

CHAPTER 2– PRACTICE AND PROCEDURE GENERALLY

PART A -- GENERALLY

Section 1. Special Definitions.

(a) As used in this Chapter and in Chapter 3 and Chapter 4:

(i) “Acceptance date” means the date of the acceptance notice.

(ii) “Acceptance notice” means the notice required to be given by the Commissioner to the applicant when the application has been accepted for filing in accordance with Section 1(c)(i) or Section 1(e)(i) of Chapter 11 of the Banking Regulations, as the case may be.

(iii) “Affected person” means (A) in the case of a petitioner who is an individual, the depository entity or company that employs him and the members of the Board of directors of such entity; or (B) in the case of a depository entity, the company which owns it and the Board of directors of such company.

(iv) “Applicant” means the single incorporator or the group of incorporators named in an application. All financial entities shall have at least five (5) incorporators, except for a trust company, which shall have at least one (1) incorporator.

(v) “Application” means the completed application prescribed under Section 11 of the Banking Regulations, including all exhibits and other materials attached to or otherwise filed simultaneously with the application form, together with all other information required by the Commissioner.

(vi) “Comment period” means the period of time that begins on the acceptance date and ends on that date which is ten (10) days before the hearing.

(vii) “Enforcement article” means article 2 of chapter 10 of the Banking Statutes.

(viii) “FDIC application” means the application of a proposed institution for insurance of deposits by FDIC.

(ix) “Final determination” means (A) regarding an application, the decision and order of the Board whether or not the application should be approved and the charter granted or (B) regarding a petition, the decision of the Board whether to confirm or dismiss the order and/or to modify any penalty order.

(x) “Hearing” means the public hearing by the Board on an application, as provided in Section 5 of Chapter 3, or on a petition, as provided in Section 3 of Chapter 4.

(xi) “Hearing date” means the date set by the Board for the hearing.

(xii) “Hearing notice” means the notice of the hearing given by the Board to the applicant, as provided in Section 5(a) of Chapter, or to the petitioner, as provided in Section 3(c) of Chapter 4.

(xiii) “Incorporator” means an adult (as defined in W.S. 8-1-102(a)(i)) individual of sound mind who intends singly or with others to incorporate or organize a depository entity. In the case of a trust company, the application shall name and be executed by at least one (1) incorporator; in all other cases, the application shall name and be executed by at least five (5) incorporators.

(xiv) “Notice date” means the date on which the petitioner is served with a notice of intent, which shall conclusively be the date shown on the return receipt or other reliable report of service.

(xv) “Notice of intent” means the notice given by the Commissioner under the enforcement article that he intends to issue a final order, which notice is more particularly described in W.S. 13-10-208(a). A temporary order, upon its service, is also a “notice of intent”.

(xvi) “Order” means an order issued by the Commissioner under the enforcement article, including a penalty order and a temporary order.

(xvii) “Party” is defined in W.S. 16-3-101(b)(vi) and includes (A) in the case of an application, the applicant and all persons added as a party under Section 8 of Chapter 3 or (B) in the case of a petition, the petitioner and the Commissioner.

(xviii) “Penalty order” means an order, or such portion of an order, that imposes a civil monetary penalty.

(xix) “Petition” means the petition that a petitioner may file pursuant to Section 1 of Chapter 4.

(xx) “Petitioner” means a person who files a petition. A petitioner may be a depository entity, a company, or an officer or director of a depository entity or a company.

(xxi) “Presiding officer” means the person designated by the Board pursuant to Section 11 to serve as the presiding officer of a hearing.

(xxii) “Proposed institution” means the financial entity that the applicant proposes to organize.

(xxiii) “Public notice” means the public notice of the filing of the application and of the hearing, which the applicant is required to cause to be published, as provided in Section 6 and Section 7 of Chapter 3.

(xxiv) “Receipt Date” means the date on which the Commissioner is served with a petition.

(xxv) “Temporary order” means an order issued pursuant to W.S. 13-10-204 or W.S. 13-10-206.

Section 2. Ex Parte Communication.

Unless required for the disposition of ex parte matters authorized by law, members of the Board, Division counsel and the presiding officer shall not consult directly or indirectly with any party regarding an application or a petition, except as allowed under W.S. 16-3-111. A request for status of the proceeding is not an ex parte communication.

