

ADOPTED REGULATION OF THE STATE TREASURER

LCB File No. R028-04

Effective June 30, 2004

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

AUTHORITY: §§1-19, NRS 356.390.

A REGULATION relating to securities; establishing a program for monitoring the collateral that must be maintained by depositories to secure the uninsured deposits of certain public depositors; providing for the imposition of an administrative fine in certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 356 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 19, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Acceptable securities” has the meaning ascribed to it in subsection 2 of NRS 356.360.*

Sec. 4. *“Collateral pool” means the method of securing the repayment of the uninsured balances of the deposits of a participating public depositor at a depository through the total collateral pledged at a third-party depository for the uninsured balances of the deposits of all participating public depositors.*

Sec. 5. *“Depository” has the meaning ascribed to it in NRS 356.310.*

Sec. 6. *“File transfer protocol” means the communications protocol approved by the State Treasurer governing the transfer of files from the computer of a public depositor,*

depository or third-party depository to a computer at the Office of the State Treasurer over a network.

Sec. 7. *“Local government” has the meaning ascribed to it in NRS 356.320.*

Sec. 8. *“Public depository” means the State or a local government that deposits public money with a depository.*

Sec. 9. *“Public money” has the meaning ascribed to it in NRS 356.330. The term includes, without limitation, savings deposits and demand deposits.*

Sec. 10. *“Third-party depository” has the meaning ascribed to it in NRS 356.340.*

Sec. 11. 1. *To participate in a collateral pool at a depository, a public depository must notify the depository on a form approved by the State Treasurer. The public depository must provide a copy of the notice to the State Treasurer.*

2. *Within 5 business days after receipt of the notice described in subsection 1, the depository shall provide to the public depository a list of the names and titles of all the accounts maintained by the public depository at the depository. The public depository shall review the list and, within 5 business days after receipt of the list, notify the depository of any inaccurate or incomplete information relating to the accounts of the public depository at the depository.*

3. *Within 5 business days after submission of the form described in subsection 1 to the depository, the public depository shall provide to the depository written authorization to:*

(a) *Request any third-party depository that holds collateral pledged on behalf of the public depository to release all such collateral to the depository; and*

(b) *Repledge the securities for the benefit of the State Treasurer at the third-party depository selected by the depository.*

4. For each new account opened at a depository by a public depositor that participates in a collateral pool at the depository, the public depositor shall:

(a) Inform the depository that the account is subject to the provisions of NRS 356.360.

(b) Report the account to the State Treasurer, on a form approved by the State Treasurer, on or before the deadline established by the State Treasurer for submission of such a form.

The report must be submitted by file transfer protocol, electronic mail, facsimile, telephone or any other method approved by the State Treasurer.

5. A depository shall seek verification from a public depositor that participates in a collateral pool at the depository if the depository suspects that an account of the public depositor is not identified as a public account.

6. A public depositor that participates in a collateral pool at one or more depositories shall submit to the State Treasurer an annual report of all accounts that the public depositor maintained at each such depository during the immediately preceding year. The report must be submitted:

(a) On or before the deadline established by the State Treasurer for submission of the report;

(b) In a format approved by the State Treasurer; and

(c) By file transfer protocol, electronic mail, facsimile, telephone or any other method approved by the State Treasurer.

↪The public depositor shall transmit to each depository referenced in the report a copy of the portion of the annual report that pertains to that depository.

7. A public depositor that participates in a collateral pool at a depository shall not secure any portion of the uninsured balances of its deposits pursuant to a direct pledge agreement with the depository.

Sec. 12. *1. A depository that receives notification from a public depositor that wishes to participate in a collateral pool at the depository pursuant to section 11 of this regulation shall execute an agreement with the State Treasurer, in a format approved by the State Treasurer, to pledge and maintain collateral against the uninsured deposits of the public depositor. Such an agreement must:*

(a) Require the depository to maintain as collateral at a third-party depository for the benefit of the State Treasurer acceptable securities having a fair market value that is at least 102 percent of the amount of the uninsured balances of the public money of the public depositor held at the depository.

(b) If the depository is not maintaining the minimum level of collateral at the third-party depository required by paragraph (a), require the depository to pledge additional collateral to meet the requirements of paragraph (a) within the deadline established by the State Treasurer.

(c) Prohibit the depository from holding, at any one time, public money in an amount exceeding the total equity of the depository, as reflected on the financial statement of the depository.

