

July 5, 2022

Ms. Kathy Lawson
General Counsel
WV Department of Financial Institutions
900 Pennsylvania Ave Suite 360
Charleston, WV 25302

RE: W. Va. Code §§32A-2-7 and 31A-2-4

Dear Ms. Lawson,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide additional comments on the West Virginia Money Transmission Services Rules. ETA is a strong supporter of enacting portions of the CSBS model law and commends West Virginia for doing so.

ETA has the following concerns with the rules as currently drafted:

- ***Sunset Provision***
 - ETA opposes the sunset provision in §106-23-1.1.5, terminating the rules as of August 1, 2028. With the sunset provision, ETA’s members will not be able to rely on the permissible investments-related provisions in these regulations in structuring their operations and investments over a multi-year horizon.
- ***Permissible Investments***
 - ETA urges the Commission to provide greater flexibility in quality permissible investments and fully align with the “cash and cash equivalents” tier of the CSBS Model Money Transmission Modernization Act (the Model Law).
 - West Virginia statute §32A-2-8b(e)(6) gives the commission significant flexibility to designate “any other permissible investments determined by the commissioner.... Licensees may propose that the commissioner place certain investments on the list of permissible investments at the commissioner’s discretion.”
 - ETA requests that the Commission fully conform its permissible investments to the Model Law, including by aligning regulation with Section 10.04(b) of the Model Law in full. Section 10.04(b) permits licensees to, for example, invest in money market mutual funds rated less than “AAA” and equal to or higher than “A-” by S&P, or the equivalent rating from any other eligible rating service, subject to such investments not making up more than 20% of the aggregate value of the licensee’s total permissible investments. This flexibility under the Model Law, subject to its appropriate prudential limits, was reached by consensus with many state regulators and industry representatives and by the CSBS. Not aligning West Virginia’s regulations

with Section 10.04(b) undermines that consensus and limits a licensee's ability to make use of equivalent provisions in *any other state*. This is because permissible investments requirements apply to a licensee's *nationwide* outstanding transmission obligations, so deviations from the Model Law by any single state in their implementation of or alignment with Section 10.04 negatively impact a licensee's operations in every other state, regardless of local law in those states.

- The Commission's proposed rule aligns with the Model Law's wider range of eligible ratings at §106-23-2.2.1; the Commission should use its discretion with this proposed wider range in permissible investments.
- The provision of the Proposed Rule relating to the fixed date of issuance and expiration of the letter of credit varies greatly from the irrevocable letter of credit criteria of the Model Act. This provision in West Virginia law would effectively permit licensees to only obtain letters of credit issued on December 31, which will likely create complex challenges for licensees and issuing banks. West Virginia should not deviate from the Legislature's bill or the Model Act by creating a *de facto* national standard.
- To facilitate uniform adoption of the letter of credit as a permissible investment, this provision in the Proposed Rule should be revised by deleting "of December 31" of Section 3.2.1d of the Proposed Rule.

ETA appreciates you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Matt Tremblay

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Electronic Transactions Association

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