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M E M O R A N D U M

NOTICE DATE: February 2, 2016
TO: Active Certified Non-Participating Manufacturers & Escrow Agents
FROM: Tobacco Enforcement Unit, Nevada Attorney General's Office
SUBJECT: Revision of the Model Escrow Agreement

Nevada law requires the principal funds deposited in a qualified escrow fund for Units Sold within the State to be maintained for the benefit of releasing parties and prohibits the Non-Participating Manufacturer (NPM) from "using, having access to or directing the use of the principal" except as consistent with NRS 370A.150. NRS 370A.090. The terms of the Escrow Agreement between the escrow bank and NPM contain the same requirements and prohibitions. An issue has arisen regarding the valuation measure to be used in determining whether the escrow fund's accumulated principal is being maintained, *i.e.* market value, federal tax cost basis, or face (par) value. Accordingly, Nevada has determined that a Revised Model Escrow Agreement must be implemented.

After a careful review of the issue, Nevada has determined that to be compliant with state law and the Escrow Agreement, both the Cost Basis and the Face Value of the cash and investments held in the escrow account must each be maintained at a level at least as high as the accumulated required deposits. As used in this letter, (a) Cost Basis, for a security, is the amount paid, excluding accrued interest, by the company to buy the security and (b) Face Value, for a security such as a U.S. Treasury Bond, is the amount of principal that must be repaid when the bond matures, which is also known as the par value or principal amount of the bond. Accordingly, accrued interest on the cash and investments in the escrow account may be released to the company, provided that doing so does not draw either Cost Basis or the Face Value of the account below the accumulated principal balance.

Additionally, under the Escrow Agreement and Nevada law, the principal balance must not be reduced for Escrow Agent fees and expenses. Also, Escrow Agents are required to provide a bank statement to the Nevada Attorney General for its sub-account annually, at a minimum, to provide “evidence or verification as may be deemed necessary” to confirm the activity in the qualified escrow fund account.” NRS 370.665(3)(f).

Nevada law also requires that a NPM has “executed a qualified escrow agreement governing the qualified escrow fund that has been reviewed and approved by the Attorney General.” NRS 370.665(3)(b)(2). The Model Escrow Agreement currently in use by NPMs and their escrow agents must be replaced with the Revised Model Escrow Agreement. **Execution of the Revised Model Escrow Agreement will be required to replace the current Escrow Agreement as part of the 2016 Certification of Enrollment.**

The Revised Model Escrow Agreement is enclosed for your convenience and can be found in Microsoft Word format on our website at http://ag.nv.gov/Hot_Topics/Issue/Tobacco/. Please contact us if you have questions.

If you have any questions, please do not hesitate to contact our Office.

Hillary Bunker

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Tobacco Enforcement Unit

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