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Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

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Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part I. Financial Institutions

Chapter 1. General Provisions
(Reserved)

Chapter 3. Fees and Assessments

§301. General Provisions

A. The Depository Institutions Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered banks, savings and loan associations, savings banks and credit unions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege will not be afforded to applications that will not be expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 6:126(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:706 (June 1997).

§303. Establishment of Fees and Assessments

Description	Fee
A. Application for a de novo state bank, savings and loan association or savings bank charter, or the merger or consolidation of two banks, savings and loan associations, or savings banks. The fee for a merger or consolidation may be reduced based on certain factors including, but not limited to: the date of each institution's most recent examination, the financial condition of the applicant, the structure of the institutions, the complexity of the transaction, the number of similar transactions contemplated, and any other factor(s) as determined by the commissioner of Financial Institutions.	\$10,000; \$5,000 for each additional institution affected.
B. The conversion from a national or federally-chartered depository institution to a state-chartered depository institution.	\$1,500
C. Application for a state bank, savings and loan association or savings bank for a branch office.	Standard Form: \$1,000 Short Form: \$250
D. Processing fee for an application to acquire a failing or failed institution. If the applicant is the successful bidder, the processing fee will be applied to the application fee(s) as set forth in A. and C. above:	
1. existing state-chartered financial institution;	\$500 per branch
2. de novo state-chartered financial institution.	\$5,000

Description	Fee
E. Application for a conversion or merger of a state-chartered bank, savings and loan association, or savings bank into a national bank, a federal savings and loan association, or a federal savings bank.	\$1,500
F. Application for the organization and/or merger of a stock or mutual holding company for an already existing bank, savings and loan association, or savings bank (phantom).	\$2,000
G. Special examination fee for a state bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
H. Semi-annual assessment of each state-chartered bank, savings and loan association, and savings bank at a floating rate to be assessed no later than June 30 and December 31, to be based on the total consolidated average assets, for the preceding quarter. Not applicable to Trust Banks. Any amounts collected in excess of actual expenditures of the OFI shall be credited or refunded on a pro-rata basis. Any shortages in assessments to cover actual operating expenses of OFI shall be added to the next variable assessment or billed on a pro-rata basis.	Variable
I. Annual assessment of each holding company domiciled in and/or operating in Louisiana, to be assessed no later than September 30 of each year to be based upon the holding company's total consolidated assets as of the previous June 30, in accordance with the following schedule:	
1. assets less than \$100,000,000	\$350
2. assets of \$100,000,000 to \$149,999,999	\$500
3. assets of \$150,000,000 or greater	\$650
J. Examination fee for holding companies of each bank, savings and loan association, or savings bank domiciled in and/or operating in Louisiana. Fee per examiner.	\$50/hour
K. Semi-annual assessment for each bank limited to the exercise of trust powers only and domiciled and operating in Louisiana to be assessed no later than June 30 and December 31.	\$500
L. Examination fee for each trust bank domiciled and operating in Louisiana. Fee per examiner.	\$50/hour
M. Examination fee for a trust department of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
N. Examination of the registered transfer agent activities of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
O. Review of a restatement and/or amendment to the Articles of Incorporation of a state-chartered bank, savings and loan association or savings bank.	\$250
P. Application by a state-chartered bank, /savings and loan association, or savings bank to exercise trust powers and/or re-institute trust powers formerly surrendered.	\$1,000
Q. Application by a state-chartered bank, savings and loan association, or savings bank to establish or acquire a subsidiary or service corporation.	\$500

Description	Fee
R. Application by an in-state or out-of-state holding company to acquire a Louisiana bank, savings and loan association, or savings bank, or a holding company thereof, or an out-of-state holding company with a Louisiana bank, savings and loan or savings bank subsidiary(-ies).	\$1,000; \$11,000 if de novo charter also required.
S. Corporate Credit Union Examination Fee	\$5,000 plus \$400 per day per examiner.
T. Application by a state-chartered bank, savings and loan association, or savings bank to merge with its parent holding company.	\$1,000
U. Processing fee for a certificate of authority filed by a state-chartered savings and loan association or savings bank not domiciled in Louisiana to operate a branch in Louisiana.	\$1,000
V. Application for conversion by any state-chartered depository institution to another state charter.	\$1,500
W. Application for the voluntary conversion of a depository institution from a mutual to a stock form (equity ownership).	\$1,500

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:126(A), 6:212 and 6:646(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), amended LR 21:1069 (October 1995), LR 23:706 (June 1997), amended by the Office of the Governor, Office of Financial Institutions, LR 31:2894 (November 2005).

§305. Administration

A. The commissioner may increase any of the fees in §303 when a combination of two or more of the transactions described in that Section occur, said fee not to exceed the lesser of \$50 per hour, or the combined fees as stated above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 6:126(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), amended LR 23:707 (June 1997).

Chapter 5. Applications

Subchapter A. Certificate of Authority for New Financial Institutions; Branches; or Relocation of Main Office or Branch Office

§501. Definitions

Applicant—one or more natural persons or a state-chartered financial institution seeking a certificate of authority from the commissioner to transact business as a financial institution, or a branch thereof, as defined below.

Application—shall consist of forms provided by the commissioner, submitted in a form acceptable to the commissioner, along with all supporting documents, requesting that a certificate of authority be granted.

Branch or Branch Office—for the purpose of making application to this Office means any manned office of a bank. This excludes off-site electronic financial terminals and loan production offices which are owned or leased by the financial institution.

Commissioner—the Commissioner of Financial Institutions.

Deposit Production Office—a physically manned location, in the State of Louisiana, in another state, or the District of Columbia, other than the main office or branch office of a financial institution, from which the financial institution intends to provide information about deposit products offered by such financial institution, solicit deposits, and assist persons in completing application forms and related documents to open deposit accounts. A deposit production office may be a wholly-owned operating subsidiary of a financial institution. A deposit production office may also be referred to in this rule as a “DPO”.

