

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

Money Transmitters

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

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

Authorized By: Holly Bakke, Commissioner, Department of Banking and Insurance.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-435

Submit comments by January 2, 2004 to:

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The agency proposal follows:

Summary

On May 1, 1998, the Governor signed into law the New Jersey Money Transmitter Act, N.J.S.A. 17:15C-1 et seq. (the "Act"). The Act combined the licensing and regulation of the activities of foreign money transmission and the sale of checks, which were previously governed by two separate State statutes, the Foreign Money Remitter Act and the Check Sellers Act, into one law. The Act brought under its umbrella the previously unregulated activities of domestic money transmission and third party payment service providers. Section 25 of the Act authorized the Commissioner to promulgate regulations. The Department of Banking and Insurance

(Department) proposes to readopt and amend N.J.A.C. 3:27, Money Transmitters, which was adopted effective September 21, 1998 and will expire on March 19, 2004, pursuant to N.J.S.A. 52:14B-5.1c. The rules provide a framework for the licensing and regulation of money transmitters. The rules require licensing, security devices and demonstration of adequate net worth. The Department has reviewed the current rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

In addition, the Department has determined that certain revisions are necessary for clarification and to strengthen the consumer protection that the Act affords. Therefore, the Department proposes to amend certain rules, propose new rules and to readopt the balance of the rules without amendment.

N.J.A.C. 3:27-1 sets forth the general provisions for the chapter.

N.J.A.C. 3:27-1.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 3:27-1.2 sets forth the definitions used in the chapter. N.J.A.C. 3:27-1.2 is amended to add the definitions of “control,” “controlling person,” “OFAC (Office of Foreign Assets Control of the United States Department of the Treasury),” “outstanding payment instrument,” “payment instrument,” and “permissible investment.” In addition, the Department proposes to amend the definition of “money transmitter”. The amendment clarifies that the definition applies to persons who engage in this State in activity that requires licensure either by operating from a location in this State or through interacting via any means, including, but not limited to, the Internet, with persons in New Jersey. The amendment also adds an example of a third party who makes payments. Finally, the proposed amendments to N.J.A.C. 3:27-1.2 would also add text to the definition of “foreign money transmitter” that is similar to the text proposed to be added to the definition of “money transmitter” with regard to how operators engage in the

activity that requires licensure in New Jersey. The intent of these similar revisions to the definitions of “money transmitter” and “foreign money transmitter” is to clarify that firms that interact with consumers in New Jersey from remote locations, or with consumers in remote locations from New Jersey, are subject to the licensure requirement and the provisions of the Act and N.J.A.C. 3:27 if, through that interaction, they engage in the activity recited in the respective definitions. Mere advertising on the internet or through other means would not trigger the applicability of the Act and the rules. The transaction of money transmitter business with a consumer in New Jersey from a non-New Jersey based interactive website, or with a consumer outside of New Jersey from a New Jersey-based interactive website would require the operator of the website to be licensed and to comply with all other requirements imposed by the Act and the rules which are applicable to the type of money transmitter activity in which the operator of the interactive website engaged.

The Department proposes to readopt Subchapter 2, which requires all persons acting as money transmitters to be licensed, that licenses be renewed biennially, and sets forth the application requirements.

N.J.A.C. 3:27-2.1 is proposed to be amended to remove the references to the transitional period, which are no longer necessary. For the same reason, N.J.A.C. 3:27-2.2, Conversion of an existing license, has been repealed and N.J.A.C. 3:27-2.3 is recodified as N.J.A.C. 3:27-2.2.

N.J.A.C. 3:27-2.3 is being recodified as N.J.A.C. 3:27-2.2. N.J.A.C. 3:27-2.2.(a) sets forth the requirement that all persons applying for an initial license must submit a completed application; a bond or irrevocable letter of credit; an audited financial statement; an application fee and a license fee.

New N.J.A.C. 3:27-2.2(b) sets forth additional requirements for an initial license application including submissions by each executive officer, key shareholder, officer, owner, partner or manager responsible for the business to be licensed. in charge in this State. These submissions include certified consents for criminal investigation purposes, passport style photographs, fingerprints, registration fees, and two checks, one for \$26.00 payable to the Treasurer of the State of New Jersey and a second check in the amount required by the New Jersey State Police to cover the costs of background investigation including fingerprints.

