

**BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING**

Money Transmitters

Readoption with Amendments: N.J.A.C. 3:27

Adopted Repeal: N.J.A.C. 3:27-2.2

Proposed: November 3, 2003 at 35 N.J.R. 4938

Adopted: March 19, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: March 19, 2004 as R. 2004, d.152, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 15e and 17:15C-1 et seq.

Effective Date: March 19, 2004, Readoption
April 19, 2004, Amendments and Repeals

Expiration Date: March 19, 2009

Summary of Public Comments and Agency Responses:

The Department received one comment from Howrey Simon Arnold and White on behalf of the Non-Bank Funds Transmitters Group (Group).

Comment: The commenter stated that N.J.S.A. 17:15C-2 defines three distinct types of businesses as money transmitters and the regulations are unclear as to whether specific requirements related to each or only one of the regulated functions.

Response: The Department agrees that the statute defines three distinct types of businesses as money transmitters. The statute also distinguishes between money transmitter and foreign money transmitter, a separately defined subset of one of the aforementioned classifications. Despite these separate definitions, the statute does not differentiate between these business types for most of its requirements. Further, the Department has reviewed the rules as requested and

does not agree with the commenter's general statement that the rules are not clear as to whether requirements were to be performed by all licensees. Specific comments as to the applicability of particular provisions to all licensees will be addressed separately.

Comment: The commenter believed that the term "owner" should be deleted from N.J.A.C. 3:27-2.2(b). The commenter stated that this is not a "defined term" and that the correct term is "controlling person," as defined by N.J.S.A. 17:15C-2.

Response: The Department does not believe that the term "owner" should be deleted from N.J.A.C. 3:27-2.2(b). The Department believes that the plain meaning of "owner" is sufficient for understanding. The addition of the word "owner" was necessary in part to clarify the application rules for small businesses such as sole proprietorships.

Further, while the statute does define "controlling person" as "any person in control of a licensee," the term is only used in N.J.S.A. 17:15C-14b.(2) as one of a list of persons the Commissioner should consider when determining whether to approve an application to acquire control of a licensee. In contrast, N.J.A.C. 3:27-2.2(b) refers to an application for an initial license. In addition, N.J.S.A. 17:15C-7, the statute governing applications for a license, does not use the term "controlling person." Pursuant to N.J.S.A. 17:15C-2 and 17:15C-7, an initial applicant is not precluded from being a "controlling person."

Comment: The commenter believed that the term "officer" should be deleted from N.J.A.C. 3:27-2.2(b) for numerous reasons. First, there is no definition of "officer" in the regulations or N.J.S.A. 17:15C-1 et seq., the New Jersey Money Transmitters Act (Act). Second, there may be numerous individuals that "technically hold 'officer' titles." In the Act, the title "executive

officer" is specifically defined to refer to senior officers of a corporation responsible for the licensee's business. Thus, adding the term "officer" is contrary to the Act and the legislative intent. Furthermore, adding the term "officer" makes little sense in the context of a license application.

Response: The Department does not agree that the term "officer" should be deleted from N.J.A.C. 3:27-2.2(b). While the Department agrees that there may be numerous individuals with the title "officer," the rule requires that information be forwarded concerning those individuals "responsible for the business to be licensed," which is the business in New Jersey. If there are numerous officers responsible for the business in New Jersey, then information must be provided for all of those individuals. If there are titular officers who are not responsible for the business in New Jersey, then the information concerning them need not be submitted.

The addition of "officers," as well as the addition of "owners," to N.J.A.C. 3:27-2.2(b) is not contrary to the Act or the legislative intent which underlies it. N.J.S.A. 17:15C-7d, explicitly confers upon the Commissioner the power to compel the submission of whatever information the Commissioner concludes is required in an application.

Comment: The commenter stated that N.J.A.C. 3:27-2.2(b)3 exceeds the Department's statutory authority and is void because N.J.S.A. 17:15C-7b.(9) expressly prohibits requiring the submission of the fingerprints of individuals who work for a "publicly traded corporation, its subsidiaries and affiliates."

Response: The Department agrees that N.J.S.A. 17:15C-7b.(9) excludes publicly traded corporations, their subsidiaries and affiliates from the requirement that fingerprints be provided for each of the applicant's executive officers and each officer or manager who will be in charge

of the applicant's activities to be licensed. The rule is being amended upon adoption to include the exception contained in the statute.

Comment: The commenter stated that, as to N.J.A.C. 3:27-3.6(a) and (b), it is not clear whether the reporting required by the rule is to be performed by all licensees, including those who only issue payment instruments, or only by those who receive money for transmission, or who transmit money within the United States or to locations abroad. The commenter stated that the content of N.J.A.C. 3:27-3.6(a) and (b) focused on only foreign money transmitters. Specifically, the commenter believes that the reference to a list of countries, without specifically including the United States, could be construed to imply that the rule applied only to foreign money transmitters.