Electronic Financial Terminal (EFT)—

1. an electronic information processing device, other than a telephone, which is established to do either or both of the following:

a. capture the data necessary to initiate financial transactions; or

b. through its attendant support system, store or initiate the transmission of the information necessary to consummate a financial transaction;

2. the term includes, without limitation, point of sale terminals, merchant-operated terminals, script or cash dispensing machines, and automated teller machines.

Financial Institution—any bank, savings bank, homestead association, building and loan association, or savings and loan association chartered by the commissioner.

Investigation—the commissioner or any examiner or examiners designated by the commissioner shall make such investigations as deemed necessary to assist in the determination of matters pending before the commissioner. The investigation shall include an examination of each of the six factors detailed in §503.C.

Loan Production Office—a physically manned location, in the state of Louisiana, in another state or the District of Columbia, other than the main office or branch office of a financial institution from which the financial institution intends to provide information about, and solicit and/or originate applications for, loans, by such financial institution. A loan production office may be a wholly-owned operating subsidiary of a financial institution. A loan production office may also be referred to in this rule as an “LPO”.

“Phantom” Financial Institution—a corporation organized as a state, nondeposit taking financial institution, for the purpose of facilitating the organization of a holding company.

Relocation of a Branch Office—a movement within the same neighborhood that does not substantially affect the nature of business or customers served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR

19:1414 (November 1993), amended by the Office of the Governor, Office of Financial Institutions, LR 31:2894 (November 2005), amended by the Office of the Governor, Office of Financial Institutions, LR 31:2894 (November 2005), LR 46:1387 (October 2020).

§503. Application for Certificate of Authority

A. Scope. This rule applies to applications for a certificate of authority under R.S. 6:101 et seq.

B. Application Filing and Notice

1. Applications shall be in such form and contain such information as the commissioner may from time to time prescribe. Application forms may be obtained from the office of the commissioner. The application shall contain a public section and a confidential section. The public section shall include comments and information submitted by interested persons in favor of or in opposition to such application.

2. The original and one copy of the application must be submitted in completed form to the commissioner. Applicants seeking a certificate of authority to operate as a savings bank must also submit a business plan as required by R.S. 6:1125. Any application not substantially complete will not be accepted for filing and will be returned to the applicant resulting in processing delay.

3. Within 30 days prior to receipt of application by the commissioner, applicant must publish a one-time notice in a newspaper of general circulation in the community in which the institution/branch is to be located. The published notice will contain such information as deemed necessary by the commissioner. A sample notice will be provided together with the application forms.

4. Proof of publication must be submitted to the commissioner before processing of the application can be completed. In the case of an acquisition of a failed or failing financial institution, requirement for publishing a notice will be waived.

5. Upon acceptance of the application for filing, notice in writing will be given to financial institutions in the community in which the institution/branch office is to be located. This notice will allow for a reasonable comment period, normally 14 calendar days.

6. Upon acceptance of the application for filing, the commissioner or any examiner or examiners designated by the commissioner will conduct an investigation. Information not included in the application, which is necessary to determine the six factors described below, will be requested from the applicant. Processing of an application will not be completed until the satisfactory conclusion of the investigation.

C. Factors to be Considered. Six factors within the application are to be considered:

1. financial history and condition;
2. distribution and adequacy of capital;
3. future earnings prospects;

4. management;
5. convenience and needs of the community;
6. corporate powers.

D. Acquisition of a Failed or Failing Financial Institution. The commissioner may waive any provision of this rule which is not required by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1415 (November 1993).

§505. Application to Relocate a Main Office or Branch Office

A. A financial institution desiring to relocate its main office or an existing branch office must make application to the commissioner. Five of the above factors to be considered for a new branch office will also be considered for a relocation. Convenience and needs of the community will not be considered for a branch office relocation since a relocation does not substantially affect the nature of business or customers served. An application to relocate a main office must address the convenience and needs of the community unless the relocation does not substantially affect the nature of business or customers served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by Department of Economic Development, Office of Financial Institutions, LR 19:1415 (November 1993).

Subchapter B. Loan Production Offices, Deposit Production Offices, and Electronic Financial Terminals; Notice, Activities and Requirements

§509. Application for Loan Production Office (LPO)

A. Definitions

Commissioner—the commissioner of the Louisiana Office of Financial Institutions.

Federal Financial Institution—any national bank, federal savings association, or other depository institution chartered by the Office of the Comptroller of the Currency.

Financial Institution—any federal financial institution, Louisiana financial institution, or out-of-state financial institution.

Letter of Notification—written notice submitted to the commissioner by a financial institution indicating its intent to establish one or more loan production office(s). The Letter of Notification shall identify the financial institution and provide the municipal address of the proposed LPO location. If the ratio of premises and fixed assets to Tier 1 capital plus the allowance for loan and lease losses will, at any time, exceed 50 percent, or 45 percent for a new institution, the financial institution must also provide supporting

documentation and a request to exceed this threshold pursuant to LAC X:I.1101.

Loan Production Office—a physically manned location, in the state of Louisiana, in another state or the District of Columbia, other than the main office or branch office of a financial institution from which the financial institution intends to provide information about, and solicit and/or originate applications for, loans, by such financial institution. A loan production office may be a wholly-owned operating subsidiary of a financial institution. A loan production office may also be referred to in this rule as an “LPO”.

Louisiana Financial Institution—any Louisiana state-chartered bank, savings bank, homestead association, building and loan association, or savings and loan association.

Out-of-State Financial Institution—any state-chartered bank, savings bank, homestead association, building and loan association, or savings and loan association, chartered in a state other than Louisiana or chartered in the District of Columbia.

