

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 44.00: THE LICENSING AND REGULATION OF MONEY TRANSMITTERS

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44.01: Purpose and Scope

The purpose of 209 CMR 44.00 is to establish procedures and requirements for the licensing and supervision of money transmitters under the provisions of M.G.L. c. 169B.

Nothing contained in 209 CMR 44.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the Applicant.

44.02: Definitions

Terms that are defined in M.G.L. c. 169B and used in 209 CMR 44.00 *et seq.* shall have the same meaning as in M.G.L. c. 169B, unless otherwise provided in this section. As used in 209 CMR 44.00, the following words shall, unless the context otherwise requires, have the following meanings -

Applicant - Any person submitting an application for a license under the provisions of M.G.L. c. 169B. Applicant shall include partners or members, if the Applicant is a partnership, limited liability company, or association; and officers, directors, key individuals, and principal employees, if the Applicant is a corporation.

Money Transmitter - a person who engages in the business of money transmission or advertises, solicits, or holds itself out as providing money transmission.

NMLS means the Nationwide Multi-State Licensing System & Registry, a multi-state licensing system owned and operated by the State Regulatory Registry LLC, a wholly owned subsidiary of the Conference of State Bank Supervisors, an association of state financial services regulators.

Payroll Processing Services – Receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries.

44.03: Licensing Exemptions

The following are not required to be licensed as money transmitters:

- (1) Persons described in M.G.L. c. 169B, section 2(a);
- (2) Entities solely engaged in payroll processing services; and
- (3) A person exempt by regulation or order if the Commissioner finds such exemption to be in

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the public interest and the regulation of such person is not necessary for the purposes of M.G.L. c. 169B.

44.04: Application Procedures

(1) Application. Each Applicant for a license as a money transmitter shall submit an application in a form prescribed by the Commissioner, containing such information as the Commissioner may from time to time require.

(2) License Requirements. An Applicant is required to submit information supporting the following general requirements:

(a) Financial responsibility.

1. An Applicant shall demonstrate a tangible net worth of the greater of (i) \$100,000 or (ii) 3 per cent of total assets for the first \$100,000,000, 2 per cent of additional assets for \$100,000,000 to \$1,000,000,000, and 0.5 per cent of additional assets for over \$1,000,000,000. Tangible net worth shall be demonstrated at initial application by the Applicant's most recent audited or reviewed financial statements. Notwithstanding the foregoing provisions of this subsection, the Commissioner shall have the authority, for good cause shown, to exempt, in-part or in whole, any Applicant or Licensee from the requirements of this subsection. In addition, a review of financial responsibility may include a review of historical net losses, profitability, and any other information that the Commissioner may deem necessary.

2. An Applicant shall demonstrate that it will maintain at all times permissible investments that have a market value computed in accordance with the generally accepted accounting principles issued by the Financial Accounting Standards Board of not less than the aggregate amount of all of its outstanding money transmission obligations, as further described in M.G.L. c. 169B, section 9.

(b) Financial statement. An Applicant shall submit financial statements prepared in accordance with generally accepted accounting principles issued by the Financial Accounting Standards Board, in U.S. dollars, meeting the following minimum requirements:

1. Contents. The financial statements required by 209 CMR 44.00 shall include, but are not limited to, a Balance Sheet, Statement of Income, and Statement of Cash Flows, and all relevant notes thereto. An Applicant shall also submit financial statements for the preceding fiscal year and such other financial information as the Commissioner may require. If an Applicant's financial statements are consolidated, the Applicant shall include a separate breakdown of all consolidated entities. Consolidated financial statements shall include a separate, stand-alone breakdown of the Applicant with a separate balance sheet, income statement, and statement of cash flows.

2. Initial Application. An Applicant shall submit audited or reviewed financial statements for its preceding fiscal year or such other financial information as the Commissioner may require. Reviewed financial statements shall be prepared in accordance with Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. At the discretion of the Commissioner and under such conditions as he or she may impose, an Applicant's unaudited financial statements may be submitted with audited consolidated financial statements of its parent entity.

(c) Character and Fitness. An Applicant shall submit information that will demonstrate that the Applicant possesses the financial and business experience, competence, character, and general fitness to engage in the licensed business.

(d) Other Information. An Applicant shall submit such other information the Commissioner may deem necessary to properly evaluate an application. In evaluating

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an application and requesting information from an Applicant, the Commissioner may be guided or rely upon the standards set forth in the NMLS Policy Guidebook, as published by the State Regulatory Registry.

- (3) Bond. Each Applicant shall provide, and a Licensee shall at all times maintain, security consisting of a surety bond in a form satisfactory to the Commissioner.
  - (a) The amount of the required security shall be the greater of \$100,000 or an amount equal to one hundred percent of the Licensee's average daily money transmission liability in Massachusetts calculated for the most recently completed three-month period, up to a maximum of \$500,000.
  - (b) A Licensee that maintains a bond in the maximum amount provided for in clause (a) of this subsection shall not be required to calculate its average daily money transmission liability in the Commonwealth for purposes of this subsection.
  - (c) A Licensee may exceed the maximum required bond amount.

44.05: Licensing Standards

- (1) A license to engage in the business of a money transmitter will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 169B, § 4 and 209 CMR 44.04 have been met and that it is in the public interest to permit the Applicant to engage in money transmission.
- (2) The Commissioner may deny an application to engage in the business of a money transmitter and shall issue a formal notice of the denial of a license application within 30 days of the decision to deny the application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application.
- (3) An Applicant whose application has been denied under 209 CMR 44.05(2) may appeal the Commissioner's action under M.G.L. c. 30A.