2. Except as otherwise provided in this subsection, if a depository that receives notification from a public depositor that wishes to participate in a collateral pool at the depository pursuant to section 11 of this regulation has not yet established a collateral pool on the date of receipt of the notification, the depository shall execute an agreement with the State Treasurer and a third-party depository, in a format approved by the State Treasurer, to pledge

and maintain collateral against the uninsured deposits of the public depositor at the third-party depository for the benefit of the State Treasurer. If the depository elects to use the Federal Reserve Bank as the third-party depository, the terms specified in the Operating Circulars of the Federal Reserve Banks governing book-entry securities apply.

3. An agreement entered into pursuant to subsection 2 with a third-party depository other than the Federal Reserve Bank must include a provision that requires the third-party depository to maintain only acceptable securities as pledged collateral from depositories.

Sec. 13. 1. *Each depository that maintains a collateral pool shall submit to the State Treasurer:*

(a) A daily report of the total balance of public money held at the depository in the accounts of public depositors that participate in the collateral pool as of the end of the business day to which the report pertains;

(b) A weekly summary report of the total fair market value of securities maintained by the depository at a third-party depository for the benefit of the State Treasurer as collateral for the uninsured balances of public money deposited with the depository by public depositors that participate in the collateral pool as of the end of the last business day of the week to which the report pertains;

(c) A monthly report:

(1) Listing all acceptable securities maintained by the depository at a third-party depository for the benefit of the State Treasurer as collateral for the uninsured balances of public money deposited with the depository by public depositors that participate in the collateral pool, including, without limitation, the fair market value of each of those securities, as of the end of the last business day of the month to which the report pertains; and

(2) Stating the number of accounts maintained at the depository by public depositors that participate in the collateral pool as of the end of the month to which the report pertains; and

(d) An annual report containing the financial statement of the depository for the immediately preceding year.

2. The reports required by subsection 1 must be submitted:

(a) On or before the deadlines established by the State Treasurer for submission of the reports;

(b) In a format approved by the State Treasurer; and

(c) By file transfer protocol, electronic mail, facsimile, telephone or any other method approved by the State Treasurer.

Sec. 14. 1. Except when the third-party depository is the Federal Reserve Bank:

(a) If a depository that maintains a collateral pool wishes to pledge additional security to the third-party depository that the depository selected, the depository must notify the third-party depository in writing or any other method approved by the State Treasurer. By the end of the same business day on which the third-party depository receives the notification from the depository and before the deadline established by the State Treasurer for processing such a transaction, the third-party depository shall process the transaction and provide the depository with acknowledgment that the transaction was completed.

(b) If a depository that maintains a collateral pool wishes to release security held by the third-party depository that the depository selected, the depository must notify the State Treasurer in writing or any other method approved by the State Treasurer. If the State Treasurer approves the transaction, the State Treasurer will notify the third-party depository

in writing. By the end of the same business day on which the third-party depository receives the notification from the State Treasurer and before the deadline established by the State Treasurer for processing such a transaction, the third-party depository shall process the transaction and provide the depository with acknowledgment that the transaction was completed.

(c) If a depository that maintains a collateral pool wishes to substitute security held by the third-party depository that the depository selected and the fair market value of the security proposed for substitution is:

(1) Greater than or equal to the fair market value of the existing security, the depository must notify the third-party depository in writing or any other method approved by the State Treasurer. By the end of the same business day on which the third-party depository receives the notification from the depository and before the deadline established by the State Treasurer for processing such a transaction, the third-party depository shall process the transaction and provide the depository with acknowledgment that the transaction was completed.

(2) Less than the fair market value of the existing security, the depository must notify the State Treasurer in writing or any other method approved by the State Treasurer. If the State Treasurer approves the substitution of security, the State Treasurer will notify the third-party depository in writing. By the end of the same business day on which the third-party depository receives the notification from the State Treasurer and before the deadline established by the State Treasurer for processing such a transaction, the third-party depository shall process the transaction and provide the depository with acknowledgment that the transaction was completed.

2. If a depository that selected the Federal Reserve Bank as its third-party depository wishes to pledge additional security to, or release or substitute security held at, the Federal Reserve Bank, the depository shall comply with the requirements set forth in the Operating Circulars of the Federal Reserve Banks governing book-entry securities.