B. Prior Notification

1. In accordance with R.S. 6:452, a Louisiana financial institution seeking to open a loan production office shall provide written prior notification, to the commissioner, of the planned loan production office. The notification shall be sent to the commissioner at least 45 days prior to the proposed opening date of the LPO.

2. Notification to the commissioner may be delivered by U.S. Mail, private commercial courier, hand-delivered, or by electronic mail.

3. If at the time of the notification to the commissioner, a Louisiana financial institution plans to share the location of an LPO with one or more other financial institutions, the name and domicile of each such other financial institution shall be included in the written prior notice to the commissioner.

C. Objection by Commissioner

1. In accordance with R.S. 6:452, after a Louisiana financial institution sends notification of its intent to open an LPO, the commissioner may object to the proposed loan production office based on any of the reasons set forth in Paragraph C.2. The commissioner may timely object by notifying the Louisiana financial institution within 45 days of receiving the Louisiana financial institution’s notification of its intent to open an LPO. If the commissioner timely objects to the proposed LPO, the Louisiana financial institution shall refrain from opening the proposed LPO.

2. Reasons for Objection. The following factors may form the basis for the commissioner’s objection to a loan production office as well as any additional factors deemed necessary and appropriate:

- a. financial history and condition;
- b. adequacy of capital;

- c. future earnings prospects;
- d. management;
- e. convenience and needs of the community;
- f. concentration risk.

3. Written Reasons for Objection by Commissioner. Following an objection by the commissioner to a Louisiana financial institution’s proposed loan production office, a Louisiana financial institution may request written reasons for the objection.

4. Out-of-State Financial Institutions. An out-of-state financial institution may establish one or more LPOs in Louisiana as allowed by, and in compliance with, the laws, regulations, rulings, and pronouncements of the state or district where such financial institution is chartered that apply to the establishment of an LPO by such out-of-state financial institution and may conduct at, or from, any of its LPOs in Louisiana such activities as are authorized by the laws, regulations, rulings, and pronouncements of the state or district where such out-of-state financial institution is chartered. Except for the requirements of this Paragraph, out-of-state financial institutions are not subject to the requirements of this Section or §511 of this Chapter.

5. Federal Financial Institutions. A federal financial institution may establish one or more LPOs in Louisiana as allowed by, and in compliance with the federal laws, regulations, rulings, and pronouncements that apply to the establishment of an LPO by a federal financial institution. Except for the requirements of this Paragraph, federal financial institutions are not subject to the requirements of this Section or §511 of this Chapter.

D. Activities

1. Permissible Activities. A loan production office of a Louisiana financial institution is limited to the following activities:

- a. soliciting, and originating, loans on behalf of the Louisiana financial institution;
- b. providing information on loan rates and terms;
- c. interviewing and counseling loan applicants regarding loans and any provisions for disclosure required by various regulation;
- d. aiding customers in the loan application process, including the completing of loan applications, the obtaining of credit investigations, obtaining title insurance premiums, attorney’s fees, title abstract fees, mortgage certificate fees, hazard insurance premiums, flood insurance premiums, survey costs, recording costs, and any other information needed to prepare a good faith estimate, to complete a loan application, or to prepare a loan for closing;
- e. making credit decisions and approving or declining loans, in accordance with the Louisiana financial institution’s lending policies; and
- f. signing any and all loan documents and disclosures, including but not limited to promissory notes,

line of credit agreements, mortgages, security agreements, guarantee agreements, any other agreement establishing collateral to secure the repayment of the loan, and other instruments obligating the loan customer to the Louisiana financial institution.

2. **Activities Parity.** In addition to the permissible activities set forth above, a Louisiana financial institution may conduct at, or from, any of its loan production offices any other activity that is a permissible for an LPO of a national bank or other federal financial institution by complying with R.S. 6:242(C).

3. **Electronic Financial Terminals.** In addition to the permissible activities set forth above, a Louisiana financial institution may operate an electronic financial terminal (EFT) facility within, adjacent to, or in close proximity to, any of its loan production offices, provided that it complies with the notice requirements contained in §511 of this Chapter. An EFT is defined in R.S. 6:2(7).

4. **Prohibited Activities.** The following activities may not be conducted at a loan production office of a Louisiana financial institution unless the Louisiana financial institution has established a combined loan production office and deposit production office in accordance with R.S. 6:454, and with §511 of this Chapter:

- a. providing forms which enable the customer to open deposit accounts directly or by mail;
- b. counseling customers regarding savings accounts, checking accounts or any other services except loan origination services;
- c. advertising, stating or implying that the loan production office provides services other than loan origination services;

5. **Loan Payments.** A loan production office of a Louisiana financial institution shall not accept loan payments; however, the occasional acceptance of loan payments is permissible in the event borrowers fail to follow established loan payment procedures.

6. **Loan proceeds** shall not be physically disbursed in-person to the borrower at an LPO of a Louisiana financial institution. However, this does not restrict the disbursement of loan proceeds electronically.

E. Closure or Change of Location of Loan Production Office

1. Prior to closing or relocating a loan production office of a Louisiana financial institution, the Louisiana financial institution shall give prior written notice to the commissioner for approval at least 45 days prior to closing or relocating the LPO. The notification of a relocation shall contain the current physical address of the loan production office, the proposed new address and the anticipated date of relocation. The notification of a closure shall include the current location of the loan production office, the reason for the closure and the anticipated date of the closure. Approval will be deemed to have been granted if the commissioner

does not respond to the notice within 45 days of receipt. This provision may be waived by the commissioner.

2. At least 30 days prior to the closure date or relocation date, the Louisiana financial institution shall post a notice in a conspicuous location in the loan production office to be closed or relocated, that the LPO will be closed or relocated. If the LPO is to be closed, the notice shall state the closing date and the nearest location where a customer may obtain access to services. If the LPO is to be relocated, the notice shall state the relocation date and the address of the new location.

