WEST VIRGINIA CODE: §31-17-4a

§31-17-4a. Information requirements for certain individuals and change in control.

(a) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last 10 years;

(2) Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:

(A) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case this requirement shall be waived;

(B) Information related to any criminal convictions or pending charges; and

(C) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(b) If the individual has resided outside of the United States at any time in the last 10 years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) Not be affiliated with, or have an interest with, the individual it is researching.

(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:

(A) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(B) Criminal records information for the past 10 years, including, but not limited to, felonies,

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misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(C) Employment history;

(D) Media history, including an electronic search of national and local publications, wire services, and business applications; and

(E) Financial services-related regulatory history, including, but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

(c) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(d) A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed by the commissioner.

(e) Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner without using the Nationwide Multistate Licensing System and Registry.

(f) The application required by this section shall include information required for any new key individuals that have not previously completed the requirements for a licensee.

(g) When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application shall be considered complete and:

(1) The commissioner shall approve or deny the application within 90 days after the completion date; or

(2) If the application is not approved or denied within 90 days after the completion date, the application is deemed approved, and the person, or group of persons acting in concert, are not prohibited from acquiring control.

(3) The commissioner may extend the application period for good cause.

(h) A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

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(i) When an application is filed and considered complete, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions for the change in control have been fulfilled:

(1) The requirements of subsections (d) and (f) of this section have been met, as applicable; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control, and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner is authorized to accept the investigation results of a lead investigative state if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If the division is a lead investigative state, the commissioner is authorized to investigate the applicant and the time frames established by agreement through the multistate licensing process.

(k) The commissioner shall issue a formal written notice of the denial of an application to acquire control 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. An applicant whose application is denied under this section may appeal the denial using the procedures set forth in §31-17-14 of this code.

(l) The requirements of subsections (c) and (d) of this section do not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction, or by operation of law;

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(4) A person that is otherwise exempt under this article;

(5) A person that the commissioner determines is not subject to subsection (c) of this section based on the public interest;

(6) A public offering of securities of a licensee or a person in control of a licensee; or

(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section, in cooperation with the licensee, shall notify the commissioner within 15 days after the acquisition of control.

(n) Streamlined acquisition of control:

(1) The requirements of subsections (c) and (d) of this section do not apply to a person that has complied with and received approval to engage in mortgage activity under this article or was identified as a person in control in a prior application filed with and approved by the commissioner or pursuant to a multistate licensing process: *Provided*, That:

(A) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(B) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by a reciprocal state or federal agency approved by the division if such rating was given;

(C) The licensee to be acquired is projected to meet the requirements of net worth and surety bond after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of net worth and surety bond after the acquisition of control is completed;

(D) The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(E) The person provides notice of the acquisition in cooperation with the licensee and attests to the requirements in this subsection in a form and in a medium prescribed by the commissioner.

(2) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice is deemed approved.

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(o) Before filing an application for approval to acquire control of a licensee, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of this section.

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