

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.

Amended Effective January 31, 2005

Correct reference to Colorado Money Transmitters Act; technical corrections.

Amended Effective November 30, 1994

Amend requirements for permissible investments to delete report filing requirements that will be proposed as part of a new Rule.