3. The requirements contained in Paragraph E.2 of this Subsection may be waived by the commissioner to prevent or alleviate any condition which he or she may reasonably expect to create an emergency relative to that Louisiana financial institution, its employees, or its customers.

F. Other

1. **Emergency Acquisition of a Louisiana Loan Production Office.** In the case of the acquisition of a failed or failing Louisiana financial institution, the commissioner may waive any provision of this rule which is not required by statute for the purpose of allowing an acquiring financial institution to operate a loan production office of the failed or failing financial institution.

2. **Name.** Each loan production office of a Louisiana financial institution shall include the words "Loan Production Office" on one primary exterior sign at the loan production office and all other signage shall include the words "Loan Production Office" or the initials "LPO." The words "Loan Production Office" and the initials "LPO" must be reproduced in at least one-half as large a font size as the font size used for the name of the Louisiana financial institution on signage at the loan production office.

3. Sharing of Loan Production Office Locations

a. Loan production office locations may be shared by one or more financial institutions provided that each Louisiana financial institution complies with the provisions of this rule. In addition, any written agreement related to the sharing of a loan production office shall accompany, or be included in, the prior notice submitted to the commissioner as required by §509.B. Further, when engaging in the sharing of a loan production office location, the Louisiana financial institution shall ensure that:

- i. each financial institution is conspicuously, accurately, and separately identified;
- ii. each financial institution provides its own employee(s) and their affiliation with the financial institution by which they are employed is clearly and fully disclosed to customers so that customers will know the identity of the financial institution that is providing the product or service;
- iii. the arrangement does not constitute a joint venture or partnership with the other financial institution under applicable state law;

iv. all aspects of the relationship between the financial institutions are conducted at arm's length;

vi. security issues arising from the activities of the other financial institution on the premises are addressed;

vi. the activities of the other financial institution do not adversely affect the safety and soundness of such financial institution; and

vii. the assets and records of the financial institutions are segregated.

b. An LPO location sharing agreement involving a Louisiana financial institution should outline the manner in which:

i. the operations of each of the financial institutions will be separately identified and maintained within the loan production office location;

ii. the assets and records of the financial institutions will be segregated;

iii. expenses will be shared;

iv. confidentiality of each of the financial institution's records will be maintained; and

v. any additional provisions deemed applicable.

4. Any an exception and/or waiver of any provision of this rule requires the written approval of the commissioner.

5. Effective Date. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:452.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1217 (November 1995), amended by the Office of the Governor, Office of Financial Institutions, LR 46:1387 (October 2020).

§511. Deposit Production Office

A. Definitions

Commissioner—the commissioner of the Louisiana Office of financial institutions.

Deposit Production Office—a physically manned location, in the State of Louisiana, in another state, or the District of Columbia, other than the main office or branch office of a financial institution, from which the financial institution intends to provide information about deposit products offered by such financial institution, solicit deposits, and assist persons in completing application forms and related documents to open deposit accounts. A deposit production office may be a wholly-owned operating subsidiary of a financial institution. A deposit production office may also be referred to in this rule as a "DPO".

Federal Financial Institution—any national bank or federal savings association, or other depository institution chartered by the Office of the comptroller of the currency.

Financial Institution—any federal financial institution, Louisiana financial institution, or out-of-state financial institution.

Letter of Notification—written notice submitted to the commissioner by a Louisiana financial institution indicating its intent to establish a deposit production office. The letter of notification shall identify the Louisiana financial institution and provide the municipal address of the proposed DPO location. If the ratio of premises and fixed assets to Tier 1 Capital plus the allowance for loan and lease losses will, at any time, exceed 50 percent, or 45 percent for a new institution, the financial institution must also provide supporting documentation with a request to exceed this threshold pursuant to LAC X:I.1101.

Louisiana Financial Institution—any Louisiana state-chartered bank, savings bank, homestead association, building and loan association, or savings and loan association.

Out-of-State Financial Institution—any state-chartered bank, savings bank, homestead association, building and loan association, or savings and loan association chartered in a state other than Louisiana or in the District of Columbia.

B. Prior Notification

1. In accordance with R.S. 6:453, a Louisiana financial institution seeking to open a deposit production office shall provide written prior notification, to the commissioner, of the planned deposit production office. The notification shall be sent to the commissioner at least 45 days prior to the proposed opening date of the DPO.

2. Notification to the commissioner may be delivered by U.S. Mail, private commercial courier, hand-delivered, or by electronic mail.

3. If at the time of the notification to the commissioner, the Louisiana financial institution plans to share the location of the DPO with another financial institution, the name and domicile of each such other financial institution shall be included in the written prior notice to the commissioner.

C. Objection by Commissioner

1. In accordance with R.S. 6:453, after a Louisiana financial institution sends notification of its intent to open an DPO, the commissioner may object to the proposed deposit production office based on any of the reasons set forth in Paragraph C.2. The commissioner may timely object by notifying the Louisiana financial institution within 45 days of receiving the Louisiana financial institution's notification of its intent to open a DPO. If the commissioner timely objects to the proposed DPO, the Louisiana financial institution shall refrain from opening the proposed DPO.

2. Reasons for Objection. The following factors may form the basis of the commissioner's objection to a deposit production office as well as any additional factors deemed necessary and appropriate:

- a. financial history and condition;
- b. adequacy of capital;
- c. future earnings prospects;
- d. management;
- e. convenience and needs of the community;
- f. concentration risk.

3. **Written Reasons for Objection by Commissioner.** Following an objection by the commissioner to a Louisiana financial institution's proposed deposit production office, a Louisiana financial institution may request written reasons for the objection.

