Treasurer to review and rely upon certain information to identify scrutinized companies; establishing a process for giving a company notice of the inclusion of that company on the list of scrutinized companies; establishing a process for certain companies to appeal identification as a scrutinized company; establishing the process for the removal of a company from the list of scrutinized companies; requiring the State Treasurer to consider certain factors when taking action relating to investments in scrutinized companies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines the term “scrutinized company” to mean a company that engages in a boycott of Israel. (NRS 355.330) Existing law requires the State Treasurer to identify each scrutinized company in which a trust fund administered by the State Treasurer has either direct or indirect holdings. Existing law requires the State Treasurer to review and rely upon certain publicly available information in making the identification. (NRS 355.335) **Section 2** of this regulation specifies some examples of the publicly available information that the State Treasurer is required to review and rely upon in identifying a scrutinized company.

Existing law requires the State Treasurer to adopt regulations establishing: (1) a process for giving notice to a company of the inclusion of the company on the list of scrutinized companies; and (2) the process for the removal of a company from the list of scrutinized companies. (NRS 355.350) **Section 3** of this regulation requires the State Treasurer to: (1) initially identify each scrutinized company upon reviewing certain publicly available information; and (2) provide written notice to a company initially identified as a scrutinized company. **Section 3** requires this notice to include the reasons why the State Treasurer initially identified the company as a scrutinized company. **Section 3** authorizes a company initially identified as a scrutinized company to respond to such notice with: (1) an explanation regarding or rebuttal to the statement in the notice; or (2) evidence that the company has ceased to engage in an activity specified in the statement in the notice. **Section 3** provides that if a company fails to respond within 30 days to such notice, the company will be deemed to have admitted to being a scrutinized company and will be placed on the list of scrutinized companies when the list is next updated. **Section 3** also requires the State Treasurer to: (1) review any response received from a company initially identified as a scrutinized company before making a determination

concerning the company; and (2) provide written notice to a company upon making such a determination concerning the company.

Section 4 of this regulation authorizes a scrutinized company that responded to initial identification in the manner prescribed in **section 3** and was determined to be a scrutinized company to appeal the identification of the company as a scrutinized company with the State Treasurer. **Section 4** requires the State Treasurer or his or her designee to hold a hearing on the appeal. **Section 4** also provides that if the State Treasurer or his or her designee: (1) reverses the determination, the company will not be identified as a scrutinized company and, if the company has been included on the list of scrutinized companies, will be removed from that list; or (2) affirms the determination, the company will be included on the list of scrutinized companies when the list is next updated.

Section 5 of this regulation provides that a company can be removed from the list of scrutinized companies: (1) upon request of the scrutinized company and a determination by the State Treasurer; or (2) by the State Treasurer if he or she determines, based on publicly available information, that the company should no longer be identified as a scrutinized company. **Section 5** requires a company that requests to be removed from the list of scrutinized companies to provide to the State Treasurer written evidence that the company should no longer be identified as a scrutinized company. **Section 5** requires the State Treasurer to: (1) review the evidence submitted; and (2) make a determination concerning continued identification of a company as a scrutinized company. **Section 5** also provides that if the State Treasurer determines that a company should no longer be identified as a scrutinized company, the company must: (1) not appear on the list of scrutinized companies when the list is next updated; and (2) be reported as no longer being a scrutinized company in the annual report of investments in scrutinized companies.

Existing law requires the State Treasurer to sell, redeem, divest or withdraw all direct holdings of a scrutinized company from the assets under his or her management and request that the manager of the indirect holdings of any public fund consider taking the same action if the State Treasurer determines and adopts findings that such action is consistent with his or her fiduciary responsibilities. (NRS 355.345) **Section 6** of this regulation requires the State Treasurer to make certain considerations when determining whether to adopt such findings. **Section 7** of this regulation requires the State Treasurer to monitor any direct investment of the assets under the management of the State Treasurer in a scrutinized company and take certain action based on the maturity date of the investment.

Section 1. Chapter 355 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *The publicly available information regarding companies which are engaging in a boycott of Israel that the State Treasurer will review and rely upon as required by NRS 355.335 includes, without limitation:*

- 1. Information obtained through asset managers with whom the State Treasurer has entered into a contract;*
- 2. Information obtained through an investment of the State Treasurer in conjunction with other institutions or organizations, including, without limitation, a mutual fund or commingled trust fund;*
- 3. Information obtained through institutional investors that have divested from or engaged with companies that have economic prohibitions against Israel;*
- 4. Any list of companies who are engaging in a boycott of Israel that has been created by a governmental entity; and*
- 5. Any information or guidance from the Federal Government relating to companies who are engaging in a boycott of Israel.*

Sec. 3. 1. Upon reviewing publicly available information regarding companies which are engaging in a boycott of Israel, the State Treasurer will initially identify any company in which a public fund has direct holdings or indirect holdings that appears to be a scrutinized company.