New N.J.A.C. 3:27-2.2(c) requires that an applicant have a license before commencing operations.

New N.J.A.C. 3:27-2.2(d) requires submission of a copy of a corporate applicant's Certificate of Incorporation and identification of an agent for service of process. Foreign corporations must submit a New Jersey Certificate of Authority in addition to a corporate certificate.

New N.J.A.C. 3:27-2.2(e) requires the submission of a copy of the filing with the county clerk of any trade names used by individuals or partnerships.

Similarly, new N.J.A.C. 3:27-2.2(f) requires corporations using alternate names to file a copy of the registration of that name and N.J.A.C. 3:27-2.2(g) requires limited liability companies to file a copy of their Certificate of Formation.

N.J.A.C. 3:27-3.1 requires all fees to be paid by a check payable to the Treasurer- State of New Jersey. The section is amended to add, "except as specified elsewhere in this chapter" before this requirement.

N.J.A.C. 3:27-3.2(a) sets forth the application fees for a money transmitter license as \$400.00, and for a foreign money transmitter license as \$300.00. The subsection has been amended to remove the reference to fees in the repealed transition section.

N.J.A.C. 3:27-3.2(b) states that application fees are not refundable.

N.J.A.C. 3:27-3.3(a), which sets forth the licensing fees for applicants who apply during either the first or second year of the biennial cycle, is amended to add the reference to "the reduced initial license fee," the fee for one year paid by an initial applicant in the second year of the biennial cycle.

N.J.A.C. 3:27-3.3(b) and (c) set forth the licensing fees for both money transmitters and foreign money transmitters. The rules have been amended to clarify when the reduced initial license fee and biennial fees apply to both money transmitters and foreign money transmitters.

N.J.A.C. 3:27-3.4(a) sets forth the individual and maximum registration fees for authorized delegates. The biennial fee for each location or authorized delegate in this State is increased to \$100.00. The maximum amount of \$5,000.00 remains unchanged.

N.J.A.C. 3:27-3.4(b) sets forth the parameters for the biennial registration period.

N.J.A.C. 3:27-3.4(c) requires that no reductions be made in registration fees even if application is made during the second year of a biennial cycle.

N.J.A.C. 3:27-3.5 sets forth the fee of \$100.00 for change of control pursuant to N.J.S.A. 17:15C-14.

Money transmitters are required by N.J.S.A. 17:15C-12 to file an annual report. New N.J.A.C. 3:27-3.6 sets forth the requirements for an annual report and the associated fee.

N.J.A.C. 3:27-3.6(a) requires that all money transmitters, including foreign money transmitters, shall file an annual report on or before April 1 of each year on a form supplied by

the Commissioner. The form shall include information relating to the adequacy of the money transmitter's net worth; the timely transmission of funds; confirmation of compliance with the bonding requirement; a summary of activity; the names of all banks with which the money transmitter does business and a list of all money transmissions.

New N.J.A.C. 3:27-3.6(b) requires each money transmitter to report all money transmissions for the calendar year immediately preceding the date of the report. The total number and amounts of all transmissions, whether initiated through the money transmitter directly or through any of his authorize delegates, shall be listed by country and shall account for 100 percent of all money transmissions.

The report further breaks down the number and amounts of all transmissions initiated through the money transmitter. First, all transmissions initiated directly by the money transmitter are to be listed by country. Then, separate lists for each authorized delegate, listing the number and amounts of all transmissions for that delegate, are required. The list for each authorized delegate shall contain the number and amounts of all transmissions for that delegate listed by country. The totals of each authorized delegate's transmissions plus the total transmissions for the direct transmissions of the money transmitter should equal the total transmissions, that is 100 percent of all activity reported.

New N.J.A.C. 3:27-3.6(c) sets forth the parameters for evaluating net worth.

New N.J.A.C. 3:27-3.6(d) requires that each money transmitter remit an annual report filing fee of \$100.00 and states that the Department shall assess a penalty of \$100.00 per day for late filed or incomplete reports.

