



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Auditor

RULE TYPE: Legislative

TITLE-SERIES: 155-12

RULE NAME: RULES FOR PRIVATE TRUST  
COMPANIES

CITE AUTHORITY: W. Va. Code §311-1-2(3), (4); 311-1-4(c),  
(e); 311-1-7(c); 311-1-10; 311-1-13

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

**Barbara L Wolfe -- 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 155  
LEGISLATIVE RULE  
WEST VIRGINIA STATE AUDITOR

SERIES 12  
RULES FOR PRIVATE TRUST COMPANIES

§155-12-1. General.

1.1. Scope. -- This Title establishes rules regarding standards, procedures, and forms to be followed by and with respect to licensed and unlicensed private trust companies, and foreign licensed private trust companies, and the regulation of the same by the Auditor.

1.2. Authority. -- W. Va. Code §31I-1-2(3), (4); 31I-1-4(c), (e); 31I-1-7(c); 31I-1-10; 31I-1-13

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2030.

1.6. Confidentiality. -The WVSAO-PTC-Bio, "Biographical Report," incorporated by reference in section §155-12-9.6 this rule, and which is submitted as part of any application for licensure under this Title is considered confidential and exempt from disclosure under the provisions of chapter twenty-nine-B of this code.

§155-12-2. Definitions.

As used in this Title or in the forms prescribed by this Title, the words defined in W. Va. Code Section 31I-1-3, shall have the same meaning, and the following terms and phrases (whether or not capitalized) shall have the meanings stated below unless the context clearly indicates otherwise:

2.1. "Affiliate" means any company that owns or controls, is owned or controlled by, or is under common ownership or control by any company that owns or controls a private trust company, licensed private trust company, or foreign licensed private trust company.

2.2. "Applicant" means the corporation or limited liability company on whose behalf an application for a license to operate as a licensed private trust company is submitted under W. Va. Code Section 31I-1-4; the corporation or limited liability company on whose behalf a notice to operate as an unlicensed private trust company is submitted under W. Va. Code Section 31I-1-4; or the corporation or limited liability company on whose behalf an application to register as a foreign licensed private trust company is submitted under section §155-12-13 this rule.

2.3. "Auditor" means the Auditor of the State of West Virginia.

2.4. "Authorized representative" means an officer or director of an unlicensed private trust company, licensed private trust company, or foreign licensed private trust company, if organized as a corporation; or a manager, officer, or member of an unlicensed private trust company, licensed private trust company, or foreign licensed private trust company, if organized as a limited liability company.

2.5. "Biographical information" means date of birth, place of birth, social security number, driver's license or other identification card issued by a federal or state governmental authority, current residence address, prior residence addresses, educational background, criminal justice information, employment history (whether paid or unpaid), occupational or professional licensure information, personal financial information, and all other information required by Form WWSAO-PTC-Bio "Biographical Report," incorporated by reference in section §155-12-9.6 this rule.

2.6. "Cash" means legal tender, coin, demand deposit accounts, and time-deposit accounts, as valued in United States Dollars.

2.7. "Company" means any corporation, association, partnership, limited liability company, business trust, sole proprietorship, joint venture, or charitable organization or foundation, or other similar organization or business entity.

2.8. "Controlling stockholder or member" means an individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the unlicensed private trust company or licensed private trust company.

2.9. "Financial institution" means a financial institution as defined in 31 U.S.C. Section 5312 and which institution is located in this state.

2.10. "Foreign licensed private trust company" means a private trust company that:

2.10.1. Is licensed by a state in the United States other than this state or the District of Columbia;

2.10.2. Has its principal place of business in a state in the United States other than this state or the District of Columbia;

2.10.3. Is operated in accordance with family or private trust company laws of the state in which it is licensed or of the District of Columbia;

2.10.4. Is subject to mandated statutory or regulatory supervision by the state in which the principal place of business is located or by the District of Columbia; and

2.10.5. Is not owned by, or a subsidiary of, a corporation, limited liability company, or other business entity that is organized in or licensed by any country other than the United States. For purposes of this definition, a country other than the United States shall include any colony, dependency, or possession of such country, and shall also include any territory of the United States, including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

2.11. "Holding company" means any company which owns or controls a private trust company, licensed private trust company, or foreign licensed private trust company.

2.12. "Member acting in a managerial capacity" means a member, regardless of whether the member has a title or receives a salary or other compensation, who participates in, or who has authority or discretion to participate in, the guidance, oversight, policy-making, decision-making, or strategic direction of the private trust company, licensed private trust company, or foreign licensed private trust company.

2.13. "Owns" or "controls" means owns, controls, or has power to vote 25 percent or more of any class of voting securities or membership interests of a company or private trust company, licensed private trust company, or foreign licensed private trust company; or controls in any manner the election of a majority of the directors, or managers or other similar governing body of a company or private trust company, licensed private trust company, or foreign licensed private trust company; owns, controls, or has power to vote 10

percent or more of any class of voting securities or membership interests of a company or private trust company, licensed private trust company, or foreign licensed private trust company and exercises a controlling influence over the management or policies of the company or private trust company, licensed private trust company, or foreign licensed private trust company; or as determined by the Auditor.

2.14. "Resident" means a person who has had his or her principal place of domicile in this state for a period of more than 6 consecutive months prior to the filing of an application under the Private Trust Company Act, and who has a valid West Virginia driver's license or a valid West Virginia identification card, has registered to vote, has submitted an affidavit of West Virginia residency or similar form, or has filed for homestead tax exemption on property in this state.