2. Within 30 days after the date on which the State Treasurer initially identifies a company as a scrutinized company pursuant to subsection 1, the State Treasurer will provide written notice to the company of that initial identification. Such notice will be sent by registered mail to the legal address of the company and will include, without limitation:

(a) A statement of the reasons why the State Treasurer initially identified the company as a scrutinized company;

(b) Notice that final identification of the company as a scrutinized company will result in inclusion of the company on the list of all scrutinized companies created pursuant to subsection 2 of NRS 355.335; and

(c) Notice that inclusion of the company on the list of all scrutinized companies created pursuant to subsection 2 of NRS 355.335 will, except as otherwise provided in subsection 2 of NRS 355.345:

(1) Result in the sale, redemption, divestment or withdrawal of all direct holdings of the company by the State Treasurer from the assets under his or her management; and

(2) Prohibit the State Treasurer from acquiring securities of the company as part of the direct holdings of the Office of the State Treasurer.

3. Within 30 days after the date on which a company receives notice pursuant to subsection 2, the company may submit a written response to the notice by registered mail to the Office of the State Treasurer. The response may include, without limitation:

(a) An explanation regarding or rebuttal to the statement in the notice described in paragraph (a) of subsection 2; or

(b) Evidence that the company has ceased to engage in any activity specified in the statement in the notice described in paragraph (a) of subsection 2.

4. If a company fails to respond within the period and in the manner prescribed in subsection 3, the company will be deemed to have admitted to being a scrutinized company and will be placed on the list of scrutinized companies when the list is next updated pursuant to subsection 3 of NRS 355.335.

5. Within 90 days after the date on which a response is received from a company pursuant to subsection 3, the State Treasurer will make a determination concerning the identification of

a company as a scrutinized company. Notice of the determination will be sent by registered mail to the legal address of the company.

Sec. 4. 1. *Within 10 days after the date on which a company received notice of the determination that it was identified as a scrutinized company pursuant to subsection 5 of section 3 of this regulation, the company may file a notice of appeal of the determination with the State Treasurer. A notice of appeal must include, without limitation, a written statement of any reason why the company believes that it is not a scrutinized company and any evidence that substantiates its written statement.*

2. Within 20 days after the date on which the State Treasurer receives a notice of appeal pursuant to subsection 1, the State Treasurer or his or her designee will hold a hearing on the appeal. The State Treasurer or his or her designee will serve as the hearing officer for such a hearing.

3. If the State Treasurer or his or her designee reverses the determination on appeal, the company:

(a) Will not be identified as a scrutinized company; and

(b) If the company has been included on the list of scrutinized companies created pursuant to NRS 355.335, will be removed from that list not later than 10 days after the date on which the appeal was upheld.

4. If the State Treasurer or his or her designee affirms the determination, the company will be included on the list of scrutinized companies when the list is next updated pursuant to subsection 3 of NRS 355.335.

Sec. 5. 1. *A scrutinized company may be removed from the list of scrutinized companies created pursuant to NRS 355.335:*

(a) By the State Treasurer after a review of publicly available information during the annual update of the list as required by subsection 3 of NRS 355.335; or

(b) Upon request of the scrutinized company and a determination by the State Treasurer pursuant to the procedure set forth in subsections 2 and 3.

2. If a scrutinized company requests to be removed from the list of scrutinized companies, the scrutinized company must, on or before December 1 of the year immediately preceding the year in which the scrutinized company wishes to be removed from the list, submit to the State Treasurer written evidence which demonstrates that the scrutinized company should no longer be identified as a scrutinized company.

3. Within 90 days after the date on which the State Treasurer receives any written evidence submitted by a scrutinized company pursuant to subsection 2, the State Treasurer will make a determination concerning the continued inclusion of the company on the list of scrutinized companies. Notice of the determination will be sent by registered mail to the legal address of the company.

4. If the State Treasurer determines that a scrutinized company should be removed from the list, the State Treasurer will not:

(a) Include the scrutinized company on the list of scrutinized companies when the list is next updated pursuant to subsection 3 of NRS 355.335; and

(b) Report the scrutinized company as being a scrutinized company in the annual report required to be prepared pursuant to NRS 355.340.

Sec. 6. When determining whether to adopt the findings described in subsection 2 of NRS 355.345, the State Treasurer will consider, without limitation, investment safety, liquidity and securing a just and reasonable investment return while avoiding undue risk.

Sec. 7. Except as otherwise provided in subsection 2 of NRS 355.345, if the maturity date of any direct investment of assets under the management of the State Treasurer:

1. Does not extend more than 3 months after the date on which a company is identified as a scrutinized company, the State Treasurer will monitor the investment until the date on which the security matures and not extend or reinvest with the scrutinized company until the company is no longer identified as a scrutinized company.

2. Extends more than 3 months after the date on which a company is identified as a scrutinized company, the State Treasurer will analyze the complexity of the investment and develop a divestment plan. Such a plan will be based on prudent divestment strategy that preserves the principal value of the investment.