

DEPARTMENT OF REGULATORY AGENCIES

Division of Banking

MONEY TRANSMITTERS

3 CCR 701-7

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

MO1 Surety Bond

- A. A combination of surety bond and permissible investments pursuant to Rule MO-2 must, at a minimum, equal the amount of outstanding payment instruments in Colorado. However, the surety bond may never be less than \$250,000.
- B. A surety bond of \$250,000 is permissible provided that, following application by the licensee and an opportunity for hearing before the Banking Board, the Banking Board finds that the provisions of Rule MO-2, Permissible Investments, are met.
- C. If the provisions of Rule MO-2 are not met, the licensee must maintain a surety bond in an amount of at least one million dollars. The Banking Board may, following notice to the licensee and an opportunity for hearing before the Banking Board, and upon the determination that customers of the licensee are at undue risk, order the licensee to increase the bond amount up to two million dollars based on the following factors:
 - 1. The nature and volume of the business and proposed business of the licensee in Colorado;
 - 2. The amount, nature, quality, and liquidity of the assets of the licensee;
 - 3. The amount and nature of the liabilities (including contingent liabilities) of the licensee;
 - 4. The nature and sufficiency of the licensee's cash flow;
 - 5. The licensee's net worth;
 - 6. The history of, and prospects for, the licensee to earn and retain income;
 - 7. The quality of the operations of the licensee;
 - 8. The quality of the management of the licensee;
 - 9. The nature and quality of the controlling person or persons of the licensee; and
 - 10. Such other factors as are, in the opinion of the Banking Board, relevant.
- D. Generally Accepted Accounting Principles shall be used, where applicable, by the Banking Board in connection with its consideration of such factors.
- E. MO-2 is a rule and regulation enacted by the Colorado State Banking Board and is administered by the Colorado Division of Banking.

This rule does not include amendments to or editions of the referenced material later than the effective date of this rule, January 30, 1993.

For more detailed information pertaining to these provisions, please contact the secretary for the State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, (303) 894-7575.

MO2 Permissible Investments

A. Definitions

1. "Financial institution" is defined as any bank, industrial bank, or savings and loan institution that is federally insured.
2. "Insolvent" when used with respect to any person, is defined as a person who has ceased to pay his or her debts in the ordinary course of business, who cannot pay his or her debts as they become due, or whose liabilities exceed his or her assets.
3. "Parent," when used with respect to a specified person, other than a natural person, is defined as any person, other than a natural person, which controls such specified person, directly or indirectly, through one or more intermediaries.
4. "Person" is defined as any natural person, firm, association, partnership, syndicate, joint stock company, unincorporated company or association, common law trust, or any corporation organized under the laws of the United States or of any state or territory of the United States or of any foreign country.

B. Permissible Investments and Outstanding Payment Instruments

A licensee who is approved by the Banking Board to cover outstanding payment instruments with a combination of surety bond and permissible investments must, at all times, maintain permissible investments having a market value at least equal to the amount of outstanding payment instruments in Colorado not covered by the surety bond, in accordance with this Rule.

Permissible investments may be owned by the licensee or licensee's parent. Such investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in Colorado in the event of the bankruptcy of the licensee.

C. Ownership of Permissible Investments

1. A licensee shall be deemed to own a permissible investment only if:
 - a. The licensee or the licensee's parent owns the permissible investment solely and exclusively in its own right, both of record and beneficially,
 - b. The permissible investment is not subject to any pledge, lien, or security interest, and
 - c. The licensee can freely negotiate, assign, or otherwise transfer the permissible investment.
2. A licensee shall not be deemed to be able freely to transfer a permissible investment that consists of a deposit in a financial institution unless such licensee is able freely to withdrawal such deposit. However, if the deposit is a savings or time deposit, as the case may be, the licensee shall not, on account of such restrictions, be deemed unable freely to withdraw the deposit.

3. A licensee shall not be deemed to be able freely to negotiate, assign, or otherwise transfer a permissible investment if any other transfer of such permissible investment would constitute a breach or event of default by such licensee or by any affiliate of the licensee under a contract, obligation, note, or other security issued by the licensee or by any affiliate of the licensee. For example, a licensee shall not be deemed to be able freely to negotiate, assign, or otherwise transfer a permissible investment that consists of a deposit in a bank if such licensee's failure to maintain such deposit would constitute a breach of any provision for compensating balances set forth in a loan contract between such bank and the licensee or a parent of the licensee.

