

## **Chapter 20**

### **Special Purpose Depository Institutions**

#### **Section 1. Authority; Scope; Applicability of Other Rules; Federal Law.**

- (a) This Chapter is promulgated pursuant to Wyoming Statute ("W.S.") 13-12-126.
- (b) This Chapter governs special purpose depository institutions, as defined in W.S. 13-1-101(a)(xvi).
- (c) The rules of the Board and the Division, except as provided in this subsection and to the extent not inconsistent with W.S. 13-12-101 through 13-12-126, shall apply to special purpose depository institutions. The term "bank" or "financial institution" in other rules shall be reasonably construed to include special purpose depository institutions, as determined by the Commissioner. Chapter 4, §§ 5 and 6 of the Rules of the Division shall not apply to special purpose depository institutions.
- (d) Consistent with W.S. 13-12-107, a special purpose depository institution is subject to all applicable federal laws relating to insured depository institutions which are consistent with the powers, limitations and other characteristics specified by W.S. 13-12-101 through 13-12-126 and this Chapter, as determined by the Commissioner. A special purpose depository institution may request the Commissioner to provide guidance on the applicability of a specific federal law.

#### **Section 2. Capital and Surplus/Operating Expenses.**

- (a) Consistent with W.S. 13-12-110(b), a special purpose depository institution shall have initial capital, subscribed for as fully paid stock, which is commensurate with the risk profile and proposed activities of the institution, as determined by the Commissioner. A special purpose depository institution shall also maintain a capital plan analyzing capital needs based on initial requirements, projected growth and the availability of capital from identified sources. The plan may include a moratorium on the payment of dividends during a specified future period. The initial capital required by this subsection shall be subscribed and fully paid in at the time the institution applies for a certificate of authority under W.S. 13-12-116, but prior to this time, as part of the charter application of the institution, the incorporators shall present evidence that the required capital will be available if a charter is granted, which may include letters of commitment, as required by the Commissioner.
- (b) After a special purpose depository institution has commenced operations, the Commissioner may require the institution to modify its capital levels based on the size, risk profile or activities of the institution. To the extent possible, the Commissioner will give the institution a sufficient period to implement a modified capital requirement. The Commissioner retains the authority to require a modification of capital within sixty (60) days, consistent with W.S. 13-4-203, if conditions warrant.
- (c) A special purpose depository institution shall have a paid-up surplus fund of not less than three (3) years of operating expenses prior to applying for a certificate of authority under W.S. 13-12-116.

### **Section 3. Application Requirements.**

(a) To be accepted for filing, a special purpose depository institution charter application shall be comprised of the following information:

- (i) The signatures of all incorporators, verifying the contents of the application;
- (ii) Three (3) signed, original copies of the articles of incorporation of the institution plus any filing fee required by the Secretary of State, or existing incorporation documents required by the Commissioner;
- (iii) The final bylaws or draft bylaws proposed for adoption either by the incorporators simultaneously with incorporation or by the board of directors of the proposed special purpose depository institution at its first meeting, indicating which method will be used to adopt the bylaws;
- (iv) The capital plan of the institution;
- (v) Evidence satisfactory to the Commissioner that the proposed special purpose depository institution will be able to obtain private insurance as specified by W.S. 13-12-119(e) upon chartering, including coverage types, coverage limits and any conditions relating to payment of claims;
- (vi) The name, proposed title, physical address and biographical sketch of each individual proposed to serve as an executive officer or director of the institution during the first year of operations, demonstrating sufficient experience, ability and standing to afford the institution a reasonable promise of successful operation, to the extent reasonably possible;
- (vii) A detailed business plan, which shall include:
  - (A) All proposed activities of the special purpose depository institution, including identification of likely customers, a marketing plan and business projections based on statistical data or other accepted business methods;
  - (B) A business risk assessment, consistent with subparagraphs (a) and (c) of this paragraph;
  - (C) A comprehensive estimate of operating expenses for the first three (3) years of operation, consistent with subparagraph (A) of this paragraph;
  - (D) A complete proposal for compliance with this Chapter, W.S. 13-12-101 through 13-12-126 and all other applicable state and federal laws; and
  - (E) Other information material to the investigation and report of the Commissioner and the decision of the Board.

