BEFORE THE DEPARTMENT OF ADMINISTRATION

OF THE STATE OF MONTANA

|  |  |  |
| --- | --- | --- |
| In the matter of the amendment of ARM 2.59.112 pertaining to investment policies and the repeal of ARM 2.59.131, 2.59.133, and 2.59.137 pertaining to the report of declaration and payment of dividend – dividend approval request form, oaths of directors, and parity with national banks | )  )  )  )  )  )  )  )  ) | NOTICE OF PROPOSED AMENDMENT AND REPEAL  NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On February 11, 2022, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 4, 2022, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.112 ~~INVESTMENT POLICIES~~ UNDERWRITING OF SECURITIES

~~(1) The bank's board of directors shall adopt an investment policy adequate for its bank. The policy shall include, at a minimum, circumstances relevant to those securities and investments the bank customarily owns or trades.~~

~~(a) With an emphasis on quality, the policy should describe those securities preferred by the bank's board of directors, and how the securities will be managed to incur a minimum risk to the bank.~~

~~(b) The bank's board of directors should formally approve those securities dealers with whom the bank does business. The bank's management should be familiar with the dealer's financial condition, abilities, and reputation in relation to the bank's needs.~~

~~(c) The board of directors should conduct a periodic review of its bank's investment portfolio, to determine adherence to previously established investment goals and policies, and to value all of its bank's investments, including investments in mutual funds. The board of directors should closely observe its bank's activity in "repurchase agreements" and "reverse repurchase agreements" for any adverse effects upon the bank.~~

~~(d) Information should be available in the bank's own credit files, or otherwise be readily accessible to bank management and examiners in sufficient detail to support a judgment that each issue in the portfolio is suitable for investment purposes.~~

(2) remains the same but is renumbered (1).

AUTH: 32-1-424, 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule and repeal the following rules in an effort to cut the red tape and streamline regulation for its state-chartered banks as part of Governor Gianforte's Red Tape Relief Initiative.

Section (1) of this rule can be deleted since banks are expected to have adequate investment policies pursuant to Federal Financial Institutions Examination Council (FFIEC) policies. The FFIEC is made up of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration. The FFIEC has issued policy statements regarding sound practices for managing investment securities. This includes board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risks associated with investment activities. This comprehensive risk management process requires policies that are appropriate for the size and risk profile of the institution. The FFIEC's investment policies protect the same interests that were secured by (1), and therefore, (1) is no longer necessary.

With the removal of (1), the catchphrase should be amended to better reflect the subject matter of the remaining section.

4. The department proposes to repeal the following rules:

2.59.131 REPORT OF DECLARATION AND PAYMENT OF DIVIDEND – DIVIDEND APPROVAL REQUEST FORM

AUTH: 32-1-211, 32-1-218, MCA

IMP: 32-1-211, 32-1-232, 32-1-452, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The substance of ARM 2.59.131, 2.59.133, and 2.59.137 can be put forth as optional guidance only and will be available on the department's website at banking.mt.gov. Making these forms optional gives banks greater flexibility and eliminates red tape. Banks may continue to use these forms or provide the required content in the format they prefer.

2.59.133 OATHS OF DIRECTORS

AUTH: 32-1-211, 32-1-322, MCA

IMP: 32-1-211, 32-1-322, MCA

2.59.137 PARITY WITH NATIONAL BANKS

AUTH: 32-1-211, 32-1-362, MCA

IMP: 32-1-211, 32-1-362, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov. Comments must be received no later than 5:00 p.m., January 20, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., January 4, 2022.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3 persons based on the 38 existing state-chartered banks.

8. An electronic copy of this proposal notice is available through the department's website at https://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles By: /s/ Don Harris

Misty Ann Giles, Director Don Harris, Rule Reviewer

Department of Administration Department of Administration

Certified to the Secretary of State December 14, 2021.