WEST VIRGINIA CODE: §32A-2-8b

§32A-2-8b. Permissible Investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.

(b) Except for the permissible investments that are set forth in subsection (e) of this section, the commissioner, with respect to any licensee, may limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of the investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization, 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 in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) Upon the establishment of a statutory trust in accordance with subsection (c) of this section or when any funds are drawn on a letter of credit pursuant to subdivision (4) of subsection (e) of this section, the Commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established hereunder shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) Types of permissible investments are as follows:

(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution,

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and cash equivalents;

(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount;

(5) One hundred percent of the surety bond provided pursuant to §32A-2-10 of this code that exceeds the average daily money transmission liability in this state; and

(6) Any other permissible investments determined by the commissioner to be acceptable. Permissible investments pursuant to this subdivision shall be published on the commissioner’s website and updated at least annually. Licensees may propose that the commissioner place certain investments on the list of permissible investments at the commissioner’s discretion.

WV Legislature