(viii) Evidence satisfactory to the Commissioner regarding the availability of a surety bond under W.S. 13-12-118(a), or a statement that the special purpose depository institution will irrevocably pledge assets to the Commissioner, as specified by W.S. 13-12-118(b);

(ix) If applicable, the designation of an agent for service of process which is described in Chapter 5, § 7 of the Rules of the Division;

(x) Information relating to corporate partnerships or affiliations, including a description of corporate interests and activities and the most recent audited financial statement of any business entity which has a twenty-five percent (25%) or greater ownership stake in the proposed institution;

(xi) Information relating to all prospective investors in the proposed institution who are not United States citizens, including the name of the natural person making an investment, date of birth, nationality and the mailing and physical address of the primary residence of the natural person;

(xii) Information relating to government agencies or self-regulatory organizations which the proposed special purpose depository institution may be subject to, whether state, federal or foreign, including activities which the agency or organization regulates or supervises, as well as license numbers, license expiration dates and agency contact persons;

(xiii) Information sufficient to conduct a background investigation on proposed directors, officers and shareholders who control ten percent (10%) or more of the voting securities of the institution, in the manner required by the Commissioner; and

(xiv) Any other information required by law or requested by the Commissioner or Board which is material to the charter application or the future operation of the institution.

(b) The incorporators shall provide truthful and complete information in a charter application, in all accompanying materials and in communications relating to an application. The application and all accompanying materials shall be attested to under penalty of perjury pursuant to Wyo. Stat. §§ 6-5-301 and 6-5-303. The incorporators shall supplement an application, accompanying materials or any communication promptly when information in the application, materials or communication changes materially or if an error or omission is discovered.

(c) If an application is withdrawn at any time before a hearing of the Board, the filing fee shall be refunded to the applicant, reduced by the amount of all expenses authorized by W.S. 13-2-208.

(d) If a charter application is rejected by the Board, it shall be treated as if it were withdrawn at 5:00 p.m. Mountain Time on the last day of the thirty (30) day time period described in Chapter 5, § 3(e), Rules of the Division.

#### **Section 4. Resolution Plan/Required Insurance.**

(a) Not later than six (6) months after a special purpose depository institution commences operations, a draft resolution plan shall be submitted to the Commissioner for review.

(b) A draft resolution plan shall generally encompass the requirements of a "targeted resolution plan" specified by 12 C.F.R. § 243.6, as of June 1, 2020. A resolution plan shall identify at least two (2) business entities that could potentially acquire the special purpose depository institution, or any component of the institution, in the event of financial distress, receivership or another contingency warranting use of the resolution plan. The resolution plan shall include a procedure for quickly and safely transferring all assets of the institution to another entity and a procedure for liquidating the assets of the institution.

(c) The Commissioner, in consultation with the officers of the special purpose depository institution, shall review the draft resolution plan and determine whether it appropriately addresses the risks inherent in a potential resolution. The institution shall amend the draft plan as reasonably required by the Commissioner to protect the interests of the customers of the institution and to protect the state and national financial system from material risks. The board of directors of the institution shall review the draft resolution plan and approve a final plan within sixty (60) days of submission of a plan by the officers. After approval, the chief executive officer of the special purpose depository institution shall file the resolution plan with the Commissioner.

(d) After filing under subsection (c) of this section, the board of directors of a special purpose depository institution shall annually review and amend the resolution plan of the institution to account for material changes in each of the following areas:

- (i) Critical operations or core business lines, including information technology;
- (ii) Corporate structure, including interconnections and interdependencies with other business entities, management and succession planning;
- (iii) Deposits and assets under custody, assets under management or similar relationships;
- (iv) Funding, liquidity or capital needs or sources;
- (v) Changes in law or regulation; and
- (vi) Any other area determined to be relevant by the Commissioner.

(e) A plan amended under subsection (d) of this section shall be filed with the Commissioner within thirty (30) days of approval by the board of directors. In addition to the requirements of subsection (d) of this section, the Commissioner may, at any time, require the board of directors of a special purpose depository institution to review and amend its resolution plan.

(f) Chapter 1, § 4 of the Rules of the Division apply to resolution plans filed with the Commissioner under this section. A resolution plan may be disclosed to other governmental agencies, self-regulatory organizations or persons assisting with the resolution of an institution in a confidential format, as deemed appropriate by the Commissioner.