2.15. "Third-party service provider" means any person or company that has entered into a business relationship with a private trust company, licensed private trust company, or foreign licensed private trust company, for the provision of services, or any person or company that has entered into a business relationship with an affiliate of a private trust company, licensed private trust company, or foreign licensed private trust company, for the provision of services.

### **§155-12-3. Application for License as a Licensed Private Trust Company.**

3.1. An applicant seeking to operate in this state as a licensed private trust company under W. Va. Code Section 31I-1-4, must file a completed application on Form WVSAO-PTC-01, "Application for License as a Licensed Private trust Company," herein incorporated by reference and available at the Auditor's website, <http://www.wvsa.gov>, accompanied by a nonrefundable \$10,000 application fee for deposit into a special account in the State Treasury to be known as the Private Trust Company Application Fund, pursuant to W. Va. Code Section 31I-1-4(e).

3.2. The application must contain all information requested by the form, along with the following exhibits to the form:

3.2.1. Exhibit A, Proposed Articles of Incorporation (or Articles of Organization, Certificate of Incorporation, Certificate of Formation, or Certificate of Organization pursuant to section §155-12-14 this rule);

3.2.2. Exhibit B, Proposed Bylaws or Operating Agreement;

3.2.3. Exhibit C, Organization Chart;

3.2.4. Exhibit D, Capital Account;

3.2.5. Exhibit E, Form WVSAO-PTC-Bio, "Biographical Report," incorporated by reference in section §155-12-9.6 this rule, for each director, officer, manager, member acting in a managerial capacity or equivalent position;

3.2.6. Exhibit F, Form WVSAO-PTC-Bio, "Biographical Report," incorporated by reference in section §155-12-9.6 this rule, for each controlling stockholder or member;

3.2.7. Exhibit G, Detailed Description of Services to be Provided;

3.2.8. Exhibit H, Family Members;

3.2.9. Exhibit I, Genealogical Chart;

3.2.10. Exhibit J, Current or Former Employees to Whom Services Will Be Provided;

- 3.2.11. Exhibit K, Fidelity Bonds;
- 3.2.12. Exhibit L, Errors and Omissions Insurance;
- 3.2.13. Exhibit M, Affiliates;
- 3.2.14. Exhibit N, Third-Party Service Providers;
- 3.2.15. Exhibit O, Depository Account Relations;
- 3.2.16. Exhibit P, Statement Regarding Maintenance of Corporate and Fiduciary Records;
- 3.2.17. Exhibit Q, List of All Stockholders or Members; and
- 3.2.18. Exhibit R, Affidavit Certifying at Least \$50,000,000 in Assets Under Management, in accordance with W. Va. Code Section 31I-1-10.

3.3. The statement provided in application Exhibit P, *Statement Regarding Maintenance of Corporate and Fiduciary Records*, must describe in detail how the proposed licensed private trust company will maintain accurate corporate and fiduciary services records. The statement must identify by name any automated accounting system software or third-party accounting service provider to be used for corporate and fiduciary accounting. Any fiduciary accounting system should provide fiduciary accounting separate from corporate accounts as provided in section §155-12-19 this rule, and in accordance with W. Va. Code Sections 44D-8-810 and 44D-8-813, herein incorporated by reference, and in accordance with generally accepted accounting principles. If accounting and bookkeeping functions are to be performed off the premises of the proposed licensed private trust company's principal place of business, name the servicing agent, and describe any affiliation by way of ownership, directorship, or common employment of personnel which the proposed licensed private trust company may have with the servicing agent.

3.4. The application must be signed under penalty of perjury by the applicant's authorized representative.

**§155-12-4. Application to Register as an Unlicensed Private Trust Company.**

4.1. An unlicensed private trust company seeking to submit the notice required to register under W. Va. Code Section 31I-1-4(c), must file a completed registration application on Form WVSAO-PTC-02, "*Application to Register as an Unlicensed Private Trust Company*," herein incorporated by reference and available at the Auditor's website, <http://www.wvsa.gov>, accompanied by a nonrefundable \$5,000 application fee for deposit into a special account in the State Treasury to be known as the Private Trust Company Application Fund, pursuant to W.Va. Code Section 31I-1-4(e).

4.2. The application must contain all information required by the form and the following exhibits:

- 4.2.1. Exhibit A, Family Members;
- 4.2.2. Exhibit B, Current or Former Employees to Whom Services Will Be Provided;
- 4.2.3. Exhibit C, Genealogical Chart;
- 4.2.4. Exhibit D, Articles of Incorporation (or Articles of Organization, Certificate of Incorporation, Certificate of Formation, or Certificate of Organization pursuant to section §155-12-14 this rule);

4.2.5. Exhibit E, Bylaws or Operating Agreement;

4.2.6. Exhibit F, Capital Account;

4.2.7. Exhibit G, Statement Regarding Maintenance of Corporate and Fiduciary Records;

4.2.8. Exhibit H, List of All Stockholders or Members; and

4.2.9. Exhibit I, Affidavit Certifying at Least \$50,000,000 in Assets Under Management, in accordance with W. Va. Code Section 31I-1-10.