Section 3 through Section 10 are reserved for future use.

PART B – HEARINGS

Section 11. Designation of Presiding Officer.

(a) Promptly after the acceptance date or the receipt date (as the case may be), the Board shall designate a presiding officer for the hearing. The presiding officer shall be a member of the Board or an employee of the Division or of any other state agency. The following persons shall not serve as the presiding officer: the Commissioner, the deputy Commissioner, Division counsel, any party and counsel to any party.

(b) The presiding officer shall have all powers necessary to conduct the hearing fairly and impartially, including the power to:

- (i) Administer oaths and affirmations;
- (ii) Issue subpoenas;
- (iii) Rule upon offers of proof and receive relevant evidence;
- (iv) Take depositions or cause depositions to be taken;
- (v) Regulate the course of the hearing;

(vi) Hold conferences for the settlement or simplification of issues, including the prehearing conference required in Section 14;

(vii) Dispose of procedural requests and similar matters;

(viii) Make proposed findings of fact, proposed conclusions of law and recommended decisions, but only as and when directed to do so by the Board; and

(ix) Take any other action authorized by the Wyoming Administrative Procedure Act or these Regulations.

Section 12. Subpoenas.

Upon written request of any party, the Chairman shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers or other relevant or material documents. Subpoenas shall be governed and enforced as provided in W.S. 16-3-107.

Section 13. Discovery and Depositions.

(a) Until ten (10) days before an application hearing or five (5) days before a petition hearing, discovery and the taking of depositions shall be available to the parties as provided in W.S. 16-3-107.

(b) The taking of depositions and discovery shall be available to the parties in accordance with Rule 26 and Rules 28 through 37 (excluding Rule 37(b)(1) and Rule 37(b)(2)(D)) of the Wyoming Rules of Civil Procedure, except that:

(i) all references in such Rules to the “court” shall be deemed to refer to the Commissioner or the Board, as the context may appear;

(ii) all references to the use of the subpoena power shall be references to W.S. 16-3-107(c);

(iii) all references to “trial” shall be deemed references to the “hearing”;

(iv) all references to “plaintiff” shall be deemed references to “a party”; and

(v) the Board may modify time periods for making or responding to discovery requests to accommodate the short time periods allowed by statute by which a hearing must be held.

(c) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Board, the refusal to obey the agency order shall be enforced in the same manner as is provided in W.S. 16-3-107(c).

(d) The Commissioner is subject to the discovery provisions of this Section but neither the Commissioner, nor any member of the Board or any employee of the Division, shall be required to disclose protected material, nor shall any of them be compelled to testify or give a deposition. Discovery sought from the Board or the Commissioner initially shall be by written application to the Board. If the Board refuses to allow discovery in whole or in part, the aggrieved party may apply to the presiding officer for an order to compel discovery. If the presiding officer fails or refuses to compel discovery, the aggrieved party may apply to the district court for the district in which the hearing is to be conducted for an order directed to the appropriate person to compel discovery. The presiding officer or district court shall enter such order as may be appropriate.

Section 14. Prehearing Conference; Agenda; Feasibility Studies.

(a) At least ten (10) days before a hearing on an application or three (3) days in the case of a petition, the presiding officer shall conduct a prehearing conference to consider the matters specified in subsection (c) of this Section. All parties shall attend the conference. The presiding officer may require each party to submit a memorandum to address the matters specified in subsection (c) of this Section. The conference may be conducted by telephone conference call or other suitable means by which all persons who are part of the conference may actively participate in the conference and can be heard by all other persons who are part of the conference.

(b) The presiding officer shall give the Chairman, the Commissioner and each party at least five (5) days' notice of the date, time and place for the prehearing conference.

(c) The following matters shall be considered at the prehearing conference:

(i) Amendments, if any, to the application or the petition;

(ii) The names and addresses of witnesses whom each party intends to call to testify at the hearing, together with a detailed summary of the testimony expected from each witness;

(iii) The documentary evidence each party intends to introduce at the hearing;

(iv) The number, description, and purpose of all demonstrative exhibits each party intends to use at the hearing;

(v) Material facts, if any, of which the Board will be requested to take official notice pursuant to W.S. 16-3-108(d);

(vi) Stipulations of fact and documentary evidence to be admitted into the record; and

(vii) Matters requiring consideration or submission to the Board in executive session;

(viii) The length of time to be devoted to presentation of cases and delivery of opening and closing statements; and

(ix) Any other matters that will simplify the issues or otherwise allow the hearing to be conducted more efficiently and quickly.