D. Liquidity and Quality of Permissible Investments

If the Banking Board finds that any permissible investment or class of permissible investment is no longer of sufficient liquidity or quality to be a permissible investment, the Banking Board may by Rule or order declare such investment or class of investments to be ineligible.

E. Quarterly Reports

The following information regarding permissible investments must be reported in writing by each licensee as of March 31, June 30, September 30, and December 31. The written report shall be submitted to the commissioner within sixty (60) days of the end of each quarter.

1. State whether or not the licensee complied with the provisions of the Colorado Money Transmitters Act and Banking Board Rules at all times during the quarter, and, if not, describe the circumstances.
2. Provide a statement of the permissible investments owned by the licensee as of the end of the quarter, showing the total market value of such permissible investments and containing the following information with respect to each permissible investment:
 - a. Identify the security, including the name of the issuer, the type of the security, CUSIP number, and such other information as may be necessary to distinguish the security from other permissible investments issued by the same issuer.
 - b. State the market value of the security as of the end of the quarter.
 - c. If the qualification of the security as a permissible investment depends upon the assignment of an eligible rating, state the rating assigned to the security and identify the rating service.
3. The report required to be filed shall be submitted in connection with, and not in addition to, the report required by Section 12-52-110 (2)(b), C.R.S.

MO3 Records [Section 12-52-110 and 12-52-210, C.R.S.]

- A. The following information must be reported in writing by each licensee as of March 31, June 30, September 30, and December 31. The written report shall be submitted to the commissioner within sixty (60) days of the end of each quarter.
 1. State, to the best of its knowledge and belief, whether or not the licensee complied with the provisions of the Colorado Money Transmitters Act and Banking Board Rules at all times during the quarter, and if not, describe the circumstances of the noncompliance.

2. Provide a statement of the permissible investments owned by the licensee as of the end of the quarter, showing the total market value of the permissible investments and containing the following information with respect to each permissible investment:
 - a. Identify the security, including the name of the issuer, the type of the security, CUSIP number, and such other information as may be necessary to distinguish the security from other permissible investments issued by the same issuer.
 - b. State the market value of the security as of the end of the quarter.
 - c. If the qualification of the security as a permissible investment depends upon the assignment of an eligible rating, state the rating assigned to the security and identify the rating service.
 3. Provide a statement of the amount of the surety bond, issuer of the surety bond, and the expiration date of the bond maintained pursuant to The Money Transmitters Act.
 4. If securities have been deposited in lieu of a surety bond, list the issuer of the securities, the type of securities, their par values, their maturity dates, their CUSIP numbers, and the name and address of the institution with which the securities were deposited.
 5. Total assets, liabilities, and capital as of the end of the quarter.
 6. Total dollar amount of exchange issued or sold and money transmitted in Colorado remaining unpaid as of the year end.
 7. Total dollar amount of exchange issued or sold and money transmitted in Colorado since year end.
 8. Total dollar amount of exchange issued or sold and money transmitted in Colorado and cleared (paid in the current calendar year.
 9. Total dollar amount of exchange issued or sold and money transmitted in Colorado remaining unpaid as of the end of the quarter.
- B. Each licensee must make, keep and preserve the following books, accounts, and other records for a period of three (3) years:
1. Record or records of payment instruments sold and money transmitted as required by the licensee's normal business practices.
 2. A general ledger containing all asset, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly.
 3. Settlement sheets received from agents, if any.
 4. Financial institution statements and reconciliation records.
 5. Records of outstanding payment instruments and money transmitted.
 6. Records of each payment instrument paid and money transmitted within the 3-year period.