4.3. The statement provided in application Exhibit G, Statement Regarding Maintenance of Corporate and Fiduciary Records, must describe in detail how the proposed private trust company will maintain accurate corporate and fiduciary services records. The statement must identify by name any automated accounting system software or third-party accounting service provider to be used for corporate and fiduciary accounting. Any fiduciary accounting system should provide fiduciary accounting separate from corporate accounts as provided in section §155-12-19 this rule, and in accordance with generally accepted accounting principles and W. Va. Code Sections 44D-8-810 and 44D-8-813, herein incorporated by reference. If accounting and bookkeeping functions are to be performed off the premises of the proposed private trust company's principal place of business, name the servicing agent, and describe any affiliation by way of ownership, directorship, or common employment of personnel which the proposed private trust company may have with the servicing agent.

4.4. The application must be signed under penalty of perjury by the applicant's authorized representative.

**§155-12-5. Application to Register as a Foreign Licensed Private Trust Company.**

5.1. An applicant seeking to operate in this state as a foreign licensed private trust company under section §155-12-13 this rule, must file a completed registration application on Form WVSAO-PTC-03, "Application to Register as a Foreign Licensed Private Trust Company," herein incorporated by reference and available at the Auditor's website, <http://www.wvsao.gov>, accompanied by a nonrefundable \$5,000 application fee for deposit into a special account in the State Treasury to be known as the Private Trust Company Application Fund, pursuant to under section §155-12-13 this rule.

5.2. The application must contain all information required by the form and Exhibit A.

5.3. The application must be signed under penalty of perjury by the applicant's authorized representative.

**§155-12-6. Annual Renewal.**

6.1. Annual renewal applications for unlicensed private trust companies, licensed private trust companies, and foreign licensed private trust companies must be filed with the Auditor on Form WVSAO-PTC-04, "Annual Renewal Application," herein incorporated by reference and available at the Auditor's website, <http://www.wvsao.gov>. Annual Renewal Applications must be filed with the Auditor on an annual basis no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

6.2. The annual renewal application must be accompanied by a nonrefundable application fee in the amount of \$1,500 for a licensed private trust company, \$750 for an unlicensed private trust company, and \$1,000 for a foreign licensed private trust company.

6.3. Each annual renewal application must be signed under penalty of perjury by the applicant's authorized representative.

**§155-12-7. Records.**

7.1. Each unlicensed private trust company and licensed private trust company shall maintain a principal office physically located in this state where original or true copies of all records and accounts of the unlicensed private trust company or licensed private trust company may be accessed and made readily available for examination or inspection by the Auditor.

7.2. The records and accounts maintained shall include the following:

7.2.1. Account information and statements relating to the minimum capital account requirements of section §155-12-15 this rule;

7.2.2. Account information and statements relating to any corporate investments not included under section §155-12-7.2.1, this rule;

7.2.3. All records and accounting related to the trust company's service in a fiduciary capacity, segregated as required under section §155-12-19 this rule;

7.2.4. General ledgers;

7.2.5. Balance sheet and income statements;

7.2.6. Operating accounts;

7.2.7. Any audits prepared under section §155-12-8.1.2 this rule;

7.2.8. Records of real and personal property owned or leased by the licensed private trust company;

7.2.9. All applicable state and local business licenses, charters, or permits;

7.2.10. The names and residence addresses of all stockholders or members of the trust company and the number of shares of stock or membership units held by each, as well as the ownership percentage of each stockholder or member;

7.2.11. The Articles of Incorporation (or Articles of Organization, Certificate of Incorporation, Certificate of Formation, or Certificate of Organization pursuant to under section §155-12-19 this rule), including all amendments and restatements;

7.2.12. The bylaws or operating agreement, including all amendments and restatements;

7.2.13. Organizational chart or charts;

7.2.14. A current list of all family members, which states how each family member qualifies as a "family member" as defined in W. Va. Code Section 31I-1-3;

7.2.15. A current genealogical chart or table that includes and identifies all family members;

7.2.16. A current list of all current or former employees to whom private trust company services are provided and which states how each such employee or former employee qualifies under W. Va. Code Section 31I-1-3(16)(D) to receive such services;

7.2.17. All personnel records;

7.2.18. Current fidelity bond policies required under W. Va. Code Section 31I-1-12(a) for licensed private trust companies;

7.2.19. Current errors and omissions insurance policies required under W. Va. Code Section 31I-1-12(d) for licensed private trust companies;

7.2.20. A list identifying all affiliates;

7.2.21. A list identifying all third-party service providers and the services provided;

7.2.22. Copies of all license and renewal applications and exhibits submitted to the Auditor;

7.2.23. The addresses of any branch offices; and

7.2.24. All other books of account and other records that relate to the company's operations in the form in which they are ordinarily maintained in the course of the company's business.

7.3. Each private trust company or licensed private trust company may maintain other records not required by this rule, but such records shall be made readily available for examination or inspection by the Auditor.

7.4. Each foreign licensed private trust company shall maintain, at its principal place of operations physically located in this state, the records below pertaining to its operations and business conducted in West Virginia:

7.4.1. All records and accounting related to the trust company's service in a fiduciary capacity;

7.4.2. Records of real and personal property owned or leased by the foreign licensed private trust company;

7.4.3. All applicable state and local business licenses, charters, or permits;

7.4.4. Organizational chart or charts;

7.4.5. All personnel records;

7.4.6. A list of all third-party service providers and the services provided;

7.4.7. The addresses of any branch offices; and

7.4.8. All other books of account and other records that relate to the company's operations in the form in which they are ordinarily maintained in the course of the company's business.