4. **Out-of-State Financial Institutions.** An out-of-state financial institution may establish a one or more DPOs in Louisiana as allowed by, and in compliance with, the laws, regulations, rulings, and pronouncements of the state or district where the out-of-state financial institution is chartered that apply to the establishment of a DPO by such out-of-state financial institution and may conduct at, or from any of its DPOs in Louisiana such activities as are authorized by the laws, regulations, rulings, and pronouncements of the state or district where such out-of-state financial institution is chartered. Except for the requirements of this Paragraph, out-of-state financial institutions are not subject to the requirements of this Section or §511 of this Chapter.

5. **Federal Financial Institutions.** A federal financial institution may establish one or more DPOs in Louisiana as allowed by, and in compliance with, the federal laws, regulations, rulings, and pronouncements that apply to the establishment of a DPO by a federal financial institution. Except for the requirements of this Paragraph, federal financial institutions are not subject to the requirements of this Section or §511 of this Chapter.

D. Activities

1. **Permissible Activities.** A deposit production office of a Louisiana financial institution is limited to the following activities:

- a. providing information about deposit products;
- b. assisting persons in completing application forms and related documents to open deposit accounts;
- c. providing forms which enable the customer to open deposit accounts directly, online, or by mail;
- d. counseling customers regarding savings accounts, checking accounts or any other deposit products; and
- e. advertising or promoting deposit products.

2. **Activities Parity.** In addition to the permissible activities set forth above, a Louisiana financial institution may conduct at, or from, any of its deposit production offices any activity that is permissible for a DPO of a national bank or other federal financial institution by complying with R.S. 6:242(C).

3. **Electronic Financial Terminals.** In addition to the permissible activities set forth above, a Louisiana financial institution may operate an electronic financial terminal (EFT) facility within, adjacent to, or in close proximity to, any of its deposit production offices, provided that it complies with the notice requirements contained in §511 of this Chapter. An EFT is defined in R.S. 6:2(7).

4. **Prohibited Activities.** The following activities may not be conducted at a deposit production office of a Louisiana financial institution unless the Louisiana financial institution has established a combined loan production office and deposit production office in accordance with R.S. 6:454, and with Section 511 of this Chapter:

- a. soliciting loans on behalf of the Louisiana financial institution or one of its wholly-owned subsidiaries;
- b. providing information on loan rates and terms;
- c. interviewing and counseling loan applicants regarding loans and any provisions for disclosure required by various regulation; or
- d. aiding customers in the completion of loan applications, including the obtaining of credit investigations, obtaining title insurance premiums, attorneys fees, title abstract fees, mortgage certificates, hazard insurance premiums, flood insurance premiums, survey costs, recording costs, and any other information needed to prepare a good faith estimate, to complete a loan application, or to prepare a loan for closing.

E. Closure or Change of Location of Deposit Production Office

1. Prior to closing or relocating a deposit production office of a Louisiana financial institution, the Louisiana financial institution shall give prior written notice to the commissioner for approval at least 45 days prior to closing or relocating the DPO. The notification of a relocation shall contain the current physical address of the deposit production office, the proposed new address and the anticipated date of relocation. The notification of a closure shall include the current location of the deposit production office, the reason for the closure and the anticipated date of the closure. Approval will be deemed to have been granted if the commissioner does not respond to the notice within 45 days of receipt. This provision may be waived by the commissioner.

2. At least 30 days prior to the closure date or relocation date, the Louisiana financial institution shall post a notice in a conspicuous location in the deposit production office to be closed or relocated, that the DPO will be closed or relocated. If the DPO is to be closed, the notice shall state the closing date. If the DPO is to be relocated, the notice shall state the relocation date and the address of the new location.

3. The requirements contained in Paragraph E.2 of this Subsection may be waived by the commissioner to prevent or alleviate any condition which he or she may reasonably expect to create an emergency relative to that

Louisiana financial institution, its employees, or its customers.

F. Other

1. Emergency Acquisition of a Deposit Production Office. In the case of the acquisition of a failed or failing Louisiana financial institution, the commissioner may waive any provision of this rule which is not required by statute for the purpose of allowing an acquiring financial institution to operate a deposit production office of the failed or failing financial institution.

2. Name. Deposit production offices of Louisiana financial institutions shall include the words "Deposit Production Office" on one primary exterior sign at the deposit production office and all other signage shall include the words "Deposit Production Office" or the initials "DPO." The words "Deposit Production Office" and the initials "DPO" must be reproduced in at least one-half as large a font size as the font size used for the name of the Louisiana financial institution on signage at the deposit production office.

3. Sharing of Deposit Production Office Locations

a. Deposit production office locations may be shared by one or more financial institutions provided that each Louisiana financial institution complies with the provisions of this rule. In addition, any written agreement related to the sharing of a deposit production office shall accompany, or be included in, the Prior Notice submitted to the commissioner as required by §510.B, a brief explanation of such written agreement, including the names of the financial institutions that will share the same location, shall accompany, or be included in, the prior notice submitted to the commissioner as required by §510.B. Further, when engaging in the sharing of a deposit production office, the Louisiana financial institution shall ensure that:

- i. each other financial institution is conspicuously, accurately, and separately identified;
- ii. each financial institution provides its own employee(s) and their affiliation with the other financial institution is clearly and fully disclosed to customers so that customers will know the identity of the financial institution that is providing the product or service;
- iii. the arrangement does not constitute a joint venture or partnership with the other financial institution under applicable state law;
- iv. all aspects of the relationship between the financial institutions are conducted at arm's length;
- v. security issues arising from the activities of the other financial institution on the premises are addressed;
- vi. the activities of the other financial institutions do not adversely affect the safety and soundness of the Louisiana financial institution; and
- vii. the assets and records of the financial institutions are segregated.

b. A DPO location sharing agreement involving a Louisiana financial institution should outline the manner in which:

- i. the operations of each financial institution will be separately identified and maintained within the deposit production office location;
- ii. the assets and records of the financial institutions will be segregated;
- iii. expenses will be shared;
- iv. confidentiality of each of the financial institution's records will be maintained; and
- v. any additional provisions deemed applicable.