Sec. 15. *1. Each third-party depository other than the Federal Reserve Bank shall submit to the State Treasurer:*

(a) A daily report of any pledge, release or substitution of security pursuant to section 14 of this regulation that was completed on the day to which the report pertains. Such a report is not required if no such transactions were completed on that day.

(b) A monthly report of all securities held at the third-party depository on behalf of the depository for the benefit of the State Treasurer as of the end of the last business day of the month to which the report pertains.

2. The reports required by subsection 1 must be submitted:

(a) On or before the deadlines established by the State Treasurer for submission of the reports;

(b) In a format approved by the State Treasurer; and

(c) By file transfer protocol, electronic mail, facsimile, telephone or any other method approved by the State Treasurer.

3. If a depository had elected to use the Federal Reserve Bank as its third-party depository, the reporting requirements set forth in the Operating Circulars of the Federal Reserve Banks governing book-entry securities apply.

Sec. 16. *For the purposes of carrying out NRS 356.300 to 356.390, inclusive, the State Treasurer will:*

1. Ensure that:

(a) An agreement to pledge and maintain collateral against the uninsured deposits of a public depositor that participates in a collateral pool has been executed pursuant to section 12 of this regulation with each depository that maintains a collateral pool.

(b) An agreement to pledge and maintain collateral against the uninsured deposits of a public depositor that participates in a collateral pool has been executed with a third-party depository pursuant to section 12 of this regulation.

2. Notify a depository of its failure to maintain the minimum amount of acceptable securities as collateral that is required in an agreement executed pursuant to section 12 of this regulation within the deadlines established by the State Treasurer for such notification.

3. Make available by electronic mail, by facsimile or on the Internet to authorized personnel of public depositors and depositories the reports submitted pursuant to sections 13 and 15 of this regulation.

4. Establish and maintain a recordkeeping system for the purpose of reviewing and analyzing the daily, weekly and monthly reports submitted by public depositors, depositories and third-party depositories pursuant to sections 13 and 15 of this regulation to:

(a) Monitor the type and minimum amount of collateral pledged by a depository at a third-party depository as security for the uninsured balances of deposits of public depositors that participate in a collateral pool at the depository;

(b) Ensure that any account opened at a depository by a public depositor that participates in a collateral pool at the depository is reported for the purposes of NRS 356.360; and

(c) Ensure compliance with an agreement executed pursuant to section 12 of this regulation.

5. Maintain a current list of participating public depositors, depositories and third-party depositories.

6. Establish and maintain an electronic database for the purposes of the receipt of reports submitted pursuant to sections 13 and 15 of this regulation.

Sec. 17. *1. A public depositor may withdraw from a collateral pool at a depository by providing written notification of its intent to withdraw to the State Treasurer and the depository, including, without limitation, the effective date of withdrawal. The effective date of withdrawal must be more than 90 days after the State Treasurer receives written notification from the public depositor pursuant to this subsection.*

2. Until the effective date of withdrawal of the public depositor, the depository of the withdrawing public depositor shall:

(a) Maintain the minimum amount of acceptable securities as collateral that is required in the agreement executed pursuant to section 12 of this regulation;

(b) Continue to provide the reports required pursuant to section 13 of this regulation; and

(c) Remain liable for any losses incurred by the collateral pool.

Sec. 18. *The State Treasurer will impose an administrative fine not to exceed:*

1. One hundred dollars per day against a depository that willfully fails to submit a report required pursuant to section 13 of this regulation by the deadline established by the State Treasurer for submission of the report.

2. Two hundred fifty dollars per day against a depository that willfully fails to maintain the minimum amount of acceptable securities as collateral that is required in an agreement executed pursuant to section 12 of this regulation.

Sec. 19. 1. *The State Treasurer hereby adopts by reference the Operating Circulars of the Federal Reserve Bank. These publications are available, free of charge, from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02210.*

2. *The State Treasurer will periodically review the Operating Circulars and determine within 30 days after the review whether any change made to a Circular is appropriate for application in this State. If the State Treasurer does not disapprove a change to a Circular within 30 days after the review, the change is deemed to be adopted by the State Treasurer.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R028-04**

The Office of the State Treasurer adopted regulations assigned LCB File No. R028-04 which pertain to chapter 356 of the Nevada Administrative Code on May 26, 2004.