**§155-12-8. Examinations, Investigations, and Fees.**

8.1. Examinations of private trust companies, licensed private trust companies, and foreign licensed private trust companies will be conducted under this Section. The Auditor may conduct an examination or

investigation of a licensed private trust company at any time it deems necessary to determine whether the licensed private trust company or licensed private trust company-affiliated party thereof has violated or is about to violate any provision of this Title, any applicable provision of the laws governing financial institutions in this state, or any rule adopted pursuant to this Title. The Auditor may conduct an examination or investigation of a private trust company or foreign licensed private trust company at any time it deems necessary to determine whether the private trust company or foreign licensed private trust company has engaged in any act prohibited under section §155-12-16 this rule or W. Va. Code Section 31I-1-11 and if a private trust company or a foreign licensed private trust company has engaged in such act, to determine whether any applicable provision of the financial institutions codes has been violated.

8.1.1. The Auditor may rely upon a certificate of trust, trust summary, or written statement from the trust company which identifies the qualified beneficiaries of any trust or estate for which a private trust company, licensed private trust company, or foreign licensed private trust company serves as a fiduciary and the qualifications of such beneficiaries as permissible recipients of company services.

8.1.2. The Auditor shall conduct an examination of a licensed private trust company at least once every 36 months. The Auditor shall examine the books and records of a licensed private trust company as necessary to determine whether it is a licensed private trust company as defined in this Title and is operating in compliance with this Title.

8.1.3. The Auditor shall examine the books and records of a foreign licensed private trust company as necessary to determine whether it is a foreign licensed trust company as defined in this Title and is in compliance with W. Va. Code Sections 31I-1-5, 31I-1-8, 31I-1-11 and sections §155-12-16, 155-12-17, and 155-12-18 this rule. In connection with an examination of the books and records of the company, the Auditor may rely upon the most recent examination report or review or certification letters or similar documentation issued by the regulatory agency to which the foreign licensed private trust company is subject to supervision. The Auditor's examination of the books and records of a foreign licensed private trust company is, to the extent practicable, limited to books and records of the operations in this state.

8.1.4. For each examination of the books and records of a private trust company, licensed private trust company, or foreign licensed private trust company as authorized under this Title, the trust company shall pay a fee for the costs of the examination by the Auditor. As used in this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to the examination of the trust company and the travel expenses of any supervisory and support staff required as a result of examination findings. The mailing of payment for costs incurred must be postmarked within 30 days after the receipt of a notice stating that the costs are due. The Auditor may levy a late payment of up to \$100 per day or part thereof when a payment is overdue unless waived for good cause. However, if the late payment of costs is intentional, the Auditor may levy an administrative fine of up to \$1,000 per day for each day the payment is overdue.

8.1.5. All fees collected under this section must be deposited into a special account in the State Treasury to be known as the Private Trust Company Application Fund, pursuant to W.Va. Code Section 31I-1-4(e), for the purpose of administering this Title.

8.1.6. The Auditor may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this Title as a private trust company, licensed private trust company, or foreign licensed private trust company.

8.2. Subsequent to any examination of a licensed private trust company by the Auditor, the Auditor shall provide the licensed private trust company with its written findings, recommendations, comments, and conclusions resulting from such examination.

8.3. The Auditor will provide a written notice to the private trust company, licensed private trust company, or foreign licensed private trust company stating the costs due as a result of an examination conducted in accordance with section §155-12-8.1. this rule. The company must remit payment for the cost of the examination within 30 days of the date of notice stating that such costs are due.

#### **§155-12-9. Application Process and Forms.**

9.1. Application forms for all license, registration, renewal, reports, and notice-filing actions covered by these rules are available on the Auditor's website at [www.wvsao.gov](http://www.wvsao.gov) or through the links provided in these rules. Forms may also be obtained at no cost by sending a request to the West Virginia State Auditor's Office, 1900 Kanawha Blvd. East, Building 1, Room W-100, Charleston, WV 25305.

9.2. Completed forms shall be submitted for filing to the West Virginia State Auditor's Office, 1900 Kanawha Blvd. East, Building 1, Room W-100, Charleston, WV 25305.

9.3. Request for Additional Information. All information the applicant desires to present to support the application should be submitted with the original filing. The required exhibits in the application forms are not intended to limit the applicant's presentation of any of the requirements, but merely represent the minimum information required for filing. Additional information shall be submitted within 60 days after the Auditor's request. Any such request for additional information will be made by the Auditor within 30 days after receipt of the application and the full amount of the prescribed registration fee . Failure to respond to such request within 60 days after the date of the request may be construed by the Auditor as grounds for denial of an application. No application shall be considered to be complete until all requested information has been submitted to the Auditor.

9.4. Burden of Proof. It is the applicant's responsibility to prove that the statutory and regulatory requirements warranting granting of the authority requested by the applicant are met.

9.5. Withdrawal of Application. The applicant may request withdrawal of an application at any time by filing a written notice of withdrawal signed by the applicant's authorized representative.

9.6. The following form is incorporated by reference and adopted by this rule for the purposes of sections §155-12-3 and 155-12-10 this rule: Form WVSAO-PTC-Bio, "*Biographical Report.*" The form contains a field that requires a proposed director, officer, manager, or member acting in a managerial capacity for a licensed private trust company to provide his or her social security number. The individual's social security number will be used by the Auditor to facilitate the identification of the individual in order to obtain verification of the required criminal justice information and licensing background, which may expedite the processing of the form.