N.J.A.C. 3:27-4.1 sets forth the requirement that persons seeking initial licenses as money transmitters or foreign money transmitters comply with the requirements of N.J.S.A.

17:15C-8 and obtain a security device authorized by the Commissioner in the minimum amount of \$100,000.00 for a money transmitter or \$25,000.00 for a foreign money transmitter.

N.J.A.C. 3:27-4.1(a) is amended to reference new chapter Appendix A for the amounts of security required.

N.J.A.C. 3:27-4.1(b) sets forth the rules regarding the security device. The security device shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any person injured by a wrongful act, default, or misrepresentation of the licensee, including its directors, officers, authorized delegates and employees, to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments, transmission of money, or both and for the benefit of the Department for unpaid examination bills, unpaid penalties and any other unpaid obligation of the money transmitter to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges or fees.

N.J.A.C. 3:27-4.1(c) requires that the security device remain in effect until cancellation. In addition, cancellation shall only occur after 30 day's written notice to the Commissioner and shall not affect any liability incurred or accrued during that period the security device is in effect.

N.J.A.C. 3:27-4.1(d) requires that the security device shall remain in place no longer than five years after the licensee ceases the money transmission business. The device may be periodically reviewed and its amount adjusted accordingly. The Commissioner may permit the security device to be reduced or eliminated prior to the expiration of the five year period to the extent that the licensee's outstanding payment obligations in this State are reduced or eliminated.

N.J.A.C. 3:27-4.1(e) requires that attorney's fees, pre- or post-judgment interest, court costs or similar charges are not recoverable through the security device unless the surety company was given prior notice of the court action and an opportunity to be heard.

N.J.A.C. 3:27-4.1(f) requires that the security device shall not be payable for claims made by business creditors.

N.J.A.C. 3:27-4.1(g) requires that the security device not be payable for treble damage claims pursuant to the Consumer Fraud Act or any other State or Federal law.

N.J.A.C. 3:27-5.1(a) sets forth the requirement that applicants for initial licenses shall demonstrate a minimum net worth of \$100,000.00 plus an additional net worth of \$25,000.00 per location or agent to be located in this State up to a maximum of \$1,000,000.00. It is amended to clarify that foreign money transmitters must only demonstrate a net worth as set forth in N.J.A.C. 3:27-5.1(b).

N.J.A.C. 3:27-5.1(b) sets forth the requirement that applicants for a license as a foreign money transmitter only shall demonstrate a minimum net worth of \$50,000.00 plus an additional net worth of \$10,000.00 per location or agent to be located in this State up to a maximum of \$400,000.00.

New N.J.A.C. 3:27-6 sets forth requirements regarding the books and records of money transmitters.

N.J.A.C. 3:27-6.1(a) requires each licensee to make, keep and preserve in English, various books, accounts and other records for three years. The books, accounts and other records include: a record of each payment instrument sold and a record of each money transmission sent or accepted, including the name and address of each recipient; a general ledger containing all assets, liabilities, capital, income and expense accounts, which general ledger shall be posted at

least monthly and all books closed quarterly; settlement sheets received from authorized delegates containing the date, name of the delegate, name of the customer, the amount of the transmission, the country to which the transmission was submitted and the fee charged for the transmission; bank statements and bank reconciliation records; records of outstanding payment instruments; records of each payment instrument paid within the three-year period; records of completed money transmissions; records of outstanding money transmission orders; a list of the names and addresses of all of the licensee's authorized delegates; a list of all countries to which money is transmitted or from which money is received for transmission; a list of the names and addresses of all clearing banks through which the licensee's money transmission business is conducted; records of all numbers including voids for numbered money transmission forms; all records required to be maintained pursuant to 31 C.F.R. §§103.11 et seq.; and records of all events reported to the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") in compliance with all reporting requirements of OFAC.

N.J.A.C. 3:27-6.1(b) allows licensees to maintain the required documents through photographic, electronic or other similar methods.