(d) At the hearing, the presiding officer shall admit into the record all facts, evidence and other matters to which the parties stipulated at the conference. The presiding officer also shall identify those matters of which the Board will take official notice.

(e) The presiding officer shall prepare an agenda that sets forth the order of business to come before the Board during the hearing, and the witnesses to be called, the documentary evidence to be introduced, and the exhibits to be used at the hearing. Before the hearing, the presiding officer shall provide a copy of the agenda to the Board, the Commissioner and each party. The agenda will govern the order of business during the hearing unless modified by the Board.

(f) The presiding officer shall exclude from a hearing on and from the record of an application any study on the economic feasibility of the proposed institution and all testimony and other evidence derived from it, unless the party offering the study shall have, at least ten (10) days before the hearing, filed the study with the Commissioner and delivered a copy of the study to each party.

Section 15. Right to Appear at Hearing; Public Comment.

(a) Only the Commissioner and the parties may appear before the Board at a hearing.

(b) The Board, in its discretion, may permit persons in attendance at a hearing on an application to present oral comments at the conclusion of the hearing. The Board, the Commissioner and the parties may ask questions of any person who presents oral comments to the Board. This subsection does not apply to a hearing on a petition.

Section 16. Open Hearing; Executive Session.

(a) Each hearing shall be open to the public. If a person disrupts a hearing or otherwise renders unfeasible the orderly conduct of the hearing, the Board shall remove

the person from the hearing and continue in session, or it may recess the hearing in compliance with W.S. 16-4-404(c).

(b) At any time during a hearing, the Board may adjourn and reconvene in executive session to consider protected material or the qualifications of a proposed officer of a proposed institution. An executive session of the Board shall not be open to the public.

Section 17. Order of Procedure.

(a) Each hearing shall be conducted substantially as follows:

(i) The presiding officer shall call the hearing to order and call the case to be heard;

(ii) The presiding officer shall address any motions or preliminary matters to be heard, including introduction of exhibits, stipulated facts and evidence, and matters to be noticed officially by the Board;

(iii) The presiding officer shall administer to all witnesses an oath or affirmation in substantially the manner prescribed in W.S. 1-12-114;

(iv) Each party may make an opening statement, in the same order as evidence is to be presented, as set forth in this Section.

(v) The applicant or petitioner shall present its case.

(vi) All other parties shall present their respective cases in the order prescribed by the presiding officer.

(vii) All parties shall be accorded a reasonable amount of time to cross-examine witnesses presented by another party.

(viii) In a hearing on an application, after all parties have submitted their cases to the Board, the Commissioner or his designee shall present the findings of the investigation and examination conducted pursuant to W.S. 13-2-211(a). All parties shall have a reasonable amount of time to cross-examine the person presenting the Commissioner's findings.

(ix) All parties may present rebuttal evidence, if any, in the order and within the time limits prescribed by the presiding officer.

(x) Each party may make a closing statement after all parties and the Commissioner have presented their cases. Closing statements shall be made in the reverse order as cases were presented. The presiding officer shall determine the amount of time for each party to make its closing statement.

(b) The members of the Board and the presiding officer may ask questions of any party or witness, including the person presenting the Commissioner's findings at a hearing on an application.

Section 18. Nature of Hearing; Presentation of Evidence.

(a) The purpose of a hearing is to obtain a full and true disclosure of all facts relevant and material to the application or petition so that the findings, decisions and orders of the Board are rendered of information as complete and trustworthy as is practicable. Hearings are not intended to be adversarial in nature.

(b) The taking of evidence shall be governed by W.S. 16-3-108. Documentary and other physical evidence submitted for the Board's consideration shall be marked as exhibits. Upon such marking, such evidence shall become part of the record.

(c) The presiding officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting other evidence so as to:

(i) make more effective the ascertainment of the truth and a full and true disclosure of relevant and material facts;

(ii) avoid needless consumption of time;

(iii) avoid presentation of irrelevant, immaterial or unduly repetitious evidence;

(iv) avoid the public disclosure of protected material;

(v) protect the witness from harassment and undue embarrassment; and

(vi) maintain an orderly and efficient hearing.