#### **§155-12-10. Notification of Proposed Appointment.**

10.1. A licensed private trust company that is required under this Rule to notify the Auditor of the proposed appointment of an individual to the board of directors, the addition of a member, appointment or employment of an individual as an officer, manager or member acting in a managerial capacity or equivalent position must notify the Auditor of such proposed appointment, addition, or employment using Form WVSAO-PTC-05, "*Notification of Proposed Appointment of a Director, Addition of a Member, or Employment of an Officer, Manager, or Member Acting in a Managerial Capacity, or Equivalent Position.*" herein incorporated by reference and available at the Auditor's website, <http://www.wvsao.gov>.. The licensed private trust company shall notify the Auditor of the proposed appointment of an individual to its board of directors, the addition of a member, or the appointment or employment of an individual as an officer, manager, or member acting in a managerial capacity or equivalent position, at least 60 days before such appointment or employment becomes effective, if the company:

10.1.1. Has been licensed for less than two years;

10.1.2. Has undergone a change in control within the preceding two years; or

10.1.3. Is operating under a cease and desist order.

10.2. The notification must include the name and such biographical information as the Auditor may reasonably require.

10.3. The notification must be accompanied by a completed Form WVSAO-PTC-Bio, "Biographical Report," incorporated by reference in section §155-12-9 this rule, for the individual proposed.

10.4. Such notification must be provided to the Auditor at least 60 days before the proposed appointment, addition, or employment becomes effective.

10.5. A licensed private trust company may not appoint an individual to the board of directors, add a member, or appoint or employ an officer or manager or member acting in a managerial capacity or equivalent if the Auditor issues a Notice of Disapproval with respect to that individual.

10.6. The Auditor shall issue a Notice of Disapproval if the Auditor finds that the proposed appointment or employment of a person would otherwise cause the licensed private trust company to violate any of the requirements set forth in W. Va. Code Section 3 II-1-4(e)(10)(B)-(D) or section §155-12-20.2.1. this rule.

#### **§155-12-11. Discontinuing Business.**

11.1. A licensed private trust company that desires to discontinue business must provide the Auditor with written notification prior to the proposed discontinuance date. The notice must contain or attach the proposed plan for discontinuing business as well as a certified copy of the resolution of the board of directors, or members if a limited liability company, authorizing the action.

11.2. The proposed plan for discontinuing business must include:

11.2.1. A draft of the proposed notice to family members and former or current employees to whom services are provided;

11.2.2. Any outstanding liabilities and the proposed process to settle those liabilities;

11.2.3. The actions the licensed private trust company intends to take for discharge from all fiduciary duties it had undertaken; and

11.2.4. Any other information related to the resolution of outstanding matters and discontinuance of business and discharge of fiduciary duties, including any related proposed amendments to the company's Articles of Incorporation (or Articles of Organization, Certificate of Incorporation, Certificate of Formation, or Certificate of Organization pursuant to section §155-12-14 this rule) and any articles or certificate of dissolution or equivalent document.

11.3. If, within 90 days of providing the Notice of Discontinuance of Business, the company has not been discharged from all of its fiduciary duties which it has undertaken and has not provided the certification of such discharge to the Auditor, then the company shall provide a progress report to the Auditor on implementation of the plan for discontinuing business, and every 90 days thereafter, the company shall provide such progress report to the Auditor until the company has been discharged from all fiduciary duties which it has undertaken, provided the certification of such discharge to the Auditor, and relinquished its license to operate as a licensed private trust company to the Auditor.

**§155-12-12. Quarterly Reporting of Capital Accounts, Fidelity Bonds, and Insurance.**

12.1. A private trust company and licensed private trust company shall, within 30 days after the end of each quarter, file with the Auditor a report of capital accounts, fidelity bonds, and errors and omissions insurance on Form WVSAO-PTC-06 “Quarterly Report of Capital Account, Fidelity Bonds, and Insurance,” herein incorporated by reference and available at the Auditor’s website, <http://www.wvsaogov.gov>.

12.2. Licensed private trust companies are required to provide all information requested on Form WVSAO-PTC-06.

12.3. Private trust companies are required to provide the capital account information, and may but are not required to, provide the fidelity bonds and insurance information.

**§155-12-13. Registration of Foreign Licensed Private Trust Company.**

13.1. A foreign licensed private trust company must register with the Auditor before beginning operations in West Virginia.

13.1.1. The registration application must state that the foreign licensed private trust company is a private trust company as defined in W. Va. Code Section 31I-1-3(16) and that its operations will comply with Sections 31I-1-4, 31I-1-8, 31I-1-9, 31I-1-10, and 31I-1-11 of the West Virginia Code, and such other provisions of the Private Trust Company Act as the Auditor may prescribe, and that it is currently in compliance with the applicable private trust company laws and regulations of its principal jurisdiction.

13.1.2. The registration application must provide:

13.1.2.a. The current telephone number and street address of the physical location of its principal place of business in its principal jurisdiction.

13.1.2.b. The current telephone number and street address of the physical location in this state of its principal place of operations where its books and records pertaining to its operations in this state will be maintained.

13.1.2.c. The current telephone number and street address of the physical location of any other offices located within this state.

