

## RULE

### Office of the Governor Office of Financial Institutions

#### Virtual Currency Business Activity (LAC 10:I.1901-1937)

The Office of Financial Institutions (OFI) proposes to enact LAC 10:I.1901-1937 relative to licensure, registration, and regulation of those persons engaging, or planning to engage, in virtual currency business activity in the State of Louisiana pursuant to the Virtual Currency Businesses Act, (“VCBA”), R.S. 6:1381, et. seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and is intended to provide clear and concise guidance that will allow for the implementation and enforcement of the provisions of the VCBA as required under LSA – R.S. 6:1394.

The proposed Rule will enable OFI to achieve its regulatory goals and objectives regarding proper supervision and oversight of such persons included within the scope of the VCBA in a manner that is not overly complex, costly, or burdensome. In doing so, OFI hopes to create new efficiencies and improve the overall effectiveness of its supervisory program over such persons included within the scope of the VCBA. OFI also proposes to implement the necessary fee structure in order to cover the cost of regulating and supervising such persons included within the scope of the VCBA. Such fees are necessary in order for the OFI to effectively discharge its duties and responsibilities over these regulated persons and ensure compliance with the VCBA, and allow for the licensure and registration of those persons in accordance with the provisions of the VCBA.

#### Title 10

### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

#### Part XV. Other Regulated Entities

#### Chapter 19. Virtual Currency

##### §1901. Definitions

In addition to the definitions provided in Section 1382 of the Virtual Currency Businesses Act, (“VCBA”), R.S. 6:1381 et. seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, the following definitions are applicable to this Chapter:

1. *Acting in Concert*—persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
2. *Commissioner*—the commissioner of the office of financial institutions.
3. *Control*—means and also includes, but is not limited to the following:
  - a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
  - b. power to directly or indirectly vote at least 25 percent of outstanding voting shares or voting interests of any:
    - i. applicant, licensee or registrant; or
    - ii. applicant’s, licensee’s or registrant’s responsible individual or responsible individuals, including persons acting in concert;
  - c. power to directly or indirectly elect, appoint or remove any applicant’s, licensee’s or registrant’s responsible individual or a majority of responsible individuals, including persons acting in concert;
  - d. power to directly or indirectly participate in a licensee’s or registrant’s day-to-day decisions or operations, including persons acting in concert; and
  - e. any other set of facts or circumstances that may constitute control.
4. *Nationwide Multistate Licensing System and Registry (NMLS)*—the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
5. *Net Worth*—The difference between total business assets and total business liabilities, after deducting estimated income taxes on the differences between the estimated current values of business assets and the current amounts of business liabilities and their tax bases.
6. *Tangible Net Worth*—includes all business assets minus liabilities minus intangible assets (goodwill and other intangible assets, such as favorable leasehold rights, trademarks, trade names, internet domain names, and non-compete agreements.)
7. *Unfair or Deceptive Act or Practice*—failure to provide any disclosure or disclosures shall be an unfair or deceptive act or practice for purposes of taking enforcement action against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3) (b).
8. *Unsafe or Unsound Act or Practice*—means inability of any applicant, licensee or registrant to meet its withdrawal requests; violation of the applicant’s, licensee’s or registrant’s articles of incorporation; or violation of any law or any regulation governing the applicant, licensee or registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1382, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

### **§1903. Application for License or Notice of Registration**

A. The department shall begin accepting initial applications for licensure and notices of registration through the NMLS on January 1, 2023.

B. Completed applications for licensure and notices of registration submitted on or before April 1, 2023 will be approved, conditionally approved or denied on or before June 30 2023.

C. This rule shall become effective on July 1, 2023.

D. Applications for licensure and notices of registration pursuant to this Section shall not be complete until the department:

1. Receives all information required by applicable provisions of the VCBA; and
2. Completes its investigation pursuant to La. R.S. 6:1385D.

E. By force of law, no applicant shall have a right of appeal, as provided by La. R.S. 6:1387, before the 30th day after the effective date of this rule.

F. After July 1, 2023, initial and renewal applications shall be submitted in accordance with the VCBA and this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1383, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

### **§1905. Reserved**

### **§1907. Renewal of License or Notice of Registration**

A. Any application for renewal of a license or notice of registration issued pursuant to provisions of the VCBA shall be submitted through the NMLS and satisfy all renewal requirements of the VCBA, including but not limited to those required by R.S. 6:1388.

B. Beginning July 1, 2023, the period for submitting applications for renewal of all licenses and notices of registration to engage in virtual currency business activities shall begin on the first day of November of each calendar year.

C. A renewal application submitted on or before the thirty-first day of December shall be considered timely and the license or notice of registration seeks to renew shall remain in force and effect, as provided by the VCBA.

D.(1) An application for renewal of any license or notice of registration shall be accompanied by both:

- (a) The renewal fee; and
- (b) The late fee.

