

### **Informational Statement for R018-21RP2**

The information required by NRS 233B.066 is provided below:

**1. A clear and concise explanation of the need for the adopted regulation.**

NRS 90.750(1)-(2) provides the Administrator of the Office of the Secretary of State with the authority to adopt regulations further defining such words and terms as are necessary for an understanding of the provisions of chapter 90 as well as to keep regulations adopted by the Administrator in harmony with regulations adopted by the Securities and Exchange Commission under federal securities laws and to encourage uniformity with the regulations of securities agencies and administrators in other states.

Further, NRS 90.750(2) provides that the Securities Administrator shall take into consideration the regulations adopted by the Securities and Exchange Commission, the regulations of securities agencies and administrators in other states that enact a law comparable to this chapter, and any model rule, regulation, exemption or like provision adopted by the North American Securities Administrators Association (NASAA).

NRS 90.750(3) provides that a regulation or order may not be adopted or entered unless the Administrator determines from evidence obtained at a public hearing and entered in the record that the action is in the public interest and appropriate for the protection of investors and consistent with the purposes fairly intended by the provisions of this chapter. Furthermore, NRS 90.750(4) allows for the Administrator to use his or her own experience, technical competence, specialized knowledge, and judgment in the adoption of a regulation.

The purpose of the proposed regulations is to update and modernize the language of Chapter 90 of the Nevada Administrative Code and to adopt various NASAA model rules.

**2. A description of how public comment was solicited, a summary of the public response and an explanation of how other interested persons may obtain a copy of the summary.**

Persons wishing to comment upon the proposed action of the Securities Division of the Nevada Secretary of State were advised of their right to appear at the scheduled public hearing and their right to address comments in written form to the Securities Division, Nevada Secretary of State, 2250 Las Vegas Blvd. North, Suite 400, North Las Vegas, Nevada 89030. The Securities Division was to receive written submissions on or before May 3, 2023. No persons affected by the proposed action appeared to provide public comment, the Securities Division documented the proceedings of the public hearing held at 10:00 am May 3, 2023.

The Office of the Secretary of State also solicited comment on the proposed amendment by posting a notice with links to the full text of the proposed amendment to the LCB Administrative Regulation Notices website, Secretary of State's website, and Nevada Public Notice website as well as posting notices and agendas in numerous public locations pursuant to NRS 233B. The notices were also distributed to an internally maintained "interested persons" list consisting of licensees and those persons who have indicated a desire to be personally notified of Division action.

The Office of the Secretary of State also posted links to all notices and proposed text on the agency Twitter page for the Secretary of State (@NVSOS) as well as the NVSOS.gov website.

Before the proposed regulations were submitted to the Legislative Counsel Bureau (LCB), the Division held an informal workshop on the initial draft of the proposed regulations for the purpose of receiving feedback on the provisions contained therein. Requested changes from the public and interested stakeholders were mostly incorporated into the initial draft submitted to LCB, which draft was the basis of the formal workshop on October 21, 2021. Following further revisions based upon feedback from the October 21, 2021 hearing, the Division held a second workshop on August 2, 2022. Feedback from the August 2, 2022 hearing was incorporated into the Second Revised Proposed Regulations, File No. R018-21RP2.

A Notice of Intent to Adopt Regulations was published on December 19, 2022 with notice of public hearing scheduled for January 20, 2023 for the Second Revised Proposed Regulations. The Notice of Intent to Act Upon a Regulation also solicited written comments to the Division to be received by January 19, 2023. That public hearing was subsequently cancelled pursuant to Executive Order 2023-003. However, two written comments were directed to the Division, which are both addressed below. After receiving an exemption to the Executive Order on March 17, 2023, a new adoption hearing date was scheduled for May 3, 2023.

Public response has been positive with any requested changes being to revise technical language. Requested changes to the language in the Second Revised Proposed Regulations have been largely incorporated into the final text of the document now being filed with LCB. The Division received one comment letter requesting a change that was not incorporated into the adopted revised regulations. This comment letter was received from the American Retirement Association, whose letter indicated a desire for the Division to add language stating that the proposed regulations did not create an additional fiduciary duty with respect to advisory activity to participants and beneficiaries of ERISA-covered plans or the plans themselves. Those ERISA-covered plans are already subject to an ERISA fiduciary standard. The proposed regulations in question do not impose any additional fiduciary standards other than what currently exists in Nevada law and thus the suggested change from the American Retirement Association was not incorporated.

The notices, proposed text, and link to adoption hearing notice are posted at the following websites:

Secretary of State website: <http://nvsos.gov>

Nevada Secretary of State Securities Division website: <http://www.nvsos.gov/sos/investor-information>

State of Nevada Public Notice website: <http://notice.nv.gov>

Legislative Counsel Bureau website: <https://leg.state.nv.us>

The audio recording of the public comment and adoption hearing is posted at the following website:

Nevada Secretary of State Securities Division website: <http://www.nvsos.gov/sos/investor-information>

Written comments received prior to each adoption hearing are available upon request.