13.1.2.d. The name and current street address in this state of its registered agent.

13.1.3. The registration must include a certified copy of a certificate of good standing, or an equivalent document, authenticated by the official having custody of records in the jurisdiction where the foreign licensed private trust company is organized, along with satisfactory proof, as determined by the Auditor, that the company is organized in a manner similar to a private trust company as defined under this Title and is in compliance with the private trust company laws and regulations of its principal jurisdiction.

13.2. The registration application required under this section for a foreign licensed private trust company must be accompanied by a nonrefundable registration fee of \$5,000.

13.3. Registration applications required by this section shall be submitted on a form prescribed by the Auditor and be signed, under penalty of perjury, by an officer or director if the foreign licensed private trust company is organized as a corporation, or by a manager, officer, or member if the foreign licensed private trust company is organized as a limited liability company.

13.4. All fees received by the Auditor pursuant to this section shall be deposited into a special account in the State Treasury to be known as the Private Trust Company Application Fund, pursuant to W. Va. Code Section 31I-1-4(e), for purposes of administering this Title.

**§155-12-14. Organizational Documents; Use of Term “Private Trust” in Name.**

14.1. The articles of incorporation, certificate of incorporation, or articles of organization of a private trust company or licensed private trust company must contain:

14.1.1. The name adopted by the company, which must distinguish the company from any other trust company formed in this state or engaged in the business of a trust company, private trust company, or licensed private trust company in this state. If the term “trust” is included in the name adopted by a private trust company, it must be immediately preceded by the term “private” so as to distinguish the entity from a trust company operating under Chapter 31A. This paragraph does not apply to a foreign licensed private trust company using a fictitious name that is registered and maintained pursuant to W. Va. Code Section 31D-4-404 and that distinguishes it.

14.1.2. The purpose for which the company is formed, which must clearly identify the restricted activities permissible to a private trust company or licensed private trust company under this Title.

14.1.3. A statement that the company will not offer its services to the general public.

14.1.4. A statement affirming that the articles of incorporation, certificate of incorporation, or articles of organization will not be amended without prior written notice to the Auditor.

14.2. A proposed amendment to the articles of incorporation, articles of organization, certificate of formation, or certificate of organization of a private trust company or licensed private trust company must be submitted to the Auditor for review at least 30 days before it is filed or effective. An amendment is not considered filed or effective if the Auditor issues a notice of disapproval with respect to the proposed amendment.

14.3. The term “private trust” in the name adopted by a private trust company or licensed private trust company does not disqualify the name from being allowed under W. Va. Code Section 31B-1-105 or Section 31D-4-401.

**§155-12-15. Investments.**

15.1. The assets forming the minimum capital account of an unlicensed private trust company or licensed private trust company must:

15.1.1. Consist of cash, United States Treasury obligations, or any combination thereof; and

15.1.2. Have an aggregate market value of at least 100 percent of the company’s required capital account, as specified in W. Va. Code Section 31I-1-4. If the aggregate market value of 100 percent of the company’s capital account is, at any time, less than the amount required under W. Va. Code Section 31I-1-4, then the company has five business days to bring such capital account into compliance with W. Va. Code Section 31I-1-4.

15.2. An unlicensed private trust company or licensed private trust company may purchase or rent real or personal property for use in the conduct of the business and other activities of the company.

15.3. Notwithstanding any other provision of law, an unlicensed private trust company or licensed private trust company may invest funds for its own account, other than those required or allowed under

sections §155-12-15.1. or 155-12-15.2. this rule, in any type or character of equity securities, debt securities, or other assets.

15.4. Notwithstanding any other law, an unlicensed private trust company or licensed private trust company may, while acting as a fiduciary, purchase directly from underwriters or broker-dealers or in the secondary market:

15.4.1. Bonds or other securities underwritten or brokered by:

15.4.1.a. The unlicensed private trust company or licensed private trust company;

15.4.1.b. A family affiliate; or

15.4.1.c. A syndicate, including the private trust company, licensed private trust company, or family affiliate.

15.4.2. Securities of an investment company, including a mutual fund, closed-end fund, or unit investment trust, as defined under the Federal Investment Company Act of 1940, for which the private trust company or licensed private trust company acts as an advisor, custodian, distributor, manager, registrar, shareholder servicing agent, sponsor, or transfer agent.

15.5. The authority granted in section §155-12-15.4. this rule, may be exercised only if:

15.5.1. The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship.

15.5.2. The private trust company or licensed private trust company procures in writing the consent of any co-fiduciaries with discretionary investment powers to the investment.

15.5.3. The private trust company or licensed private trust company discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in Rule 15.4. before the first exercise of that authority, and each such disclosure reflects:

15.5.3.a. The nature of any interest the private trust company or licensed private trust company has, or is reasonably expected to have, in the underwriting or distribution of bonds or securities purchased.

15.5.3.b. The nature and amount of any fee or other compensation received, or reasonably expected to be received, by the private trust company or licensed private trust company in connection with the transaction.

15.5.3.c. The nature of the relationship between the private trust company or licensed private trust company and an investment company described in section § 155-12-15.4.2 this rule.

15.5.3.d. The nature and amount of any fee or other compensation received, or reasonably expected to be received, by the private trust company or licensed private trust company for providing services to an investment company described in section §155-12-15.4.2 this rule.