N.J.A.C. 3:27-6.1(c) requires that the licensee maintain its records at its principal place of business or, with notice to the Commissioner, at another location. It further allows the Commissioner to request reimbursement of travel expenses incurred in the examination or investigation of records if the records are maintained outside of the State. Alternatively, the Commissioner may require the licensee to make the records available to the Commissioner at its principle place of business, or at the Commissioner's office, within three business days after demand. The Commissioner may further require that those records be produced by an individual, on behalf of the licensee, who will be available to answer questions regarding those records and

the business regulated under the Act. The Commissioner may require the appearance of a specific individual, or request that the licensee designate an individual with knowledge of the records and the business.

New N.J.A.C. 3:27-7.1 sets forth the requirements for change of control of a money transmitting service.

N.J.A.C. 3:27-7.1(a) requires approval of the Commissioner prior to anyone directly or indirectly acquiring control of a licensee. Applications for change of control are required to be accompanied by information required of initial applicants for licensure and an amended version of the last submitted annual report updated through the date of the application, as well as any documents related to the change of control, such as stock purchase agreements. The Commissioner may request copies or access to any or all of the materials retained in compliance with N.J.A.C. 3:27-6 prior to granting or denying approval.

N.J.A.C. 3:27-7.1(b) requires a new application in compliance with N.J.A.C. 3:27-2.2(b) for any change in key shareholders, executive officers, owners, partners, or managers responsible for the licensed business.

New N.J.A.C. 3:27-8.1 sets forth the penalty provision relating to money transmitters. N.J.A.C. 3:27-8.1(a) provides that a violation of the Act or these rules shall be subject to the penalties contained in N.J.S.A. 17:15C-1 et seq.

An appendix designated Appendix A is added to the chapter. The Appendix contains a chart relating to the required amounts of security as required in Subchapter 4 and sets forth the amounts of required security for different annual volume of business. The amounts reflect security amounts required and enumerated by N.J.S.A. 17:15C-8. For a foreign money transmitter with an annual business volume of \$15,000,000.00 and up to and including

\$25,000,000.00 the security required is \$150,000.00. For a foreign money transmitter with an annual business volume of over \$25,000,000.00 and up to and including \$30,000,000.00 the security required is \$200,000.00. For a foreign money transmitter with an annual business volume of over \$30,000,000.00 and up to and including \$70,000,000.00 the security required is \$750,000.00. For a foreign money transmitter with an annual business volume of over \$70,000,000.00 the security required is \$1,000,000.00.

For money transmitters other than foreign money transmitters the amount of security required for an annual volume of business up to and including \$15,000,000.00 is \$100,000.00. For over \$15,000,000.00 and up to and including \$25,000,000.00 the security required is \$150,000.00. For over \$25,000,000.00 and up to and including \$30,000,000.00 the security required is \$200,000.00. For over \$30,000,000.00 and up to and including \$70,000,000.00 the security required is \$750,000.00 and for over \$70,000,000.00 the security required is \$1,000,000.00.

A 60-day comment period is provided on this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for reoption, amendments and new rules apply to all persons or entities serving as money transmitters, check sellers and third party payment service providers (hereafter collectively known as “money transmitters”) in New Jersey. The reoption, amendments and new rules should continue to have a favorable impact on money transmitters, the public and the Department. They will continue to allow the Commissioner to monitor money

transmitters, affording the general public an adequate level of protection through licensing, reporting and regulation. The new rules requiring consents for criminal investigations and fingerprints will serve to raise that level of protection. The clarification of the existing rules through amendments will help ensure the uniformity of the rules and enhance understanding of those rules, creating a beneficial effect for money transmitters. The rules proposed for re-adoption, amendments and new rules will continue to allow the Department to fulfill its regulatory duties and enhance its ability by providing clear and comprehensive guidelines.

Economic Impact

There will be some negative economic impact on money transmitters as a result of the rules proposed for re-adoption, amendments and new rules. Money transmitters will bear the compliance costs associated with the recordkeeping and reporting requirements. They also will bear the cost of the new fees associated with the annual report and the criminal background checks. For a discussion of the compliance requirements and fees, see the Summary above. Money transmitters will also bear the continued costs associated with maintaining security devices. However, these costs are not unduly burdensome and are necessary to ensure the Department's ability to adequately monitor and regulate money transmitter licensees. In addition, requirements such as providing security devices and annual reports and maintenance of books and records are statutorily required.