44.06: Books and Records

- (1) A Licensee shall keep and use its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee is complying with the provisions of M.G.L. c. 169B and applicable state and federal laws and regulations.
- (2) A Licensee shall maintain, for not less than 3 years:
  - (a) a record of each outstanding money transmission obligation sold;
  - (b) a general ledger posted not less than monthly containing all asset, liability, capital, income and expense accounts;
  - (c) bank statements and bank reconciliation records;
  - (d) records of outstanding money transmission obligations;
  - (e) records of each outstanding money transmission obligation paid within the 3-year period; and
  - (f) a list of the last known names and addresses of all of the Licensee's authorized delegates.

44.07: Reports

- (1) A Licensee shall, annually on or before March 31, file an annual report with the Commissioner containing such information as the Commissioner may require concerning the business and operations during the preceding calendar year. In addition, each Licensee shall file a final annual report upon surrender of a license.
- (2) Each Licensee shall submit a report of condition within 45 days of the end of the calendar

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quarter, or within any extended time as the Commissioner may prescribe.

(a) The report of condition shall include:

- (i) financial information of the Licensee;
- (ii) nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the Licensee is licensed to engage in money transmission;
- (iii) a permissible investment report;
- (iv) transaction destination country reporting for money received for transmission, if applicable; and
- (v) any other information the Commissioner reasonably requires with respect to the Licensee.

(3) The information required by clause (iv) of paragraph 209 CMR 44.07(2) shall only be included in a report of condition submitted within 45 days of the end of the fourth calendar quarter.

(4) Each Licensee shall, within 90 days after the end of each fiscal year, or within any extended time as the Commissioner may prescribe, file with the Division an audited financial statement of the Licensee for the fiscal year prepared in accordance with generally accepted accounting principles issued by the Financial Accounting Standards Board; and any other information as the Commissioner may reasonably require.

(a) The audited financial statements shall be prepared by an independent certified public accountant and shall include or be accompanied by a certificate of opinion of the independent certified public accountant that is satisfactory in form and content to the Commissioner. If the certificate or opinion is qualified, the Commissioner may order the Licensee to take any action as the Commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(b) A Licensee that fails to submit the information required under 209 CMR 44.07(4) will not be permitted to renew its money transmitter license.

(5) A Licensee shall submit a report of authorized delegates through the NMLS within 45 days of the end of the calendar quarter.

(a) The authorized delegate report shall include, at a minimum, each authorized delegate's:

- (i) company legal name;
- (ii) taxpayer employer identification number;
- (iii) principal provider identifier;
- (iv) physical and mailing addresses;
- (v) business conducted in other states, if any;
- (vi) fictitious or trade name, if any;
- (vii) contact person name, phone number and email address;
- (viii) start date as Licensee's authorized delegate;
- (ix) end date acting as Licensee's authorized delegate, if applicable; and
- (x) other information, as the Commissioner reasonably requires.

(6) A Licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this subsection with the appropriate federal agency shall be deemed compliant with the requirements of this subsection.

44.08: Notice of Significant Events

(1) A Licensee shall notify the Division in writing within one business day after the Licensee has reason to know of the occurrence of:

- (a) the filing of a petition by or against the Licensee under 11 U.S.C. § 101 to 110, inclusive, as amended or recodified from time to time, for bankruptcy or reorganization;
- (b) the filing of a petition by or against the Licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;
- (c) the commencement of a proceeding to revoke or suspend its license in a state or country in which the Licensee engages in business or is licensed;

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- (d) The inability to satisfy all of the Licensee's outstanding transmission liabilities as they become payable; or
  - (e) Having been subject to any robbery, burglary or theft.
- (2) A Licensee shall notify the Division within three business days after the Licensee has reason to know of the occurrence of a criminal felony charge or conviction of the Licensee, an officer or director, key individual, a person in control of the Licensee, or an authorized delegate.

**44.09: Change in Ownership or Key Individuals**

- (1) A Licensee shall notify the Division through the NMLS no later than 15 days after the effective date of the replacement or addition of any key individual. The Licensee shall provide information as the Division may require as if the individual was a new Applicant for licensure.
- (2) A Licensee shall notify the Division through the NMLS within 15 days after an acquisition of control of the Licensee. The Licensee shall provide information as the Division may require as if the individual was a new Applicant for licensure.

**44.10: License Expiration**

The initial license term shall begin on the day the application is approved. The license shall expire on December 31 of the year in which the license term began, unless the initial license date is between November 1 and December 31, in which instance the initial license term shall run through December 31 of the following year.

**44.11 Compliance with Other Laws**

Compliance with any applicable provisions of the Bank Secrecy Act, 31 CFR Chapter X, the Electronic Fund Transfer Act, 12 CFR Part 1005 (Regulation E) and the corresponding Appendices and Official Interpretations, which do not conflict with M.G.L. c. 169B, 209 CMR 44.00 or an advisory ruling of the Commissioner, shall be deemed to be compliance with M.G.L. c. 169B, and 209 CMR 44.00.

**44.12: Severability**

The provisions of 209 CMR 44.00 are severable. If any provisions or the application of any provision is held invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 209 CMR 44.00.

**REGULATORY AUTHORITY**

209 CMR 44.00: M.G.L. c. 169B, § 3(a)(2)