4. Any exception and/or waiver of any provision of this rule requires the written approval of the commissioner.

5. Effective Date. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:453.

HISTORICAL NOTE: Promulgated by the Office of Governor, Office of Financial Institutions, LR 46:1389 (October 2020).

§513. Combination of Loan Production Office, Deposit Production Office, and Electronic Financial Terminal

A. Definitions. For purposes of this Section, the definitions provided in §§509 and 510 are applicable.

B. Combined Prior Notification

1. Any Louisiana financial institution seeking to operate at the same location, a loan production office, a deposit production office, and an electronic financial terminal, or any combination of these facilities, shall provide written notice to the commissioner at least 45 days prior to the proposed opening date.

2. A Louisiana financial institution may satisfy the notice requirements of R.S. 6:452 and 453 by submitting one combined written notice to the commissioner pursuant to this Section.

C. Upon receiving the written notice, the commissioner has 45 days to object. If the commissioner does not raise a timely objection, the Louisiana financial institution may proceed with opening the combined facility. If the commissioner raises an objection, the commissioner shall, upon request, notify the Louisiana financial institution in writing as to the nature of the objection. The commissioner may consider the reasons for objection set forth in §§509.C and 510.C of this Chapter.

E. Effective Date. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:454.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 46:1392 (October 2020).

Chapter 7. Powers

§701. Financial Institution Agency Activities

A. Definitions

Agency Agreement—the document which establishes the agency relationship between the Louisiana state-chartered financial institution and any other financial institution.

Applicant—a Louisiana state-chartered financial institution seeking the prior approval of the commissioner to engage in agency activities as principal or as agent.

Close Loans—the authority to provide loan applications, review documentation, provide loan account information, service loans and receive payments.

Commissioner—the Commissioner of Financial Institutions.

Financial Institution—any bank, savings bank, homestead association, building and loan association or savings and loan association.

Notification—consists of all forms prescribed by the commissioner, submitted in a completed form, along with all supporting documents and other information required by this rule.

Receive Deposits—the taking of any additional deposit. This does not include the acceptance of a deposit which will result in the opening of a new deposit account.

B. Notification

1. Filing. All notifications filed in accordance with this rule shall be accompanied by a nonrefundable fee as prescribed by the commissioner and shall be in such form and contain such information as the commissioner may from time to time prescribe. The notification shall be filed at least 30 days prior to the effective date of the agreement. When the notification is submitted, an original and one copy must be provided. The commissioner may approve a substantially complete notification after consideration of the factors set forth in the following Sections. A reasonable amount of time may be utilized in the analysis of these factors and additional information may be requested. The prior approval of the applicant's board of directors is required before filing the notification. Substantially incomplete notifications will not be accepted for filing and will be returned to the applicant resulting in a processing delay.

2. Form. The applicant shall, at least 30 days prior to the effective date of the agency agreement, provide notification to the commissioner which includes:

a. the name, address and phone number of the applicant as well as the name of a contact person to which questions regarding the application and notification may be directed;

b. the name, address and phone number of the financial institution which is entering the agency relationship with the applicant;

c. a description of the services proposed to be performed under the agency agreement including, but not limited to, those permissible activities as enumerated in §701.C.1;

d. a copy of the agency agreement;

e. evidence that the applicant's bonding company has been notified;

f. a copy of a resolution of the board of directors authorizing the establishment of the agency relationship; and

g. if applicable, a "No Objection Letter" from the appropriate chartering authority for the financial institution providing the agency services for the Louisiana state-chartered financial institution. This provision is only applicable when a Louisiana state-chartered financial institution enters into a relationship with a financial institution in which the out-of-state financial institution will act as agent for the Louisiana state-chartered financial institution.

3. Approval Process. The commissioner may approve any request to establish an agency relationship unless he finds that the proposed operation violates the provisions of this rule or any other pertinent provision of law. The commissioner may, in his sole discretion, provide written reasons for his decision, which shall be released only to the applicant.

C. Activities

1. Permissible Activities. Any Louisiana state-chartered financial institution may, upon compliance with the requirements of this rule:

a. as agent for any financial institution, agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform other services with the prior approval of the commissioner; and/or

b. enter into an agency relationship with any other financial institution to allow the other financial institution to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform other services with the prior approval of the commissioner.

2. Prohibited Activities. A Louisiana state-chartered financial institution, operating under the authority of an agency agreement, may not:

a. conduct any activity as agent that it would be prohibited from conducting as principal under applicable state or federal law;

b. have an agent conduct any activities that the financial institution as principal would be prohibited from conducting under applicable state or federal law;

c. as agent for another financial institution, make a credit decision on a loan. Only the principal may make the decision to extend credit; or

d. as agent for another financial institution, open a deposit account.

3. Other Activities. If any proposed activity is not specifically designated in §701.C.1 and has not been previously approved in a regulation issued by the commissioner, the commissioner shall decide whether the performance of such activity would be consistent with applicable state and federal law and the safety and soundness of the Louisiana state-chartered financial institution.

4. Additional Activities

a. If a Louisiana state-chartered financial institution which has an established agency relationship desires to expand its activities to include activities not already approved, the applicant shall notify the commissioner of the change. The notification shall provide a complete description of the proposed new activity and shall also include a copy of the new agency agreement. If only a section of the existing agreement is required to be amended, the institution may submit a copy of the amendment in lieu of the entire agreement. The commissioner shall decide if this activity is consistent with applicable state and federal laws and the safety and soundness of the Louisiana state-chartered financial institution. The financial institution will be given written notice as to the permissibility of the proposed activity by the commissioner.

b. Should a financial institution, as an agent, close loans at a location other than its main office or any branch facility, a loan production office application may be required.