Notice date: 4/26/2004
Hearing date: 5/26/2004

Date of adoption by agency: 5/26/2004
Filing date:

INFORMATIONAL STATEMENT

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

Public comment was solicited by posting notices of the hearing at libraries throughout the state, as well as directly contacting those known groups that would be impacted by the proposed regulation. Public comment was also solicited on May 26, 2004 at the public workshop and hearing for the proposed regulations of the Office of the State Treasurer. Additionally, public comment was solicited via phone calls, e-mail, facsimile and meetings with representatives from the City of Las Vegas, Clark County, White Pine County, Humboldt County, Carson City, and Churchill County. Public comment was also solicited at the 2004 Nevada Government Financial Officers Association (NGFOA) Conference at the Riviera Hotel & Casino January 22 – 23, 2004. Senior Deputy Treasurer Patrick Foley presented an overview of the program on January 22, 2004, where he discussed the objectives of the program, as well as the collective benefits to the depositories and public depositors. Exhibit A is the handout provided to the audience from the presentation. Finally, public comment was solicited from a Nevada Association of School Superintendents meeting held April 1, 2004. Each attendee was provided a copy of the pooled collateral program overview and workflow, proposed regulations as submitted to the Legislative Counsel Bureau, a current contact listing at their agency, and a pooled collateral contact information form to update contact information as necessary. Responses indicated an overall positive response to the proposed regulations. Public response focused on the procedures of the program, as well as technicalities surrounding the reporting capabilities afforded to the public depositors as a result of the proposed regulation. Additionally, public depositors sought confirmation that deposit relationships that they acted as official custodian for were covered by the pooled collateral program. Interested persons may obtain a copy of the presentation handouts, the Nevada Association of School Superintendents meeting packet and minutes of the public workshop and hearing by calling the Office of the State Treasurer at (702) 486-2585 or by writing to the Office of the State Treasurer at 555 East Washington Ave., Suite 4200, Las Vegas, Nevada 89101.

2. The number persons who:

(a) Attended NGFOA presentation: January 22, 2004 75

(b) Testified at NGFOA presentation: January 22, 2004 0

(c) Attended Nevada Association of School Superintendents meeting: April 1, 2004 20

- (d) **Testified at Nevada Association of School Superintendents meeting:** April 1, 2004 0
- (e) **Attended Public Workshop and Hearing:** May 26, 2004 10
- (f) **Testified at Public Workshop and Hearing:** May 26, 2004 1
- (g) **Submitted to the agency written comments:** 0

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

Comments were solicited from affected businesses by the communications, as outlined in #1, as well as the Nevada Bankers Association, Kafoury Armstrong & Co., and the Federal Reserve Bank. Comments from interested businesses included Bank of America, Wells Fargo Bank, US Bank, Bank One, Business Bank of Nevada, and the Bank of Las Vegas. The comments focused on the depository reporting and collateral requirements for pooled collateral. The comments dealt with the depository identification of public deposits and accounts eligible for FDIC insurance application. The comments also dealt with the types of accounts and amounts eligible for FDIC insurance. Comments also focused on GASB Statement 40 and the objective of Statement 40 which is to update the custodial credit risk disclosure requirements of Statement 3 and to establish more comprehensive disclosure requirements addressing other common risks of the deposits and investments of state and local agencies. The Office of the State Treasurer contacted GASB regarding how securities are held and have received a statement back from them that indicates in state sponsored collateral pools that are collateralized at 100% or greater the uninsured deposits are not classified in category 3. The GASB guidance statement is available from the Office of the State Treasurer upon request. The Federal Reserve Bank's comments sought clarification and identification of their institution versus other third party collateral custodian banks.

A copy of the written comments may be obtained by calling the Office of the State Treasurer at (702) 486-2585 or by writing to the Office of the State Treasurer at 555 East Washington Ave. Ste 4200 Las Vegas, Nevada 89101.

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

The regulation was adopted with minor changes to the revised proposed regulation received from LCB file number R028-04 at the May 26, 2004 public workshop and hearing. All of the information contained in the revised proposed regulation was generally agreed upon by persons in the industry and other interested parties, prior to the adoption of the permanent regulation. No substantive changes were requested at the May 26, 2004 public workshop and hearing.

5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

A. Estimated economic effect of the adopted regulations on depository financial institutions.

It is estimated that the regulation has a significant positive economic effect on depositories by lowering the overall collateral requirement to secure uninsured public deposits, therefore increasing the opportunity for the financial institutions to utilize assets in a more effective manner.