2. If a licensee or registrant does not submit an application for renewal on or before the last day of February, the license or notice of registration shall lapse on the first day of March and the licensee or registrant shall cease engaging in virtual currency business in Louisiana, with persons and individuals in Louisiana or on behalf of persons or individuals in Louisiana, as provided by La. R.S. 6:1384.

3. Any person whose license or notice of registration has lapsed may apply for a new license or notice of registration, in accordance with the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

### **§1909. Net Worth/Tangible Net Worth**

A. In satisfying the licensure, renewal, and registration requirements provided by the VCBA, including but not limited to R.S. 6:1386(B) through (D), R.S. 6:1388(B)(2)(f), and R.S. 6:1389(A)(7), net worth and tangible net worth shall be clearly evidenced by filing or submitting a current, audited financial statement to the commissioner through the NMLS prepared:

1. In accordance with General Acceptable Accounting Principles (GAAP) standards; and
2. Consistent with Public Company Accounting Oversight Board (PCAOB) standards.

B. Licensure, renewal, and registration requirements relative to net worth and net tangible worth provided by the VCBA, including but not limited to those expressly provided by R.S. 6:1386(B) through (D), R.S. 6:1388(B)(2)(f), and R.S. 6:1389(A)(7), shall be:

1. Satisfied at the time of initial application for licensure, renewal, and registration under the VCBA;
2. Maintained at all times during licensure, renewal, and registration; and
3. Annually reported to the commissioner beginning on the first day of November, in compliance with Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

### **§1911. Examination**

The commissioner may:

A. Conduct on-site examination or investigation the books, records, and accounts used in the business of a licensee or registrant.

B. Consider results of an inspection conducted by a comparable official in any in which the books, records, and accounts used in a licensee's or registrant's virtual currency business are located.

C. Enter into agreements or relationships with other government officials or state and ~~or~~ federal regulatory agencies.

D. Consider licensing or examination reports prepared by other governmental agencies or officials, within or outside Louisiana. AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1913. Records**

Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such books, records, and accounts of its virtual currency business activities, pursuant to R.S. 6:1391, for a period of five years, or longer, if required by the commissioner to resolve any examination, investigation, or complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1915. Consent Agreements**

The commissioner may enter into a consent agreement at any time with a person to resolve a matter arising under the VCBA, or a rule adopted, or an agreement entered into, under the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1917. Civil Penalties**

The commissioner, in his discretion, may assess a civil penalty against a person that violates the VCBA or any rule promulgated pursuant to the VCBA, or any order issued by the commissioner pursuant thereto, not to exceed \$1,000 for each violation, plus the department's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1919. Miscellaneous Provisions**

A. Failure to comply with this rule, or any other rule, or with any order issued by the department within a reasonable period of time may be considered in determining whether to waive any regulatory fee or to allow the filing of additional information relating to the application process. Noncompliance with any provisions of the VCBA, including but not limited to any provision or provisions pertaining to ownership, control, security, net worth, registration, or failure to pay any fee may likewise be considered in determining whether to deny issuance or renewal of a license or notice of registration, or the commissioner's institution of any investigative, administrative, or regulatory action within the scope of his authority.

B. All persons must be properly registered with the Louisiana Secretary of State, if required, prior to engaging in virtual currency business activity in the State of Louisiana.

C. Required Disclosures – Licensees engaging in virtual currency business activity in Louisiana shall provide proper disclosures to persons and individuals who use the licensee's products or services. The commissioner shall also determine, by policy, the time and form required for such disclosures. Required disclosures must be made separately from any other information provided by the licensee to persons and individuals and in a clear and conspicuous manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1921. Fees**

Pursuant to the authority granted under R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1391, the following fee structure is hereby established to cover necessary costs associated with the administration of the VCBA, R.S. 6:1381, et seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature.

Description	Fee
1. Initial Application Fee (\$2,500) and Investigation/Review Fee (\$2,500)	\$5,000
2. License Renewal Fee (\$2,000) and Investigation/Review Fee (\$2,000)	\$4,000/\$1,500 late fee

Description	Fee
3. Examination Fee	\$50 per/hour for each examiner, plus the actual cost of subsistence, lodging, and transportation for out-of-state exams, not to exceed the amounts provided for in Division of Administration travel regulations in force at the time of such exam
4. Registration Fee	\$750 for initial application
5. Registration Renewal Fee	\$500 for any subsequent annual renewals /\$250 late fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1385, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1923. Exceptions**

Any request for an exception and/or waiver must be submitted in writing and requires the written approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**§1925. Severability**

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 47:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

**Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule. This proposed Rule has no known impact on small businesses, pursuant to R.S. 49:978.4.

**Poverty Impact Statement**

The proposed Rule has no known impact on poverty, pursuant to R.S. 49:973.

**Provider Impact Statement**

The proposed Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments through 5:00 PM on July 10, 2022, to Susan Rouprich, General Counsel, Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.



Stanley M. Dameron  
Commissioner