D. Cessation of an Agency Relationship

1. Voluntary Cessation

a. Written notification to the commissioner is required upon the cancellation of an agency relationship.

b. The financial institution shall post a notice at least 30 days prior to the effective date of termination of the financial institution's intention to cease the agency relationship. The notice shall be posted at its main office and at any other location where business was conducted under an agency capacity.

2. Involuntary Cessation. The commissioner may order a Louisiana state-chartered financial institution or any other financial institution subject to the commissioner's enforcement powers to cease acting as agent or principal under any agency agreement with a financial institution that the commissioner finds to be inconsistent with safe and sound banking practices.

E. Other

1. Any request for an exception and/or waiver of any provision of this rule requires the written approval of the commissioner.

2. By no means shall any Louisiana state-chartered financial institution serving as agent for another financial institution be deemed to be a branch of the other financial institution.

3. The commissioner shall impose a fee for this notification in accordance with this office's fees and assessments rule.

4. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:539.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1215 (November 1995).

§703. Variable Rate Loans

A. Pursuant to R.S. 6:25.1 (Act 640 of 1981) and R.S. 9:3554(B), banks, savings and loan associations, other supervised financial organizations, and licensed lenders are hereby authorized to make, purchase or participate in loans bearing simple interest from date on a variable rate basis consistent with the following regulations promulgated by the Commissioner of Financial Institutions.

1. Purpose. This regulation is issued by the commissioner of Financial Institutions under authority granted by R.S. 6:25.1 (Act 640 of 1981) and R.S. 9:3554(B).

2. Scope. This regulation shall apply to all loans or other extensions of credit which are made, purchased, or participated in by banks, savings and loan associations, other supervised financial organizations and licensed lenders, and which bear simple interest from date on a variable rate basis.

3. Definitions. As used herein, the following definitions shall apply.

Bank—any bank organized under the laws of the United States of America or of any state or foreign nation, and any subsidiary or parent holding company of a bank. (Nonbank subsidiaries of bank holding companies are considered to be banks or other supervised financial organizations for the purposes of this regulation.)

Index—any basis on which the interest rate charged on a loan may vary in accordance with the agreement of the parties.

Licensed Lender—shall have the same meaning as defined under R.S. 9:3516(19), that is, a person, other than a supervised financial organization, engaged in the business of making supervised loans.

Prime Rate or Base Rate—the interest rate established from time to time, one or more times, by the board of directors and/or management of a bank, savings and loan association, or any supervised financial organization as its "prime" or "base" lending rate, whether or not that interest rate is published or otherwise made known to the general public.

Savings and Loan Association—any savings and loan association, thrift institution, or savings bank organized under the laws of the United States of America or of any state, and any wholly-owned subsidiary or parent holding company of a savings and loan association.

Supervised Financial Organization—shall have the same meaning as defined under R.S. 9:3516 (26), that is, a banking or similar organization organized, certified and

supervised by an agency of either the United States of America or of the state of Louisiana pursuant to the banking, currency, and related laws of the United States of America or of the State of Louisiana.

Variable Rate—the manner of computing simple interest on a loan whereby the rate of simple interest varies from time to time, one or more times, over the term of the extension of credit with changes in a contractual index rate or is adjusted in accordance with a formula specified in the promissory note or credit agreement governing the loan.

4. General Rule. Banks, savings and loan associations, other supervised financial organizations, and licensed lenders are authorized to make, purchase or participate in loans bearing simple interest from date on a variable rate basis.

5. Calculation of and Basis for Change in Rate

a. The simple rate of interest on a variable rate loan may vary with changes in an index or may be adjusted in accordance with a formula specified in the promissory note or credit agreement governing the loan.

b. It shall be permissible for a supervised financial organization to charge and collect simple interest on a variable rate basis indexed to the institution's own "prime" or "base" lending rate.

6. Rate Adjustment. This regulation sets no limitations on the frequency of interest rate adjustments or on the amount of any incremental change in the interest rate in variable rate loans.

7. Relationship to Other Laws

a. This regulation shall not be construed to limit the manner or method of contracting for interest in connection with any loan or other extension of credit.

b. Banks, savings and loan associations, other supervised financial organizations and licensed lenders are permitted to enter into variable rate loan transactions pursuant to this regulation which are governed by any applicable Louisiana or federal credit laws and regulations, including but not limited to:

- i. Article 2924 of the Louisiana Civil Code;
- ii. the Louisiana Consumer Credit Law (R.S. 9:3510, et seq.);
- iii. the Louisiana Motor Vehicle Sales Finance Act (R.S. 6:951, et seq.);
- iv. R.S. 9:3503, et seq.;
- v. R.S. 6:654;
- vi. R.S. 9:3509;
- vii. R.S. 12:703.

c. This regulation shall not supersede the requirements of R.S. 6:957(F) as added by Act 580 of 1981 with regard to variable rate retail installment contracts for the purchase of a residential mobile home.

d. This regulation shall additionally not supersede the adjustable rate mortgage regulations promulgated by the Office of Financial Institutions for state banks as published in Volume 7, Number 7, *Louisiana Register*, July 20, 1981, as well as the adjustable rate mortgage regulations promulgated by the Office of the Comptroller of the Currency for National banks (12 CFR §29.1 et seq.).

e. This regulation shall additionally not supersede the adjustable mortgage loan regulations promulgated by the Office of Financial Institutions for state savings and loan associations as published in Volume 7, Number 7, *Louisiana Register*, July 20, 1981, as well as the adjustable mortgage loan regulations promulgated by the Federal Home Loan Bank Board for federal savings and loan associations (12 CFR §545.6-4a).

f. Notwithstanding any other laws to the contrary, particularly Article 1939 of the Louisiana Civil Code, loans subject to these regulations shall be exempt from the application of the prohibition against interest on interest.