(d) Cross-examination shall be limited to the subject matter of the direct examination and matters relating to the credibility of the witness. The presiding officer may permit additional inquiry into matters as if on direct examination.

(e) No relevant information shall be excluded solely because it is hearsay.

Section 19. Reopening of Hearing.

Upon reasonable notice to all parties, the Board may reopen a hearing at any time prior to the issuance of its findings of fact, its conclusions of law and its decision and/or order on an application or petition. A reopened hearing shall be held within the home county and, if possible, at the same location as the initial hearing.

Section 20. Records of Hearing and Executive Sessions.

(a) The record of a hearing shall include:

- (i) all formal and informal notices, pleadings, motions and intermediate rulings;
- (ii) evidence received or considered, including matters officially noticed;
- (iii) questions and offers of proof, objections and rulings on the same;
- (iv) any proposed findings and exceptions to the same; and
- (v) any opinion, findings, conclusions, decision or order of the Commissioner or the Board and any report by the presiding officer.

(b) Portions of the record that contain evidence, testimony, deliberations or other matters presented in executive session shall be deemed to be matters described in W.S. 16-4-203(d) and in W.S. 9-1-512 and shall not be subject to public inspection.

Section 21. Transcripts.

(a) All hearings shall be recorded verbatim stenographically, or by court reporter, videotape, audiotape or any other means of verbatim recording as may be determined by the Board.

(b) If a party desires a copy of those portions of the recording that are available for public inspection, it shall request the same in writing. Such request shall be delivered to the Commissioner, along with a fee that the Commissioner shall determine on a case-by-case basis to recoup to the Division the cost of services and materials necessary to make the edited copy. Upon receipt of the request and the required fee, the Commissioner shall provide such copy to the requesting party as soon as practicable.

(c) If a party desires that a hearing be transcribed by court reporter, it must so inform the Commissioner and the presiding officer in writing and make the necessary arrangements and pay all associated costs related to the same. In each such case, the court reporter shall not record protected material nor be permitted to attend executive sessions of the Board.

Section 22 through Section 30 are reserved for future use.

PART C -- DECISION AND ORDER; OTHER POST-HEARING MATTERS

Section 31. Briefs.

Each party may file with the Board a brief on issues relevant to the application or petition. Briefs must be filed within ten (10) days after the hearing. Each brief shall become a part of the record. A party who files a brief shall serve a copy on all other parties. A party may file only (1) brief in connection with an application or petition.

Section 32. Recommended Decision of Presiding Officer.

At the Board's direction, the presiding officer shall submit to the Board proposed findings of fact and conclusions of law and a recommended decision on the application or petition. A copy of the presiding officer's proposed findings and conclusions and recommended decision shall be served on each party. Within ten (10) days after a party's receipt of the proposed findings and conclusions and recommended decision, the party may file with the Board written objections to the proposed findings and conclusions and recommended decision.

Section 33. Board Deliberations and Final Determination.

(a) The Board shall deliberate on an application or a petition only at a meeting open to the public. The Board may adjourn the meeting and reconvene in executive session to deliberate on matters involving protected material or the qualifications of a proposed officer of the proposed institution. The Board shall deliver its final decision and order on an application at a meeting open to the public.

(b) The Board's final determination shall be in writing, shall be based solely on the record and shall include findings of fact and conclusions of law separately stated. Findings of fact shall be based exclusively on the evidence received at the hearing and matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) In a final determination on an application, the Board must conclude that it has ascertained to its satisfaction that the criteria set forth in W.S. 13-2-212(a) have been met. In a final determination on a petition as to an order other than a penalty order, the Board must find, by a preponderance of the evidence, that grounds exist under the enforcement article for issuing the order or otherwise dismiss the order. In a final determination on a penalty order, the Board must expressly consider the factors set forth in W.S. 13-10-207(c).

(d) The Board shall deliver a copy of its final determination to each party.

Section 34. Unclaimed Exhibits.

Within sixty (60) days after the expiration of all periods within which an appeal of a final determination must be filed, the parties shall retrieve all exhibits. After that time, the Board may dispose of any exhibits not so retrieved.