



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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6/3/2022 4:17:18 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Financial Institutions Division of TITLE-SERIES: 106-23
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Rule Pertaining to Money Transmission Services
CITE STATUTORY AUTHORITY: W.Va. Code §§32A-2-7 and 31A-2-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Kathy Lawson
ADDRESS: 900 Pennsylvania Avenue, Suite 306
Charleston WV 25302
EMAIL: klawson@wvdob.org

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule provides additional guidance related to amendments enacted during the 2022 legislative session that address permissible investments for money transmission licensees.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule provides additional detail regarding permissible investments on the requirements for holding cash and cash equivalents as well as irrevocable letters of credit. The rule establishes definitions as well as an implementation plan.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Division anticipates no impact positive or negative on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The Division anticipates no impact positive or negative on the agency's special revenue account. The Division may receive additional license applications for money transmission activities because of clarifying language added to statutory definitions during the 2022 session, however there is no way to predict how many applications will be received. New license application fees are \$1000 and renewals are \$250 annually.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The Division anticipates no economic impact to the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The rule itself is anticipated to have no impact on expenses or revenues of the agency.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 106
LEGISLATIVE RULE
COMMISSIONER OF FINANCIAL INSTITUTIONS

SERIES 23
RULE PERTAINING TO MONEY TRANSMISSION SERVICES

§106-23-1. General.

1.1. Scope. -- This rule establishes provisions related to the regulation of money transmission services, implemented in West Virginia Code §§32A-2-1, et seq.; it applies to all entities licensed under that statute.

1.2. Authority. -- W.Va. Code §§32A-2-7 and 31A-2-4.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Sunset Provision. – This rule will terminate and have no further force or effect on August 1, 2028.

§106-23-2. Definitions.

2.1. General Rule. – Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided in W.Va. Code §§31A-1-2 and 32A-2-1, et seq.

2.2. Terms defined.

2.2.1. “Eligible rating” means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers such as “plus” or “minus” for S&P, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

2.2.2. “Eligible rating service” means any Nationally Recognized Statistical Rating Organization (NRSRO) as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the commissioner by rule or order.

§106-23-3. Permissible Investments.

3.1. Cash and cash equivalents. In addition to the permissible investments enumerated in §32A-2-8b(e)(1), cash and cash equivalents shall also include ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated “AAA” by S&P, or the equivalent from any eligible rating services.

3.2. Irrevocable Letters of Credit.

3.2.1. The irrevocable letter of credit authorized by §32A-2-8b(e)(4) must:

3.2.1.a. Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that (1) bears an eligible rating or whose parent company bears an eligible rating; and (2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

3.2.1.b. Be irrevocable, unconditional and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

3.2.1.c. Not contain reference to any other agreements, documents or entities, or otherwise provide for any security interest in the licensee; and

3.2.1.d. Contain an issue date and contain an expiration date of December 31, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least 60 days prior to any expiration date, that the irrevocable letter of credit will not be extended.

3.2.2. In the event of any notice of expiration or non-extension of a letter of credit issued pursuant to section 3.2.1 of this rule and §32A-2-8b(e)(4), the licensee shall be required to demonstrate to the satisfaction of the commissioner, 15 days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with §32A-2-8b(a) upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with §32A-2-8b(a). Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

3.2.3. The letter of credit shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit to receive funds within seven days of presentment:

3.2.3.a. The original letter of credit, including any amendments;

3.2.3.b. A written statement from the beneficiary stating that any of the following events have occurred:

3.2.3.b.1. the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

3.2.3.b.2. the filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

3.2.3.b.3. the seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee;

3.2.3.b.4. the beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with §32A-2-8b(a) upon the expiration or non-extension of the letter of credit.

3.2.4. The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this section are assigned to the commissioner.

3.2.5. The commissioner is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including but not limited to services provided by the Nationwide Multistate Licensing System and State Regulatory Registry, LLC.

3.3. Phased Implementation for Permissible Investments.

3.3.1. All licensees and applicants shall be expected to comply with §32A-2-8b(a) as of the effective date of such provision.

3.3.2. The Division of Financial Institutions will examine current licensees for compliance with these provisions upon their effective date at a scheduled examination and will note instances of non-compliance and direct licensees to make appropriate changes as necessary to achieve compliance.

3.3.3. Beginning July 1, 2023, any licensee not in full compliance with §32A-2-8b(a) may be subject to penalties for failure to comply as provided in the statute.