The rules proposed for re-adoption, amendments and new rules are reasonable and necessary. The various fees imposed are appropriate to defray the costs incurred by the Department in administering the Act.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re adoption, amendments and new rules are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that any new jobs will be generated or lost as a result of the rules proposed for re adoption, new rules and amendments. Money transmitters will use existing staff for continued compliance with the rules.

The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for re adoption, new rules and amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the rules proposed for re adoption, amendments and new rules.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because the money transmitters to whom the rules proposed for re adoption, new rules and amendments apply often employ fewer than 100 full-time employees, and therefore are "small businesses" as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting and compliance requirements which affect all money transmitters, regardless of size can be found in the rules proposed for re adoption, amendments and new rules. See the Summary above for discussion of the reporting

and compliance requirements and see the Economic Impact above for a discussion on the costs of these requirements. As stated above, it is anticipated that money transmitters will use existing staff for compliance with the rules. No professional services are required.

One purpose of the amendments is to clarify rules already in effect and required by N.J.S.A. 17:15C-1 et seq. The amendments and new rules regarding initial applications, annual reports, maintenance of books, records and accounts and applications for change of control are necessary to ensure the Department's ability to adequately monitor and regulate money transmitter licensees and protect consumers as discussed above. Moreover, the Department does not believe that these rules are unduly burdensome. The purpose of these rules is to protect the financial integrity of money transmitters and in turn protect the consumers who use them. Thus, the purpose does not vary based upon business size. However, there is a differentiation made between those who act as foreign money transmitters and those engaged in the other activities. Those who only engage in foreign money transmission have reduced net worth and bonding requirements in recognition of the generally prevailing difference in size between these smaller entities and the other types of licensees.

Finally, many of the proposed amendments merely codify requirements presently imposed by statutes (N.J.A.C. 3:27-4.1(b), (c) and (d) and 6.1(c)) and thus are not amenable to reduced compliance requirements based upon business size.

Smart Growth Impact

The Department does not believe that the rules proposed for readoption, new rules and amendments will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3:27-2.2.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. MONEY TRANSMITTERS

3:27 – 1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

...

“Control” means ownership of, or the power to vote, 25 percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person’s interest the interest of any other person controlled directly or indirectly by that person or by any spouse, parent or child of that person.

“Controlling person” means any person in control of a license.

...

"Foreign money transmitter" means a person who, **from a location in this State or through interacting via any means, including, but not limited to, the Internet, with persons**

in this State, engages, in this State, only in the business of the receipt of money for transmission or transmitting money to locations outside of the United States by any and all means, including, but not limited to, payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit.

“Money transmitter” means a person who, **from a location in this State or through interacting via any means, including but not limited to the Internet, with persons in this state**, engages in this State in the business of:

1. - 2. (No change.)

3. The receipt of money for obligors for the purpose of paying obligors' bills, invoices or accounts for a fee, commission or other benefit paid by the obligor **(for example, mortgage payment acceleration programs and utilities payment programs)**.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

“Payment instrument” means any check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term “payment

instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

"Permissible investments" means

1. Cash;
2. Certificates of deposit or other debt obligations of a bank, savings bank, savings and loan association, or credit union, either domestic or foreign;
3. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System;
4. Any investment which is rated in one of the three highest rating categories by a nationally recognized statistical rating organization;
5. Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality or any political subdivision thereof which is rated in one of the three highest rating categories by a nationally recognized statistical rating organization;
6. Shares in a money market mutual fund, interest-bearing bills, notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of those securities or a fund composed of one or more permissible investments;
7. Demand borrowing agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

8. Receivables which are due to a licensee from its authorized delegates pursuant to a contract described in section 17 of the Act, which are not past due or doubtful of collection; or

9. Any other investment or security device which the Commissioner may authorize by rule.

. . .