7. A list of the names and addresses of all of the licensee's agents, as well as copies of each agent contract. Agent contracts need not be maintained for agents that have been terminated.
- C. 1. Each licensee shall annually report information as of July 31 for each agent performing money transmission services for Colorado consumers. The information shall be submitted to the Division by September 30, in a format furnished by the Commissioner (Money Transmitter Agent Information form), and include:
 - a. Business name of agent.
 - b. Street address, City, State, and Zip code of agent.
 - c. Telephone number of agent.
 - d. Money transmission services provided at the location.
 - e. Each owner of the agent business that owns greater than ten (10) percent of the business, if a partnership or an entity created pursuant to Title 7, C.R.S. - Corporations and Associations, including:
 - (1) Street address, City, state and Zip code of each of the owners;
 - (2) Home telephone number of each of the owners.
2. An agent of a licensed money transmitter involved in selling or adding additional money to "Stored Value" issued by the licensed money transmitter or to corporations organized under the general banking, savings and loan, or credit union laws of Colorado or the United States, is not subject to this Paragraph of this Rule.
3. For the purpose of this Rule, the definition of "Stored Value" set forth in section 12-52-202 (2), C.R.S. shall be applicable.
- D. The records required to be maintained may be maintained at any location, provided the licensee notifies the Division of Banking in writing of the location of its records prior to each scheduled examination.
- E. The original of any record of licensee or agent includes the data or other information comprising a record stored or transmitted in or by means of any electronic, computerized, mechanized, or other information storage or retrieval or transmission system or device that can upon request generate, regenerate, or transmit the precise data or other information comprising the record; and an original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.

MO4 Qualification of License Applicant [Section 12-52-108, C.R.S.]

- A. To qualify for a license, the applicant must demonstrate to the Banking Board such qualifications as to command the confidence of the public and warrant the belief that the license applicant's business will be operated lawfully and fairly.
- B. Each application must be submitted to the Banking Board on such forms as the Board requires. The application forms shall, at a minimum, require:
 1. For all applicants:

-
- a. The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records.
 - b. The history of the applicant's material litigation and criminal convictions for the five (5) year period prior to the date of the application.
 - c. A description of the activities conducted by the applicant and a history of operations.
 - d. A description of the business activities in which the applicant seeks to be engaged in the State.
 - e. A list identifying the applicant's proposed agents in the State, if any, at the time of the filing of the license application.
 - f. A sample agent contract, if applicable.
 - g. A sample form of payment instrument, if applicable.
 - h. The location(s) at which the applicant and its agents, if any, propose to conduct the licensed activities in the State.
 - i. The name and address of the clearing bank or banks on which the applicant's payment instruments will be payable.
2. If the applicant is a corporation, the applicant must also provide:
- a. The date of the applicant's incorporation and state of incorporation.
 - b. A certificate of good standing from the state in which the applicant was incorporated.
 - c. A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.
 - d. The name, business and residence addresses, and employment history for the past five (5) years of the applicant's executive officers and the officer(s) or managers who will be in charge of the applicant's activities to be licensed hereunder.
 - e. The name, business and residence address and employment history for the period of five (5) years prior to the date of the application of any key shareholder of the applicant.
 - f. The history of material litigation and criminal convictions for the five (5) year period prior to the date of the application of every current director, executive director, or key shareholder of the applicant.

- (3) The amount and nature of the liabilities, including contingent liabilities, of the applicant;
 - (4) The history of, and prospect for, the applicant to earn and retain income;
 - (5) The quality of the operations of the applicant;
 - (6) The quality of the management of the applicant; and
 - (7) Any other factor the Banking Board deems relevant.
- c. A license that is in effect immediately before the effective date of this Paragraph of this Rule remains in force as a license under the Colorado Money Transmitters Act until the license expiration date. Thereafter, the licensee is subject to the renewal requirements of Section 12-52-109, C.R.S., and upon renewal, shall meet the net worth requirements of this Rule.
5. The Banking Board is authorized, for good cause shown to waive any requirement of this section with respect to any license application or to permit a license application to submit substituted information in its license application in lieu of the information required by this section.