15.6. Rules 15.4. and 15.5 do not affect the degree of prudence required of fiduciaries under the laws of this state. However, a purchase of bonds or securities pursuant to sections §155-12-15.4. and §155-12-15.5. this rule, is not presumed to be affected by a conflict between the fiduciary's personal and fiduciary interests if such purchase:

15.6.1. Is negotiated at a fair price; and

15.6.2. Is in accordance with:

15.6.2.a. The interest of the qualified beneficiaries; and

15.6.2.b. The purposes of the trusts; and

15.6.3. Otherwise complies with:

15.6.3.a. The prudent investor rule in W. Va. Code Section 44-6C-1(a), or other prudent investor or similar rule under other applicable law, unless such compliance is waived in accordance with W. Va. Code Section 44-6C-1(b) or other applicable law; and

15.6.3.b. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

15.7. Notwithstanding sections §155-12-15.1, thru §155-12-15.6, this rule, a private trust company or licensed private trust company may not, while acting as a fiduciary, purchase a bond or security issued by the company or its parent, or a subsidiary company thereof or its parent, unless:

15.7.1. The private trust company or licensed private trust company is expressly authorized to do so by:

15.7.1.a. The terms of the instrument creating the trust;

15.7.1.b. A court order;

15.7.1.c. The written consent of the settlor of the trust for which the unlicensed private trust company or licensed private trust company is serving as trustee; or

15.7.1.d. The written consent of every adult qualified beneficiary of the trust who, at the time of such purchase, is entitled to receive income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; and

15.7.2. The purchase of the security is at a fair price and complies with:

15.7.2.a. The prudent investor rule in W. Va. Code Section 44-6C-1(a) or other prudent investor or similar rule under other applicable law unless compliance is waived in accordance with W. Va. Code Section 44-6C-1(b) or other applicable law.

15.7.2.b. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

15.8. Except as otherwise expressly limited by this Rule, a private trust company or licensed private trust company, while acting as a fiduciary, is also authorized, without limiting any powers otherwise conferred on fiduciaries by law, to do any of the following, which are not presumed to be affected by a conflict between the fiduciary's personal and fiduciary interests:

15.8.1. Make an equity investment in a closely held entity that may or may not be marketable and that is directly or indirectly owned or controlled by one or more family members.

15.8.2. Place a security transaction using a broker who is a family member.

15.8.3. Enter into an agreement with a family member who is the settlor or a qualified beneficiary of a trust with respect to the appointment of the private trust company or licensed private trust company as a fiduciary of the trust, or with respect to the compensation of the private trust company and licensed private trust company for service as a fiduciary.

15.8.4. Transact business with a family member.

15.8.5. Transact business with or invest in any asset of another trust, estate, guardianship, or conservatorship for which the private trust company or licensed private trust company is a fiduciary or in which a family member has an interest.

15.8.6. Deposit trust assets in a financial institution that is owned, controlled, or operated by one or more family members.

15.8.7. Purchase, sell, hold, own, or invest in a security, bond, real or personal property, stock, or other asset of a family member.

15.8.8. With or without adequate security, lend money to or borrow money from a family member or a trust, estate, or guardianship for which the private trust company or licensed private trust company serves as a fiduciary.

15.9. If not inconsistent with and subject to the terms of sections §155-12-15.4. through §155-12-15.8. this rule, the duty of loyalty under W. Va. Code Section 44D-8-802 applies to private trust companies, licensed private trust companies, and foreign licensed private trust companies when serving as trustee of a trust whose administration is subject to Chapter 44D.

**§155-12-16. Prohibitions.**

16.1. Notwithstanding any provision of this Title, neither a private trust company, licensed private trust company, nor foreign licensed private trust company may:

16.1.1. Engage in commercial banking, however, it may establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services pursuant to this Title;

16.1.2. Engage in fiduciary services with the public unless licensed pursuant to Chapter 31A; or

16.1.3. Serve as an attorney in fact or agent, including as a co-attorney in fact or co-agent, under a power of attorney pursuant to Chapter 39B.

**§155-12-17. Requirements for Licensed and Unlicensed Private Trust Companies and Foreign Licensed Private Trust Company.**

17.1. A private trust company or a licensed private trust company shall maintain:

17.1.1. A principal office physically located in this state where original or true copies of all records and accounts of the private trust company or licensed private trust company may be accessed and made readily available for examination by the Auditor in accordance with this Title. A private trust company or licensed private trust company may also maintain one or more branch offices within or outside of this state.

17.1.2. A registered agent who has an office in this state at the street address of the registered agent.

17.1.3. All applicable state and local business licenses, charters, and permits.

17.1.4. A deposit account with:

17.1.4.a. A bank located in the United States and insured by the Federal Deposit Insurance Corporation; or

17.1.4.b. A credit union located in the United States and insured by the National Credit Union Administration.

17.2. In order to operate in this state, a foreign licensed private trust company must be in good standing in its principal jurisdiction, must be in compliance with the private trust company laws and regulations of its principal jurisdiction, and must maintain:

17.2.1. An office physically located in this state where original or true copies of all records and accounts of the foreign licensed private trust company pertaining to its operations in this state may be accessed and made readily available for examination by the Auditor in accordance with this Title;

17.2.2. A registered agent who has an office in this state at the street address of the registered agent;

17.2.3. All applicable state and local business licenses, charters, and permits; and

17.2.4. A deposit account with:

17.2.4.a. A bank located in the United States and insured by the Federal Deposit Insurance Corporation; or

17.2.4.b. A credit union located in the United States and insured by the National Credit Union Administration.