SUBCHAPTER 2. LICENSING

3:27 – 2.1 Requirement to be licensed

(a) [As of July 31, 1998, no] **No** person shall act as a money transmitter or as a foreign money transmitter without holding, in good standing, a license under the Act, unless that person is exempt from licensure pursuant to section 3 of the Act.

(b) [A person who holds in good standing a license to act as a foreign money transmitter or check seller that has an expiration date of December 31, 1999 and who wishes to act as a money transmitter or as a foreign money transmitter after July, 30, 1998, shall apply for the conversion of the license to a new license pursuant to this subchapter to be effective no later than October 30, 1998. Such new license shall be issued for the remainder of the current biennial period and shall be valid through December 31, 1999.] The license shall be renewable for subsequent biennial licensing periods commencing on January 1, 2000.

3:27-[2.3]**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. A certified consent for criminal investigation purposes;

2. A two inch by two inch passport style photograph of the person listed in (b) above;

3. Fingerprints in the manner currently required by the New Jersey State Police or their authorized representative;

4. Registration fee(s) as required by N.J.A.C. 3:27-3.4;

5. Additional information, which may be specifically requested by the Commissioner from a particular applicant; and

6. A check in the amount of \$26.00 payable to the "Treasurer, State of New Jersey" and a second check in the amount required by the New Jersey State Police payable to the "Division of State Police-SBI" or their designee for each person for the costs of background investigations, including fingerprints.

(c) No applicant for a license shall commence operations until a license has been issued.

(d) Corporate applicants for a money transmitter license shall submit a copy of the Certificate of Incorporation showing the filed or recording stamp of the New Jersey Department of Treasury, Division of Revenue, and shall identify the registered agent for

service of process. Foreign corporations shall submit a New Jersey Certificate of Authority in addition to a corporate certificate.

(e) Individual or partnership applicants using a trade name shall submit a copy of the trade name as filed with the county clerk showing the date of recording.

(f) Corporations using alternate names shall file a copy of registration of such name, as recorded, as part of their applications, in addition to the documents listed in (a) above.

(g) Limited liability companies shall file a copy of the Certificate of Formation.

SUBCHAPTER 3. FEES

3:27-3.1 Fees -general

[All] Except as specified elsewhere in this chapter, all fees shall be paid by a check made payable to "Treasurer-State of New Jersey."

3:27-3.2 Application fees

(a) A person who is applying for an initial license under this Act shall pay an application fee to the Department in the amount of \$400.00 for a money transmitter license or \$300.00 for a foreign money transmitter license [as established by N.J.A.C. 3:23-3.1].

(b) (No change.)

3:27-3.3 License fees

(a) An applicant for an initial license who applies during the first year of a biennial period or an applicant who applies to renew an existing license shall pay the biennial licensing fee. An applicant for an initial license who applies during the second year of a biennial period shall pay **the reduced initial license fee of** one half the biennial licensing fee.

(b) [The biennial license fee is \$1,400 for a money transmitter and \$1,200 for a foreign money transmitter as established by N.J.A.C. 3:23-2.1.] **For foreign money transmitters only, the biennial license fee is \$1,200 and the reduced initial license fee, when applicable, is \$600.00.**

(c) [The annual license fee is \$700.00 for a money transmitter and \$600.00 for a foreign money transmitter as established by N.J.A.C. 3:23-2.1.] **For money transmitters other than foreign money transmitters, the biennial license fee is \$ 1,400 and the reduced initial license fee, when applicable, is \$700.00.**

3:27-3.4 Registration fees

(a) A biennial registration fee of [\$25.00] **\$100.00** for each authorized delegate and location in this State shall be required, except that the total fee required to so register locations and authorized delegates shall not exceed a maximum of \$5,000.

(b) - (c) (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), whether initiated through the money transmitter directly or through any of its authorized delegates, listed by country;

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

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

(c) Unless waived by the Commissioner in accordance with N.J.S.A. 17:15C-6, the net worth of a money transmitter shall not be considered adequate if the licensee does not possess permissible investments having 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) The money transmitter, including foreign money transmitters, shall remit a fee of \$100.00 for each annual report filed. Any licensee who fails to file a complete annual report in a timely manner, as set forth in (a) above, shall be assessed a penalty of \$100.00 per day for each day after the due date that the complete report remains unfiled.