**3. The number of persons who: (1) Attended each hearing; (2) Testified at each hearing; and (3) Submitted to the agency written statements.**

Workshop date: October 21, 2021

(a) Number in attendance: 1

(b) Number testifying: 1

(c) Written statements submitted: 5

Workshop date: August 2, 2022

(a) Number in attendance: 7

(b) Number testifying: 2

(c) Written statements submitted: 5

Public Hearing date: January 20, 2023

Cancelled – no hearing held

Public Hearing date: May 3, 2023

(a) Number in attendance: 1

(b) Number testifying: 0

(c) Written statements submitted: 0

**4. For each person identified in subparagraphs (2) and (3) of paragraph (c), the following information if provided to the agency conducting the hearing: (1) Name; (2) Telephone number; (3) Business address; (4) Business telephone number; (5) Electronic mail address; and (6) Name of entity or organization represented.**

Please see the attached spreadsheet for details.

**5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

The Office of the Secretary of State solicited comment on the proposed revised regulations by posting a notice with links to the full text of the proposed amendment to the LCB Administrative Regulation Notices website, Secretary of State's website, and Nevada Public Notice website as well as posting notices and agendas in numerous public locations pursuant to NRS 233B. The notices were also distributed to an internally maintained "interested persons" list consisting of licensees and those persons who have indicated a desire to be personally notified of Division action.

The Office of the Secretary of State also posted links to all notices and proposed text on the agency Twitter page for the Secretary of State (@NVSOS) as well as the NVSOS.gov website.

Before the proposed regulations were submitted to the Legislative Counsel Bureau (LCB), the Division held an informal workshop on an initial draft of the proposed regulations for the purpose of receiving feedback on the provisions contained therein. Requested changes from the public and interested stakeholders were mostly incorporated into the initial draft submitted to LCB, which draft was the basis of the formal workshop on October 21, 2021. Following further revisions based upon feedback from the October 21, 2021 hearing, the Division held a second workshop on August 2, 2022. Feedback from the August 2, 2022 hearing was incorporated into the Second Revised Proposed Regulations, File No. R018-21RP2.

A Notice of Intent to Adopt Regulations was published on December 19, 2022 with notice of public hearing scheduled for January 20, 2023 for the Second Revised Proposed Regulations. The Notice of Intent to Act Upon a Regulation also solicited written comments to the Division to be received by January 19, 2023. That public hearing was subsequently cancelled pursuant to Executive Order 2023-003. After receiving an exemption to the Executive Order on March 17, 2023, a new adoption hearing date was scheduled for May 3, 2023.

**No representatives from small businesses were present at the workshops or hearings, nor were any written comments received from the same.** Written comments were solicited and accepted for the month prior to each hearing date described above.

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Secretary of State website: <http://nvsos.gov>

Nevada Secretary of State Securities Division website: <http://www.nvsos.gov/sos/investor-information>

State of Nevada Public Notice website: <http://notice.nv.gov>

Legislative Counsel Bureau website: <https://leg.state.nv.us>

The audio recording of the public comment and adoption hearing is posted at the following website:

Nevada Secretary of State Securities Division website: <http://www.nvsos.gov/sos/investor-information>

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Substantially all requested changes in both public comment and via public comment letters were included in the revisions to the revised proposed regulations. The Division received one comment letter requesting a change that was not incorporated into the adopted revised regulations. This comment letter was received from the American Retirement Association, whose letter indicated a desire for the Division to add language stating that the proposed regulations did not create an additional fiduciary duty with respect to advisory activity to participants and beneficiaries of ERISA-covered plans or the plans themselves. Those ERISA-covered plans are already subject to an ERISA fiduciary standard. The proposed regulations in question do not impose any additional fiduciary standards other than what currently exists in Nevada law and thus the suggested change from the American Retirement Association was not incorporated.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: (1) Both adverse and beneficial effects; and (2) Both immediate and long-term effects.**

Please see attached small business impact statement for full details as set forth therein.

- 8. The estimated cost to the agency for enforcement of the proposed regulation.**

There is no anticipated cost related to the enforcement of the proposed regulation.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed regulation does not overlap or duplicate any other regulations of another state or government agency.

- 10. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

This regulation does not include provisions which are more stringent than a federal regulation which regulates the same activity.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.

Workshop October 21, 2021	Workshop August 2, 2022	Adoption Hearing January 21, 2023 (cancelled pursuant to Executive Order)	Adoption Hearing May 3, 2023
Erin Houston - SOS (Host)	Erin Houston - SOS (Host)	Erin Houston - SOS (Host)	Erin Houston -- SOS (Host)
Brett Olin (SOS)	Scott Anderson (SOS)	n/a	Judi Harris (SOS)
John Cronin, LPL Financial, Vice President, Head of State Government Relations, Legal & Government Relations Mobile: (802) 238-2214 Email: john.cronin@lplfinancial.com	Samantha Sato, (702) 994-8304, Carrarra Nevada Government Affairs, info@carraranv.com		
	Tyler Shaw, FRPA		
	Jesse Wadhams, Black& Wadhams, jessewadhams@blackwa dhams.law		
	Andrew Remo, Aremo@USARetirement .org		
	Jacob Levine, jl2362@american.edu		
	Nathan Glassey, Nglassey@usaretireme nt.org		
	James Wadhams, jlwadhams@blackwadha ms.law		
	Shelly Capuro, 775-852- 3900, scapurro@kcnvlaw.com		