(g) Not more than forty-five (45) days after a charter has been approved by the Board, all executed insurance policies required by W.S. 13-12-119(e) shall be provided to the Commissioner.

### **Section 5. Receivership.**

(a) Subject to court supervision as otherwise required by law, the Commissioner is the receiver and resolution official for special purpose depository institutions, consistent with Wyo. Stat. 13-12-122 and 11 U.S.C. § 109(b)(2). As used in this Chapter, "receivership" means a liquidation conducted under W.S. 13-12-122.

(b) In the event of financial distress or another contingency warranting use of the resolution plan created under § 4 of this Chapter, the Commissioner shall, to the extent appropriate under the circumstances, use the plan for the resolution of the institution.

(c) If appropriate, the Commissioner may retain such staff and enter into contracts for professional services as are necessary to carry out a receivership. The Commissioner may retain services on a continuing retainer or on an as-needed basis.

(d) Persons who have claims against the special purpose depository institution may present claims, along with supporting documentation, for consideration by the Commissioner. The Commissioner shall determine the validity and approve the amounts of claims. All claims against the institution shall be fixed when the Commissioner takes possession of the institution. Constructive notice provided by the filing made under W.S. 13-4-303(a) shall be deemed to satisfy the knowledge requirement of subsection (b) of that section.

(e) The Commissioner shall establish a date by which any person seeking to present a claim against the institution must present their claim for determination. The Commissioner shall also mail notice to creditors as required by W.S. 13-4-402.

(f) The Commissioner shall allow any claim against the institution received on or before the deadline for presenting claims, if the claim is established to the Commissioner's satisfaction by the information on the institution's books and records or as otherwise submitted. The Commissioner may disallow any portion of any claim by a creditor or claim of a security interest, preference, set-off or priority which is not established to the satisfaction of the Commissioner.

(g) Wyoming law relating to the nature of digital assets under title 34.1, Wyoming statutes and W.S. 34-29-101 through 34-29-103, including security interests, shall govern claims made under this section, as well as the receivership of the institution.

(h) If a person with a claim against a special purpose depository institution also has an obligation owed to the institution, the claim and obligation shall be set-off against the other and only the net balance remaining after set-off shall be considered as a claim, if the set-off is otherwise legally valid.

(j) The Commissioner shall pay expenses and claims in the following priority order:

(i) Administrative expenses of the Commissioner, as defined in subsection (k) of this section;

(ii) Claims of secured creditors and any preferences which may be required by W.S. 13-4-502;

(iii) Unsecured creditors of the institution, including secured creditors to the extent any claim exceeds a valid and enforceable security interest;

(iv) Creditors of the institution, if any, whose claims are subordinated to general creditor claims; and

(v) Shareholders of the institution.

(k) "Administrative expenses" mean those costs incurred by the Commissioner under W.S. 13-4-501 in maintaining institution operations as necessary and for the purpose of preserving assets while liquidating and resolving the affairs of the institution. Expenses include pre-receivership and post-receivership obligations that the Commissioner determines are necessary and appropriate to facilitate the orderly liquidation and resolution of the institution. Expenses shall also include:

(i) Expenses of the Commissioner and the costs of contracts entered into by the Commissioner for professional services relating to the receivership, including audit, accountancy, information technology, legal, fiduciary and real estate services, except for the cost of any continuing retainer paid by the Commissioner for professional services related to receivership that is not directly related to the receivership of a specific institution;

(ii) Expenses necessary for the continued operations of an institution during the receivership, including wages and salaries of employees, expenses for professional services, contractual rent pursuant to an existing lease or rental agreement and payments to third-party or affiliated service providers that, in the opinion of the Commissioner, are of benefit to the receivership until the date the Commissioner repudiates, terminates, cancels or otherwise discontinues the applicable contract.

(m) Subject to court supervision as otherwise required by law, in resolving the affairs of a special purpose depository institution, the Commissioner may:

(i) Take possession of the books, records, property and assets of the institution, including the value of collateral pledged by the institution, to the extent it exceeds a valid and enforceable security interest of a claim;

(ii) Collect all debts, dues and claims belonging to the institution, including claims remaining after set-off;

(iii) Sell or compromise all bad or doubtful debts, including fraudulent transfers;

(iv) Sell the real and personal property of the institution; and

(v) Deposit all receivership funds collected from the liquidation of the institution with a Wyoming bank.