SUBCHAPTER 4. BONDING, SECURITY DEVICES

3:27-4.1 Bond or security device requirements

(a) A person who seeks an initial license to engage in the business of a money transmitter or in the business of foreign money transmitter shall comply with the requirements of N.J.S.A. 17:15C-8 and shall obtain a surety bond, utilizing a bond form provided by the Department, from a surety company authorized to do business in this State, or an irrevocable letter of credit, or a security device, authorized by the Commissioner in the [minimum amount of \$100,000 for a money transmitter or in the minimum amount of \$25,000 for a foreign money transmitter] amounts stated in chapter Appendix A which is incorporated herein by reference.

(b) The security device shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any person injured by a wrongful act, default, or misrepresentation of the licensee, including its directors, officers, authorized delegates and employees, to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale

and issuance of payment instruments, transmission of money, or both and for the benefit of the Department for unpaid examination bills, unpaid penalties and any other unpaid obligation of the money transmitter to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges or fees.

(c) The security device shall remain in effect until cancellation, which may only occur after 30 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred or accrued during the period the security device was in effect.

(d) The security device shall remain in place for no longer than five years after the licensee ceases money transmission operations in the State. The Commissioner may periodically review the amount of the licensee's payment obligations and the security device may be increased or reduced accordingly. However, notwithstanding this provision, the Commissioner may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this State are reduced or eliminated. The Commissioner may also permit a licensee to substitute an irrevocable letter of credit or other form of security device acceptable to the Commissioner for the security device in place at the time the licensee ceases money transmission operations in the State by surrender, revocation or expiration of its license.

(e) Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the security device, unless such charges are included

in a final judgment against the money transmitter and the surety company was given prior notice of the court action and an opportunity to respond.

(f) The security device shall not be payable for claims made by business creditors.

(g) The security device shall not be payable for treble damage claims pursuant to the Consumer Fraud Act or any other State or Federal law.

SUBCHAPTER 5. NET WORTH

3:27-5.1 Net worth requirements

(a) Each applicant for an initial license as a money transmitter, **except those described in (b) below**, shall demonstrate a net worth of not less than \$100,000, calculated in accordance with generally accepted accounting principles, plus an additional net worth of \$25,000 per location or agent to be located in this State, as applicable, up to a maximum of \$1,000,000.

(b) (No change.)

SUBCHAPTER 6. MAINTENANCE OF BOOKS, RECORDS AND ACCOUNTS

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. A record of each payment instrument sold and a record of each money transmission sent or accepted, including the name and address of each recipient;

2. A general ledger containing all assets, liabilities, capital, income and expense accounts (which general ledger shall be posted at least monthly and all books closed quarterly);

3. Settlement sheets received from authorized delegates containing the date, name of delegate, name of customer, the amount of the transmission, the country to which it was transmitted and the fee charged for the transmission;

4. All bank statements and bank reconciliation records relating to the business of money transmission;

5. Records of outstanding payment instruments;

6. Records of each payment instrument paid within the three-year period;

7. Records of completed money transmissions;

8. Records of outstanding money transmission orders;

9. A list of names and addresses of all of the licensee's authorized delegates;

10. A list of all countries to which money is transmitted or from which money is received for transmission;

11. A list of the names and addresses of all clearing banks through which the licensee's money transmission business is conducted;

12. Records of all numbers including voids, for numbered money transmission forms;

13. All records required to be maintained pursuant to 31 C.F.R. §§ 103.11 et seq.; and

14. Records of all events reported to the OFAC in compliance with all reporting requirements of OFAC.

(b) Maintenance of the documents required by this section in a photographic, electronic or other similar form shall constitute compliance with this section.