Response: N.J.S.A. 17:15C-12 requires that each licensee shall file an annual report and does not exclude those who only issue payment instruments. A licensee may respond to a question or request for information on the annual report form which does not pertain to their business in any way by indicating that the question or request is not applicable. In regard to the reporting requirements found in N.J.A.C. 3:27-6(b), the Department believes that the language “each money transmitter” clearly indicates all classifications of money transmitters should comply. However, in order to remove any remaining confusion, the Department has added specific references to the United States to further clarify the language of N.J.A.C. 3:27-3.6(b).

Specifically, N.J.A.C. 3:27-3.6(b)1, 2 and 3 are being amended upon adoption to clarify that the reporting requirements are also applicable to “domestic” money transmitters who limit their activity to transmissions within the United States. In addition, N.J.A.C. 3:27-3.6(b)1 is also

being amended to clarify that the requirement to report all “money transmissions” includes all outstanding transmissions.

Comment: The commenter stated that the term "timely transmission of funds," as used in N.J.A.C. 3:27-3.6(a), is an undefined and vague term not used elsewhere in the rule or the Act. The commenter believed that, in the absence of any statutory requirement, the meaning is unclear.

Response: The Department acknowledges that, as used, the phrase "timely transmission of claims" is unclear. It will, therefore, be deleted from N.J.A.C. 3:27-3.6(a) upon adoption.

Comment: The commenter stated that N.J.A.C. 3:27-3.6(b)2, which requires money transmitters to report the number and amounts of all transmissions listed by country, is burdensome, as the information is not always maintained by money transmitters. The commenter stated that, in many cases, licensees provide for "will call service," which is where a customer can send money to a recipient who is travelling and the recipient can pick up the money at the recipient's convenience. For this type of service, the customer does not designate a country where the recipient will pick up the money.

Response: As N.J.A.C. 3:27-3.6(b) requires all money transmitters to list all transmissions, licensees should indicate "will call," or another similar descriptive heading, for any transmission for which the country where the recipient will receive the funds is unknown.

Comment: The commenter stated that N.J.A.C. 3:27-3.6(b)3, the rule which requires licensees to submit a separate list of the number and amounts of all transmissions for each of the licensee's

authorized delegates, listed by country, is exceedingly burdensome for licensees who do not prepare such information in the normal course of business. The commenter believed that the rule is costly, appears to serve no valid public purpose, and requires licensees to create new data processing systems.

Response: In addition to those records licensees are specifically required to maintain pursuant to N.J.S.A. 17:15C-10, that statute requires licensees to make, keep and preserve “such other books and records as the Commissioner may require by regulation.” (See N.J.S.A. 17:15C-10a.(10)). The Department believes that, given the the utilization of the services of money transmitters by persons involved in terroristic activity, drug trafficking and money laundering in the past, the public interests that are served by such a rule are obvious, and that it is necessary for licensees to maintain this type of information in the normal course of business.

Comment: The commenter believed that N.J.A.C. 3:27-3.6(c) was unclear, impermissibly vague and "perhaps duplicative of statutory mandate." The commenter stated that, "pursuant to the Act, the net worth provision is clear and may not be amended by regulation." The commenter further stated that the "permissible investment requirement is a separate and distinct legal obligation under the Act from the requirement in the Act to maintain a minimum net worth.”

Response: The intent of N.J.A.C. 3:27-3.6(c) was to mirror the statute and to be "duplicative of the statutory mandate" with respect to the permissible investments of licensees. However, as the commenter points out, a reference to net worth was inadvertently included in this provision. The Department is correcting the language upon adoption to mirror the language on permissible investments contained in N.J.S.A. 17:15C-6. N.J.A.C. 3:27-3.6(a) requires money transmitters

to file their annual reports on a form supplied by the Commissioner and which includes information indicating the adequacy of the net worth of the licensee.

Comment: The commenter objected to N.J.A.C. 3:27-6.1(a)12, which requires that licensees record all numbers, including voids, for numbered money transmissions. The commenter stated that it was unclear what constitutes a money transmission for the purposes of the rule. The commenter also stated that some of the Group members utilize a non-numbered forms tracking system which would require the creation of an entirely new forms system in order to comply.

Response: The Department's intent in proposing N.J.A.C. 3:27-6.1(a)12 was to require licensees to track their transmissions, including voids, to enable them to account for 100 percent of all transmissions, as is referenced in N.J.A.C. 3:27-3.6 as proposed. At the time of the proposal, the Department was not aware that licensees used non-numbered transmission forms. The Department has no desire to compel licensees who use such forms to create new forms and tracking systems. Therefore, upon adoption, N.J.A.C. 3:27-6(a)12 has been amended to include references to the identifying information on non-numbered transmission forms. As a result, if a licensee currently tracks their transmissions with a system which uses a means of tracking all items, including voids, other than numbered transmission forms, they may continue to do so, and they will be subject to the same requirement to maintain a record of all such forms used by them as will be applicable to licensees who utilize numbered forms.