(n) The Commissioner may exercise other rights, privileges and powers authorized by law, including the common law of receiverships as applied by courts to bank receiverships. The Commissioner shall follow the procedure for bank receiverships used by the Federal Deposit Insurance Corporation.

(o) Subject to W.S. 13-4-506 and subsection (j) of this section, the Commissioner may make ratable dividends from available funds, based on the claims that have been proved to the Commissioner's satisfaction.

(p) Consistent with W.S. 34-29-104(d), assets held by a special purpose depository institution off-balance sheet in a custodial or fiduciary capacity, as designated on the institution's books and records, shall not be considered as part of the institution's general assets and liabilities held in connection with its other business and will not be considered a source for payment of unrelated claims of creditors and other claimants. Custodial and fiduciary assets shall be recoverable by customers in full, in the absence of institution mismanagement, misconduct or other similar activity. As used in this subsection, "designated on the institution's books and records" means the following:

- (i) Appropriate segregation from institution assets; and
- (ii) The structure of the custodial or fiduciary relationship meets all applicable legal requirements.

(q) Upon taking possession of a special purpose depository institution, the Commissioner shall transfer the institution's custodial or fiduciary appointments and accounts to successor custodians or fiduciaries, or if not practical, close the bank's fiduciary and custodial appointments and accounts and return assets to customers. The Commissioner shall conduct transfers under this subsection as quickly as possible to prevent or minimize disruption to customers.

(r) The Commissioner shall conclude a receivership as provided by W.S. 13-4-701.

#### **Section 6. Directors; Officers; Operations in Wyoming.**

(a) A special purpose depository institution shall be managed by not less than five (5) directors, consistent with W.S. 13-2-401. An institution shall maintain the following executive officers, or functional equivalents, to manage its operations:

- (i) Chief executive officer/president;
- (ii) Chief operations officer;
- (iii) Chief compliance officer;
- (iv) Chief financial officer;
- (v) Chief technology/information security officer; and
- (vi) Any other officers deemed appropriate.

(b) As used in W.S. 13-12-103(d) and this section, "principal operating headquarters" means the location or locations in Wyoming where the chief executive officer/president of the special purpose depository institution and at least one (1) of the other officers listed in paragraphs (a)(ii) through (a)(v) of this section directs, controls and coordinates the activities of the institution for a majority of a calendar year.

#### **Section 7. Investments and Liquid Assets.**

(a) Consistent with W.S. 13-12-105(b)(iii), a special purpose depository institution may, in addition to other options, maintain unencumbered liquid assets and capital through investments in the following asset classes:

- (i) Obligations of the U.S. Treasury or other federal agencies;
- (ii) Obligations of a U.S. state or U.S. municipal government which are investment grade;
- (iii) Debt securities issued by a business entity which are investment grade;
- (iv) Securities issued by a U.S. federal or state government agency or government sponsored enterprise which are investment grade;
- (v) Gold, silver or other stable commodities;
- (vi) Investments specified by W.S. 13-3-302;
- (vii) Other investments which are determined by the Commissioner to be substantially similar to the assets described in this subsection.

(b) In the event of an emergency, the Commissioner may, after consulting with affected institutions, reasonably restrict special purpose depository institutions from investing in one or more of the asset classes described in subsection (a) of this section, or may reasonably modify the manner in which investments may take place. As used in this subsection, "emergency" means:

- (i) Illiquid or otherwise abnormally functioning markets, excluding digital asset markets, which pose a substantial and specific risk to an institution;
- (ii) An unsafe or unsound condition, as defined in § 8(a)(ii) of this Chapter.

#### **Section 8. Material Communications with Governmental Agencies; Agreements.**

(a) A special purpose depository institution, or the incorporators of a proposed institution, shall promptly disclose to the Commissioner in a confidential format any material communications with other governmental agencies or self-regulatory organizations, whether state, federal or foreign, which relate to the chartering, operation, licensure, activities, condition or legal compliance of the institution. The Commissioner shall maintain any communications received under this section in a confidential format.

(b) The Commissioner may enter into information sharing, branching, joint supervision or other agreements with government agencies or self-regulatory organizations relating to special purpose depository institutions.