(c) The records of the licensee regarding business regulated under the Act shall be maintained at its principal place of business or, with notice to the Commissioner, at another location designated by the licensee. If the records are maintained outside this State, the Commissioner may require that the licensee reimburse the Department for the travel costs incurred in the examination or investigation of those records or may require that the licensee make those records available to the Commissioner at the licensee's principal place of business or at the Commissioner's office within three business days of the demand. The Commissioner may further require that those records be accompanied by an individual, on behalf of the licensee, who will be available to answer questions regarding those records and the business regulated under the Act. The Commissioner may require the appearance of a specific individual, or request that the licensee designate an individual with knowledge of the records and the business.

SUBCHAPTER 7. CHANGE OF CONTROL

3:27 - 7.1 Applications for change of control

(a) A person shall not directly or indirectly acquire control of a licensee without the prior written approval of the Commissioner. The application for change of control shall be in writing filed by the existing licensee, in a form prescribed by the Commissioner, and shall be accompanied by the information required by N.J.A.C. 3:27-2.2 for an initial license application, and an amended version of the last submitted annual report updated through the date of the application, as well as all documents related to the change in control, (that is, a stock purchase agreement). The Commissioner may request copies or access to any or all of the books and records maintained in accordance with N.J.A.C. 3:27-6.1 prior to granting approval.

(b) Any change of key shareholders, executive officers, owners, partners, or managers responsible for the licensed business shall require the submission of a new application in accordance with N.J.A.C. 3:27-2.2(b).

SUBCHAPTER 8. PENALTIES

3:27-8.1 Penalties

(a) A violation of the Act or these rules shall be subject to the penalties contained in N.J.S.A. 17:15C-1 et seq.

APPENDIX A

Annual Volume of Business Security Device Amount for Those Engaged as Foreign Money

Transmitters Only

<u>Up to and including \$500,000</u>	<u>\$25,000</u>
<u>Over \$500,000 and up to and including \$1,000,000</u>	<u>\$30,000</u>
<u>Over \$1,000,000 and up to and including \$2,000,000</u>	<u>\$35,000</u>
<u>Over \$2,000,000 and up to and including \$3,000,000</u>	<u>\$40,000</u>
<u>Over \$3,000,000 and up to and including \$4,000,000</u>	<u>\$45,000</u>
<u>Over \$4,000,000 and up to and including \$5,000,000</u>	<u>\$50,000</u>
<u>Over \$5,000,000 and up to and including \$6,000,000</u>	<u>\$55,000</u>
<u>Over \$6,000,000 and up to and including \$7,000,000</u>	<u>\$60,000</u>
<u>Over \$7,000,000 and up to and including \$8,000,000</u>	<u>\$65,000</u>
<u>Over \$8,000,000 and up to and including \$9,000,000</u>	<u>\$70,000</u>
<u>Over \$9,000,000 and up to and including \$10,000,000</u>	<u>\$75,000</u>
<u>Over \$10,000,000 and up to and including \$11,000,000</u>	<u>\$80,000</u>
<u>Over \$11,000,000 and up to and including \$12,000,000</u>	<u>\$85,000</u>
<u>Over \$12,000,000 and up to and including \$13,000,000</u>	<u>\$90,000</u>
<u>Over \$13,000,000 and up to and including \$14,000,000</u>	<u>\$95,000</u>
<u>Over \$14,000,000 and up to and including \$15,000,000</u>	<u>\$100,000</u>
<u>Over \$15,000,000 and up to and including \$25,000,000</u>	<u>\$150,000</u>
<u>Over \$25,000,000 and up to and including \$30,000,000</u>	<u>\$200,000</u>

<u>Over \$30,000,000 and up to and including \$70,000,000</u>	<u>\$750,000</u>
<u>Over \$70,000,000</u>	<u>\$1,000,000</u>

Annual Volume of Business Security Device Amount for Money Transmitters Other Than

Foreign Money Transmitters Only

<u>Up to and including \$15,000,000</u>	<u>\$100,000</u>
<u>Over \$15,000,000 and up to and including \$25,000,000</u>	<u>\$150,000</u>
<u>Over \$25,000,000 and up to and including \$30,000,000</u>	<u>\$200,000</u>
<u>Over \$30,000,000 and up to and including \$70,000,000</u>	<u>\$750,000</u>
<u>Over \$70,000,000</u>	<u>\$1,000,000</u>

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