MO5 CHANGE OF CONTROL

- A. A person has control over a licensee if:
1. The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the licensee; or
 2. The Banking Board determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the licensee.
- B. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, and thereby to change the control of that licensee, each person or group of persons shall provide written notice to the Commissioner.
1. A licensee the stock of which is traded on an organized stock exchange and a licensee which is a direct or indirect subsidiary of a publicly traded corporation shall provide the Commissioner with written notice within 15 days after knowledge of such change in control.
 2. A licensee which is not a corporation, or a corporation the stock of which is not publicly traded, shall provide the Commissioner with not less than 30 days prior written notice of such proposed change in control.
- C. After a review of the written notification, the Commissioner may require the licensee to provide additional information relating to other and former addresses, and the reputation, character, responsibility, and business affiliations of the proposed new owner or each of the proposed new owners of the licensee.

1. The Banking Board may deny the person or group of persons proposing to purchase, or who have acquired control of, a licensee if, after investigation, the Banking Board determines that the person or persons are not qualified to command the confidence of the public or have the necessary experience or financial responsibility to control or operate the licensee in a legal and proper manner or if the interests of the other stockholders, if any, or the interests of the public generally may be jeopardized by the proposed change in ownership, controlling interest, or management.
2. The Banking Board may disapprove any person who has a history of material litigation, criminal convictions, or pleas of nolo contendere.

MO6 Compliance with Federal Regulations [Section 12-52-110.5, C.R.S.]

- A. Each licensee shall develop a compliance plan outlining policies, procedures, and practices implemented to ensure compliance with federal laws and regulations applicable to money services businesses, including, but not limited to, federal anti-money laundering, record keeping, and registration requirements. Failure to develop such a compliance plan may be considered a basis for license revocation pursuant to Section 12-52-112, C.R.S.

MO7 Customer Notice [Section 12-52-116 (3)(a), C.R.S.]

- A. Every licensee shall post and maintain at its establishment and at each agent location, or other facility located in Colorado where exchange is sold or issued, or the business of money transmission is conducted, a notice furnished by the Commissioner that provides consumer information concerning the Colorado Money Transmitters Act and how to file a consumer complaint with the Colorado Division of Banking. Such notice must be posted conspicuously in an easily accessible and well-lighted area that is available to the consumer.
- B.
 1. If the exchange transaction is conducted through an electronic text medium, the licensee shall communicate the text of the customer notice to the consumer's electronic address, make the disclosure available at another location such as an internet web site, or provide the information in conjunction with other disclosures.
 2. Notice is not required if the exchange transaction is conducted orally by telephone.

MO8 Employee Money Laundering Affirmation [Section 12-52-203, C.R.S.]

- A. Purpose. To set forth procedures for an employee of an agent conducting money transmission services for a licensed money transmitter to affirm in writing their understanding of state and federal money laundering laws.
- B. Definitions. For the purpose of this Rule, the definition of "Stored Value" set forth in Section 12-52-202(2), C.R.S., shall be applicable.
- C. Procedures for affirming knowledge of money laundering laws
 1. Every agent of a licensed money transmitter shall require each employee conducting money transmission services to complete an Employee Notice, furnished by the Commissioner, affirming the individual's understanding of state and federal money laundering laws prior to performing such services.

2. In lieu of requiring each employee to complete an Employee Notice, an agent of a licensed money transmitter shall provide training on Section 18-5-309, C.R.S. and federal money laundering laws within 30 days before the employee performs money transmission services. Evidence of the employee's attendance, completion of training, and copies of training material will be maintained by the agent.
 3. Agents shall maintain copies of the forms or records at the agent business location reported to the Division until such time as the employee conducting the money transmission services ceases providing such services.
 4. Copies of these records shall be made available to any law enforcement officer acting within the scope and course of the officer's official duties.
 5. The form and records may be maintained in an electronic or digital format that reproduces the signature on the documents by the employee.
 6. Failure to comply shall be punishable pursuant to Section 12-52-206(1), C.R.S.
- D. Exemptions. An agent of a licensed money transmitter involved exclusively in selling or adding additional money to "Stored Value" issued by the licensed money transmitter, or corporations organized under the general banking, savings and loan, or credit union laws of Colorado or of the United States, is not subject to this Rule.

Editor's Notes

History

Rules MO3, MO8 emer. rule eff. 07/01/2010.

Rule MO8 emer. rule eff. 09/01/2010.

Rule MO3 eff. 10/15/2010.

Rule M08 eff. 12/15/2010.