17.3. A company in operation as of May 23, 2023, which meets the definition of a private trust company must, on or before December 30, 2023, apply for licensure as a licensed private trust company, register as either an unlicensed private trust company or a foreign licensed private trust company, or cease doing business in this state.

**§155-12-18. Powers of Licensed and Unlicensed Private Trust Companies and Foreign Licensed Private Trust Company.**

18.1. An unlicensed private trust company or a licensed private trust company may, for its eligible members and individuals:

18.1.1. Act as a sole or co-personal representative, executor, administrator, or curator for probate estates being administered in this state or in a state or jurisdiction other than this state.

18.1.2. Act as an attorney in fact or agent under a power of attorney, other than a power of attorney governed by Chapter 39B.

18.1.3. Except as provided in section §155-12-16 this rule, act within or outside this state as a sole fiduciary or co-fiduciary, including acting as a trustee, advisory agent, assignee, assignee for the benefit of creditors, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, custodian, escrow agent, fiscal or paying agent, financial advisor, guardian, investment advisor or manager, managing agent, purchase agent, receiver, registrar, safekeeping or subscription agent, transfer agent, except for public companies, warrant agent, or similar capacities generally performed by corporate trustees, and in so acting

possesses, purchases, sells, invests, reinvests, safekeeps, or otherwise manages or administers the real or personal property of eligible members and individuals.

18.1.4. Exercise the powers of a corporation or limited liability company incorporated or organized under the laws of this state, or qualified to transact business as a foreign corporation or limited liability company under the laws of this state, which are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred under this Title.

18.1.5. Delegate duties and powers, including investment functions under W. Va. Code Section 44-6C-9, in accordance with the powers granted to a trustee under Chapter 44D or other applicable law, and retain agents, attorneys, accountants, investment advisers, or other individuals or entities to advise or assist the private trust company, licensed private trust company, or foreign licensed private trust company in the exercise of its powers and duties under this Title and Chapter 44D. Such exercise of power may include, but is not limited to, retaining a bank trust department, or a public trust company, other than another private trust company, licensed private trust company, or foreign licensed private trust company.

18.1.6. Perform all acts necessary for exercising the powers enumerated in this Rule or authorized by this Title and other applicable laws of this state.

18.2. Except as otherwise provided in section §155-12-16 this rule, a foreign licensed private trust company that is in good standing in its principal jurisdiction may exercise all the trust powers in this state that a West Virginia private trust company may exercise.

#### **§155-12-19. Segregation of Books, Records, and Assets; Fiduciary Assets Not Liable.**

19.1. Each private trust company and licensed private trust company shall maintain its fiduciary books and records separate and distinct from other records of the company and shall segregate all assets held in any fiduciary capacity from other assets of the company.

19.2. Assets received or held in a fiduciary capacity by a private trust company or licensed private trust company are not subject to the debts or obligations of the company.

#### **§155-12-20. Investigation of License Applicants.**

20.1. For the purpose of this section, the application is not deemed to be filed until the applicant has provided the Auditor with all the information required to be included pursuant to W. Va. Code Section 31I-1-4.

20.2. Upon filing an application for a license to operate as a licensed private trust company, the Auditor shall conduct an investigation to confirm:

20.2.1. That the persons who will serve as directors or officers of the corporation or, if the applicant is a limited liability company, managers or members acting in a managerial capacity, have not:

20.2.1.a. Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude;

20.2.1.b. Been convicted of, or pled nolo contendere to, a violation of the criminal laws governing financial institutions, including Chapter 61, Articles 3, 4, and 15, the Bribery and Corrupt Practices Act, or similar state or federal law;

20.2.1.c. Been directors, officers, managers, or members of a financial institution licensed or chartered under the laws governing financial institutions or by the Federal Government or any other state,

the District of Columbia, a territory of the United States, or a foreign country, whose license or charter was suspended or revoked within the 10 years preceding the date of the application;

20.2.1.d. Had a professional license suspended or revoked within the 10 years preceding the date of the application; or

20.2.1.e. Made a false statement of material fact on the application.

20.2.2. That the name of the proposed company complies with to section §155-12-14 this rule.

20.2.3. That capital accounts of the proposed company conform to W. Va. Code Section 31I-1-4 and that fidelity bonds and errors and omissions insurance coverage required under W. Va. Code Section 31I-1-12 have been issued and are effective.

20.2.4. That the articles of incorporation or articles of organization conform to section §155-12-14.1. this rule.

20.2.5. That the management structure of the proposed company complies with W. Va. Code Section 31I-1-8.

20.3. If the investigation required under this section confirms that the applicant has met the requirements of sections §155-12-17 and §155-12-14.1., and W. Va. Code Sections 31I-1-4, 31I-1-8 and 31I-1-12, and that the persons who will serve as directors or officers of the corporation or the managers or members acting in a managerial capacity of the limited liability company, as applicable, satisfy the criteria set forth in Rule 20.2., the Auditor shall issue a license authorizing the applicant to operate as a licensed private trust company.

20.4. If the Auditor determines the criteria in in section §155-12-20.2. this rule have not been met, the Auditor shall serve notice of its intent to deny the application and of the applicant's opportunity to request a hearing pursuant to W. Va. Code Sections 29A-5-4 and 29A-6-1.