(a) Adverse and beneficial effects:

The adverse effect of the regulation on financial institutions is minimal. The depositories are already required to pledge collateral against uninsured deposits, but will now be able to centralize processing and management of all pledging and maintenance of collateral through the State Treasurer's Office rather than with each local agency for which they hold public deposits. Beneficial effects include a reduction in overall collateral requirements through the utilization of a single account, versus individual accounts with each government agency, elimination of reporting to government agencies, and the ability to use a single custodian to hold collateral for all government agencies.

(b) Immediate and long-term effects:

The immediate effects are the consolidation of collateral into a pool, effectively freeing up assets that could be used by the depository in another manner. The long term effects are similar to the immediate effects over a longer period of time, as the depository can better manage their collateral requirements.

B. Estimated economic effect of the adopted regulations on public depositors.

It is estimated that the regulation will have a positive economic effect on public depositors. The government agencies will recognize a reduced risk of their deposits through the pooled collateral program.

(a) Adverse and beneficial effects:

There are no adverse effects to the public depositors. The beneficial effects include elimination of pledging and maintenance of fluctuating collateral balances for public deposits accounts, and increased reporting capabilities of pledged securities for public deposits, as managed through the Office of the State Treasurer.

(b) Immediate and long-term effects:

The immediate effects are centralized management of activities to maintain pledged collateral requirements, as well as consolidated reporting through the Office of the State Treasurer, eliminating the need to work with each depository. The long term effects are similar to the immediate effects over a longer period of time, as the public depositor will find a more efficient manner to track public deposits through a centralized reporting function through the Office of the State Treasurer.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the Office of the State Treasurer for enforcement of this regulation. All costs related to this regulation are paid for by the participating depositories.

7. A description of any regulations of other state or government agencies that 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.

There are no other state or government agency regulations that the proposed adopted regulations duplicate.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

There are no provisions in the proposed regulations that are more stringent than a federal regulation. Therefore, the proposed regulations are in compliance with federal regulations and are not more stringent than federal requirements and regulations.

9. 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 provides for a new annual administrative fee paid for by the participating depositories. The fee calculation is allocated across the depositories based upon public deposit balances held at the depository. The annual amount collected is based on the pooled collated work program budget, and 100% of the fees collected are allocated to the administrative services for the pooled collateral work program. At the beginning of each fiscal year, the State Treasurer will calculate the assessment for the previous fiscal year and adjust each depository's account on the next fiscal year's assessment.

Exhibit A – Side 1

**State of Nevada
Pooled Collateral for Public Deposits**

Collateralization of Public Deposits

Pursuant to NRS 356.020 and NRS 356.133, the state of Nevada has been authorized through the 2003 legislative session and Assembly Bill 13 to establish a program to monitor a collateral pool for public deposits. This program is an alternative method being established to allow financial institutions and local government agencies within the state to participate in pooled collateralization of their deposits in an efficient, cost effective and safe manner when collateralizing public funds.

