

**New York City Department of Small Business Services**  
**Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?**

The New York City Department of Small Business Services is proposing to promulgate an amendment to Subchapter B of Chapter 11 of Title 66 of the Rules of the City of New York to establish factors for determining the eligibility of businesses with full or partial ownership held in one or more trusts for certification as minority-owned business enterprises or women-owned business enterprises.

**When and where is the hearing?** DSBS will hold a public hearing on the proposed rule. The public hearing will take place at 11 a.m. on April 28, 2023. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, use the following link and/or meeting information:  
<https://nycsbs.webex.com/nycsbs/j.php?MTID=m935b7070e97a51f643d281e6c706536b>  
Meeting Number: 2348 041 8982  
Password: MJxXgdHZ738
- **Join by Video System.**  
Dial 23480418982@webex.com  
You can also dial 173.243.2.68 and enter your meeting number.
- **Phone.** For access, dial: +1-408-418-9388  
When prompted, enter Meeting ID: 2348 041 8982

**How do I comment on the proposed rules?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the DSBS through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@sbs.nyc.gov](mailto:nycrules@sbs.nyc.gov).
- **Mail.** You can mail written comments to Raj Jaswal, New York City Department of Small Business Services, 1 Liberty Plaza, 11<sup>th</sup> Floor, New York, NY 10006.
- **Fax.** You can fax written comments to DSBS at 212-618-8865.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above. It is recommended,

but not required, that commenters sign up prior to the hearing by contacting DSBS by phone at (212) 513-6427 or by email at [rjaswal@sbs.nyc.gov](mailto:rjaswal@sbs.nyc.gov).

**Is there a deadline to submit written comments?** The deadline for submitting written comments is April 28, 2023, at 5:00 p.m.

**What if I need assistance to participate in the hearing?** You must contact DSBS's Office of Legal Affairs if you need a reasonable accommodation at the hearing because of a disability. You must tell us if you need a sign language interpreter. You can tell us by email at [rjaswal@sbs.nyc.gov](mailto:rjaswal@sbs.nyc.gov). You may also tell us by telephone at (212) 513-6427. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us of an accommodation request by April 21, 2023.

**Can I review the comments made on the proposed rules?** You can review comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public upon request by email at [rjaswal@sbs.nyc.gov](mailto:rjaswal@sbs.nyc.gov).

**What authorizes DSBS to make this rule?** Sections 1301, 1304 and 1043 of the New York City Charter, and section 6-129 of the Administrative Code authorize DSBS to promulgate this proposed rule. This proposed rule was not included in DSBS's regulatory agenda for this Fiscal Year because it was not contemplated when DSBS published its agenda.

**Where can I find DSBS's rules?** DSBS's rules are in Title 66 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DSBS must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose**

Pursuant to section 1301 of the New York City Charter (the "Charter"), the New York City Department of Small Business Services ("DSBS") is proposing to promulgate an amendment to subchapter B of chapter 11 of title 66 of the Rules of the City of New York. This proposed rule would establish criteria and procedures for determining the eligibility of a business for certification as an minority-owned business enterprise or women-owned business enterprise ("MBE" and "WBE," respectively, and "M/WBEs," collectively) when the full or partial ownership of the business is held by one or more trusts.

The City's M/WBE Goals Program, authorized by chapter 56 of the Charter and section 6-129 of the New York City Administrative Code, requires the Commissioner of DSBS to establish and operate, on behalf of the City, a centralized program for the certification of MBEs and WBEs for

the purposes of establishing their eligibility for participation in City procurement as a City-certified M/WBE, and authorizes the Commissioner to promulgate rules governing the M/WBE certification process.

This proposed rule amendment would add a new subdivision (g) to section 11-22 of chapter 66 of the Rules of the City of New York, allowing business enterprises to remain eligible for certification as M/WBEs in cases where the minority or woman owner or owners transfer their shares to a trust for estate planning purposes, and as a result, do not meet one or more of the criteria outlined in subdivisions (b), (b-1), or (c) of such section. (DSBS uses these provisions in determining whether an applicant for certification meets the criteria for ownership of, contribution to and control of a business.) In such cases, the Commissioner would be authorized to consider the factors outlined in paragraph (1) of the proposed subdivision to determine whether certification is in the interest of the program. An eligibility determination under this subdivision would also require the Commissioner to set forth how each criterion of subdivisions (b), (b-1), or (c) not satisfied is attributable to a bone fide estate planning interest.

The purpose of this rule would be to clarify the circumstances under which the City can certify M/WBE firms in which ownership is intermediated by trusts. DSBS recognizes that this ownership structure is common for estate planning purposes and that for M/WBE firms where minority or women owners still effectively own and control the business, a transfer of shares to trusts would not frustrate the purpose of the program.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 11-22 of Title 66 of the Rules of the City of New York is amended to add a new subdivision (g) to read as follows:

(g) Certification decision for firms held in trust. (1) Notwithstanding any other provision of this subchapter, the Division may determine a business enterprise that does not meet all of the eligibility criteria set forth in subdivisions (b), (b-1), and (c) of this section is nevertheless eligible for certification as an MBE or WBE if the business enterprise previously met all the eligibility criteria set forth in subdivisions (b), (b-1), and (c) of this subdivision, regardless of whether such business enterprise previously sought or obtained certification during the time period in which such business enterprise met all such criteria, and if the minority group or women owner or owners subsequently transferred some or all of such owner’s or owners’ shares

into one or more trusts for estate planning purposes, provided that in determining whether to certify such business entity, the commissioner shall consider whether such certification would advance the purposes of this subchapter, based on the following factors:

(i) the degree to which transfers of shares to the trust or trusts resemble common estate planning practices;

(ii) the degree to which the former owner or owners have a bone-fide estate planning interest in selecting the trust beneficiaries and trustees;

(iii) the degree to which day-to-day management obligations, including control of negotiations, signature authority for payroll, leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions, and the ability to hire and fire employees, are retained by women or members of a minority group.

(iv) the degree to which voting shares are retained by minority group members or women;

(v) the degree to which the business entity has provided to the Division adequate and transparent documentation memorializing the trust relationship;

(vi) the degree to which the trust or trusts are revocable; and

(vii) the degree to which the former owner or owners retain any liabilities or other legal exposure for the entity.

(2) Any determination of eligibility pursuant to this subdivision shall be made in writing and shall include:

(i) a written statement that the Division has considered each of the factors set forth in paragraph (1) of this subdivision; and

(ii) for each criterion set forth in subdivisions (b), (b-1), or (c) that a business enterprise does not satisfy, an explanation of why such business enterprise's failure to satisfy such criterion is exclusively attributable to the transfer of shares into one or more trusts in furtherance of a bone fide estate planning interest.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Standards for Determining Eligibility for MWBE Certification of Businesses Held in Trust

**REFERENCE NUMBER:** 2023 RG 014

**RULEMAKING AGENCY:** SBS

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Senior Counsel

Date: March 23, 2023

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Standards for Determining Eligibility for MWBE Certification of Businesses  
Held in Trust**

**REFERENCE NUMBER: SBS-18**

**RULEMAKING AGENCY: Department of Small Business Services**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violations pose significant risks to public health and safety, environmental hazards, and/or arise from consequences of immediate events, which make a cure period impracticable under the circumstances.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

March 24, 2023  
Date