## **Section 9. Safety and Soundness.**

(a) The Commissioner retains the authority to take action under applicable state or federal law to address unsafe or unsound conditions, deficient capital levels, violations of law or conditions that may negatively impact the operations of the institution, customers of the institution or the state or national financial system.

(b) To mitigate legal and contractual risk to the institution, a special purpose depository institution shall ensure that the following contracts exclusively apply Wyoming law and applicable federal law, with the venue of any litigation also in Wyoming:

(i) All customer agreements;

(ii) Any agreement governing a transaction that involves customer deposits, custodial or fiduciary assets, including qualified financial contracts, as defined in 12 U.S.C. § 1821(e)(8)(D), and transactions made under § 5, Chapter 19, Rules of the Division.

(c) Agreements under subsection (b) should generally include provisions specifying that the parties agree that, for the purposes of title 34.1, Wyoming statutes and W.S. 34-29-101 through 34-29-103, digital assets are located in Wyoming and that, if applicable, a possessory security interest exists. The Commissioner may make exceptions to the requirements of this subsection or subsection (b) of this section as necessary.

(d) A special purpose depository institution may, based on customer instructions or the scope of authority granted by a customer under W.S. 34-29-104 or § 5, Chapter 19, Rules of the Division, conduct custodial or fiduciary transactions with customer digital assets in a safe and sound manner, including lending of digital assets. A customer bears all risk of loss from these transactions, except for any liability of the special purpose depository institution relating to its fiduciary and trust powers. Consistent with § 3, 2019 Wyoming Session Laws, ch. 91 and W.S. 34-29-104, the lending prohibition in W.S. 13-12-103(c) shall not apply to custodial and fiduciary transactions undertaken by a special purpose depository institution to the extent that a transaction undertaken by the institution does not subject to the institution, as opposed to the customer, to credit risk.

(e) As used in this Chapter:

(i) "Failed" or "failure" means, consistent with W.S. 13-12-122(b), a circumstance when a special purpose depository institution has not:

(A) Complied with the requirements of W.S. 13-12-105;

(B) Maintained a contingency account, as required by W.S. 13-12-106;

(C) Paid, in the manner commonly accepted by business practices, its legal obligations to customers on demand or to discharge any certificates of deposit, promissory notes, negotiable instruments or other indebtedness when due.

(ii) "Unsafe or unsound condition" means, consistent with W.S. 13-12-122(b), a circumstance relating to a special purpose depository institution which is likely to:

- (A) Cause the failure of the institution, as defined in paragraph (e)(i);
- (B) Cause a substantial dissipation of assets or earnings;
- (C) Substantially disrupt the services provided by the institution to customers;
- (D) Prejudice the interests of customers in any potential receivership, including through:
  - (I) Failure to maintain clear, appropriate segregation of custodial and fiduciary assets from institution assets; and
  - (II) Failure to ensure that all custodial and fiduciary accounts and other aspects of the customer relationship meet all legal requirements.
- (E) Result in non-compliance with applicable state, federal or foreign law;
- (F) Otherwise substantially impact the operations of the institution, the interests of customers or the state or national financial system in a negative manner, in the determination of the Commissioner.

#### **Section 10. Reports and Examinations.**

- (a) Consistent with § 1(d) of this Chapter, a special purpose depository institution shall generally be supervised in the same manner as other state and national banks engaged in deposit-taking, custodial and fiduciary activities.
- (b) A special purpose depository institution shall submit electronic reports relating to the condition of the institution, in the manner and frequency required by the Commissioner.
- (c) The Commissioner shall conduct a full-scope, on-site examination of every special purpose depository institution not more frequently than every twelve (12) months, unless an unsafe or unsound condition exists.
- (d) The Commissioner shall develop and maintain manuals and procedures, including necessary ratings and policies, to ensure legal compliance, safe and sound operations and to set expectations for examinations and ongoing supervision.

#### **Section 11. Operations and Activities.**

- (a) Consistent with W.S. 13-12-103(b) and subject to the approval of the Commissioner, a special purpose depository institution may engage in all activities permitted to state and national banks which are consistent with the safe and sound operation of the institution, with the exception of lending activities prohibited by W.S. 13-12-103(c) which subjects the institution to credit risk.
- (b) A special purpose depository institution shall consult with the Commissioner and seek any necessary approval, before engaging in a new substantial activity or line of business.