Objectives

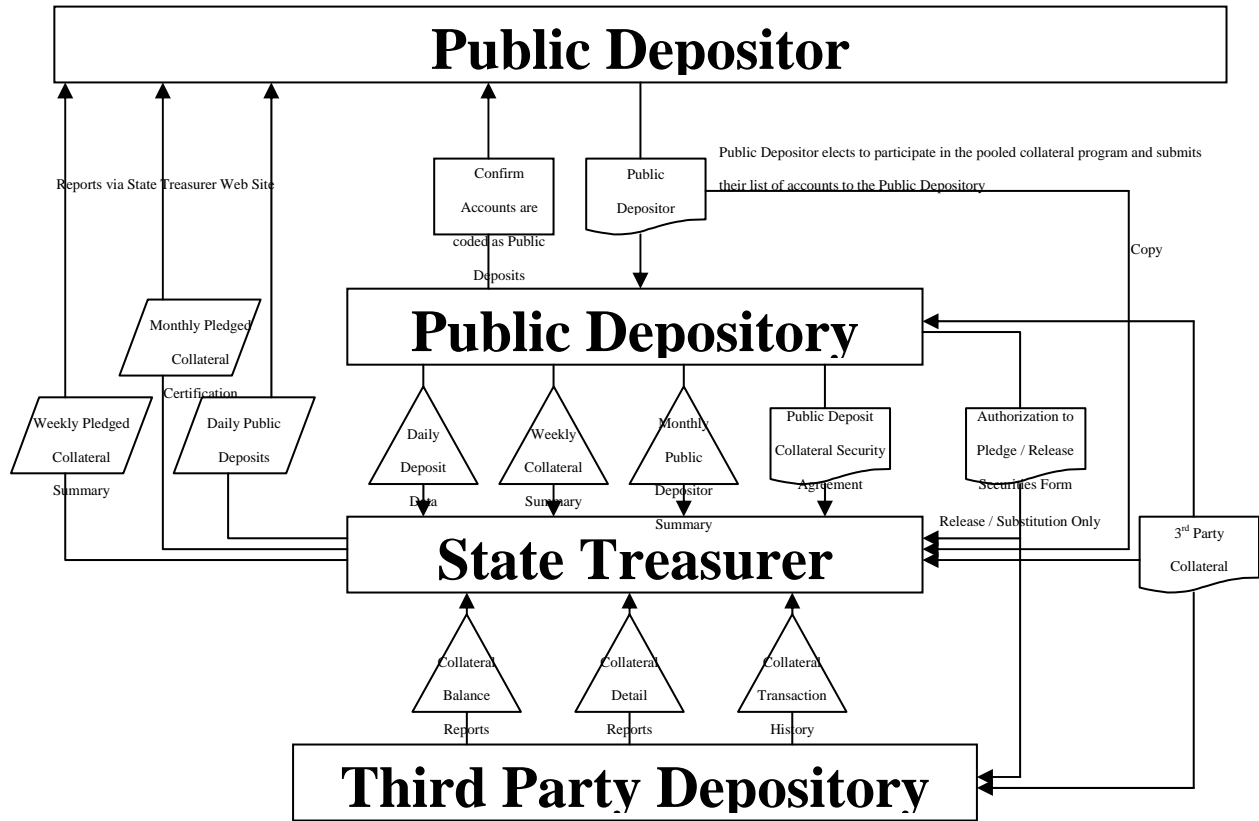
- Reduced risk for government agencies through pooled collateral.
- Centralized reporting function through State Treasurer’s office.
- Cost effective way for financial institutions to pledge collateral.
- Acceptable securities will be pledged at a third party depository on behalf of the depository for the benefit of the State Treasurer to secure all public deposits.

Pooled Collateral Benefits

Financial Institutions	Government Agencies
Centralized processing and management of all pledging and maintenance of collateral through State Treasurer’s office rather than with each local agency.	Elimination of pledging and maintenance of fluctuating collateral balances for public deposit accounts.
Reduction in overall collateral requirement by utilization of a single account versus accounts with each government agency.	State Treasurer manages and monitors all collateral for all public deposits.
Single collateral pledge agreement with the State Treasurer rather than individual agreements with each government agency.	State Treasurer manages activities to maintain 102% pledged collateral for public deposits.
Ability to use a single custodian to hold the collateral for all government agencies.	Elimination of the need to establish a custodial agreement to hold collateral.
Elimination of reporting to government agencies.	Increased reporting of pledged securities for public deposits.

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Exhibit A- Side 2



SMALL BUSINESS IMPACT STATEMENT
Collateralization of Public Deposits

Comment for the proposed permanent regulation to the Nevada Revised Statutes chapter 356.300 – 356.390 was solicited from a representative sample of small business banks in Northern Nevada and Southern Nevada prior to the workshop and Notice of Intent to Act Upon a Regulation via, meetings, phone conversations and e-mail. Responses indicated an overall positive response to the proposed regulations. According to NRS 233B.0382, a small business is a business operated for profit that employs fewer than 150 full-time or part-time employees.

The State Treasurer's Office has considered whether the proposed regulation will impose a direct and significant economic impact upon a small business or directly restrict the formation, operation or expansion of a small business. After consulting with officers of the small businesses likely to be affected by the proposed regulations, the State Treasurer's office has concluded that the proposed regulations do not impose a direct and significant economic burden on the small business banks, nor do they restrict the formation, operation, or expansion of a small business.

The State Treasurer proposes to review of the proposed regulation at a public workshop to be held on Wednesday, May 26, 2004 at the Grant Sawyer Building, Legislative Counsel Bureau Room #4406, 555 East Washington Ave, Las Vegas, NV 89101 at 2:00 p.m. Immediately following the workshop a Notice of Intent to Act Upon a Regulation will be held in the same location.