Comment: The commenter believed that N.J.A.C. 3:27-7.1 is overbroad and will be administratively difficult. The commenter further stated that the provision, as drafted, conflicts with the change of control provision at N.J.S.A. 17:15C-14, and that N.J.A.C. 3:27-7.1(b) would

require a change of control application to be filed even where there is no direct or indirect change of control.

Response: N.J.A.C. 3:27-7.1(b) was not intended to require that a change of control application be accompanied by all of the information required in N.J.A.C. 3:27-7.1(a), including all of the information in an initial license application and an amended version of the last submitted annual report, when there is only a change of a key shareholder, executive officer, owner, partner, or manager responsible for the licensed business. When no direct or indirect change of control results from or accompanies a change in one of the aforementioned categories, a complete change of control application is not required. In that case, although the change in the identity of a key shareholder, executive officer, owner, partner or manager responsible for the licensed business is reported to the Department on a change of control application, the licensee is only required to submit the information concerning the new person specified in N.J.A.C. 3:27-2.2(b). In order to clarify the difference, upon adoption, the Department is changing the headings of the subchapter and the section.

Comment: Commenter stated that while the Group did not object to the rule that a change of owners or partners triggers a change of control, the undefined terms add impermissible ambiguity to the change of control rules. The commenter further stated that the terms "owner" and "partner" should be deleted in lieu of the defined term "controlling person," which is designed, along with the defined term "control," to specify who are the "owners" of a licensee for regulatory purposes.

Response: The Department does not believe that the terms "owner" or "partner" should be deleted. The phrase "controlling person," when used with the defined word "control," does not

directly correspond to persons who are "owners" for regulatory purposes. If these words alone are used to determine who is to be licensed, all sole proprietorships and other forms of business which lack voting securities would be excluded from licensing. As the intent of the Act was to license anyone who engaged in the conducting of money transmission business, those phrases alone will not suffice.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments are not subject to any Federal standards or requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 3:27.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

3:27-2.2 Application for an initial license

(a) (No change.)

(b) In addition, for each executive officer, key shareholder, officer, owner, partner and manager responsible for the business to be licensed, the following information is required to be furnished to the Department:

1. – 2. (No change.)

3. Fingerprints in the manner currently required by the New Jersey State Police or their authorized representative **In the case of a publicly traded corporation, its subsidiaries and affiliates, or a bank, bank holding company, and the subsidiaries and**

affiliates thereof, it is not required that the applicant furnish the fingerprints of each of the applicant's executive officers and of each officer or manager who will be in charge of the applicant's activities requiring licensure*;

4. – 6. (No change.)

(c) – (g) (No change.)

3:27–3.6 Annual report and fee

(a) Each money transmitter, including foreign money transmitters, shall file an annual report on or before April 1, on a form supplied by the Commissioner. The form shall include information indicating the adequacy of net worth, *[the timely transmission of funds,]* confirmation of compliance with the bonding requirements, summary of activity, the names of all banks with which the money transmitter does business and a list of all money transmissions as outlined below.

(b) Each money transmitter shall list all money transmissions for the calendar year immediately preceding the report as follows:

1. The total number and amounts of all transmissions (100 percent of all activity ***including all outstanding transmissions***), whether initiated through the money transmitter directly or through any of its authorized delegates, listed by country ***including the United States***;

2. The number and amounts of all transmissions initiated through the money transmitter directly, listed by country ***including the United States***; and

3. A separate list for each authorized delegate, listing the number and amounts of all transmissions for that delegate, listed by country ***including the United States***.

(c) Unless waived by the Commissioner in accordance with N.J.S.A. 17:15C-6, *[the net worth]* ***the permissible investments*** of a money transmitter shall not be considered adequate if *[the licensee does not possess permissible investments having]* ***the permissible investments do not have*** an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee in the United States or the licensee is not in compliance with N.J.S.A. 17:15C-5.

(d) (No change from proposal.)

3:27-6.1 Maintenance of books, records and accounts

(a) Each licensee shall make, keep and preserve in English the following books, accounts and other records for a period of three years:

1. - 11. (No change from proposal.)

12. Records of all numbers including voids, for numbered money transmission forms ***and records of all characters or other information including voids, which identify non-numbered money transmission forms***;

13. - 14. (No change from proposal.)

(b) – (c) (No change from proposal.)

SUBCHAPTER 7. CHANGE OF CONTROL ***OR KEY PERSONNEL***

3:27 - 7.1 Applications for change of control ***or key personnel***

(a) – (b) (No change from proposal.)