8. Effect on Other Variable Rate Loans. The promulgation of this regulation shall not be construed to raise questions as to, or provide a basis for any challenge to, the validity or enforceability of variable rate loans which may have been entered into prior to the promulgation hereof or as to the validity or enforceability of variable rate loans or other extensions of credit by creditors not subject to this regulation.

9. ARM/AML Regulations

a. The Office of Financial Institutions does hereby reissue and re-promulgate the adjustable-rate mortgage regulations promulgated by the Office of Financial Institutions for state banks as published in Volume 7, Number 7, *Louisiana Register*, July 20, 1981, said regulations to be promulgated under authority granted by R.S. 6:237(B).

b. The Office of Financial Institutions does hereby reissue and repromulgate the adjustable mortgage loan regulations promulgated by the Office of Financial Institutions for state savings and loan associations as published in Volume 7, Number 7, *Louisiana Register*, July 20, 1981, said regulations to be promulgated under the authority granted by R.S. 6:902(B).

10. Effective Date. This regulation shall take effect on the date of final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:25.1 and R.S. 9:3554(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 8:232 (May 1982).

Chapter 9. Records Retention

§901. Records Retention Schedule

A. Each depository institution subject to the regulation and supervision of the Office of Financial Institutions shall retain such minimum records which are deemed necessary for the examination and supervision of such institutions by

this office and for such minimum retention periods as determined by the commissioner and set forth in a "record retention schedule." This rule does not replace the institution's responsibility to create, implement, and maintain its own comprehensive record retention program, consistent with the institution's strategic goals and objectives. Such records may be retained in various forms including but not limited to hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily reproduced into hard copies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:127.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:705 (June 1997).

Chapter 11. Premises

§1101. Holding of Property for Premises Purposes

A. Definitions

New Institution—any bank, savings bank, savings and loan association, or credit union that has been chartered by this office for less than three years.

Premises and Fixed Assets—the net book value of all land, buildings, leasehold improvements, and furniture, fixtures, and equipment used by the institution to conduct its business or held for future expansion. Additionally, this amount shall include any assets related to a capital lease and shall not include other real estate owned.

Tier 1 Capital—as defined in Part 325 of the Federal Deposit Insurance Corporation's Rules and Regulations for banks and savings banks and Part 567 of the Office of Thrift Supervision's Rules and Regulations for savings and loan associations.

Net Worth—as defined in Section 702.2(f) of the National Credit Union Administration's rules and regulations for credit unions.

B. Limitation

1. Without the prior approval of the commissioner, no bank, savings bank, or savings and loan association shall invest more than 50 percent of its Tier 1 capital plus the allowance for loan and lease losses in premises and fixed assets, and no credit union shall invest more than 50 percent of its net worth plus the allowance for loan and lease losses. For new institutions, the limitation shall be 45 percent.

AUTHORITY NOTE: Promulgated in accordance with R. S. 6:121(B)(1), 6:646(A)(1)(a) and 6:822(3)(e).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2480 (November 2004).

Chapter 13. Powers of Homesteads and Building and Loan Associations

§1301. Corporate Title

A. A federal savings association may use the word "bank" in its title since this word is not considered to

misrepresent the nature of this institution or the services it offers. Similarly, R.S. 6:712(A) states that "an association shall not adopt a corporate name which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation." Since savings associations are chartered to conduct the "business of banking," as defined in R.S. 6:2(3), the commissioner deems it necessary and in the best interest of state-chartered associations to grant parity with federal savings associations and allow the inclusion of the word "bank" in their corporate names.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by Office of Governor, Office of Financial Institutions, LR 32:2055 (November 2006).

Chapter 15. Louisiana Trust Company

§1501. General Provisions

A. The Depository Institutions' Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered financial institutions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may submit a request that a reduced fee be charged for the simultaneous filing of similar multiple applications other than de novo applications. This request will not be approved for applications that are not expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121; 6:576; 6:592; and 6:613.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:871 (May 2008).

§1503. Fees and Assessments

A. Pursuant to the authority granted under R.S. 6:121; 6:576; 6:592; and 6:613, the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Trust Company Law, R.S. 6:571 et seq.

Description	Fee
A. Application for a de novo public trust company, or the merger or consolidation of public trust companies.	\$10,000
B. The conversion from a national or federally-chartered trust company to a state-chartered public trust company.	\$1,500
C. Application for a Louisiana trust company to establish a trust office or trust representative office.	Standard Form: \$1,000 Short Form: \$250
D. Application to form a de novo private trust company	\$5,000
E. Application for a conversion or merger of a state-chartered trust company into a federally chartered depository institution or a federal trust company.	\$1,500

Title 10, Part I

Description	Fee
F. Semi-annual assessment for each public trust company domiciled in Louisiana to be assessed no later than June 30th and December 31st.	\$2,500
G. Semi-annual assessment for each private trust company domiciled in Louisiana to be assessed no later than June 30th and December 31st.	\$1,000
H. Examination fee for each trust company domiciled in Louisiana. Fee per examiner.	\$50 per hour
I. Review of a restatement and/or amendment to the Articles of Incorporation of a state-chartered Louisiana trust company.	\$250
J. Application by a state-chartered trust company to establish or acquire a subsidiary.	\$500
K. Annual certification for each private trust company	\$500
L. The conversion from a private trust company to a public trust company.	\$5,000

Description	Fee
M. Examination fee for each out-of-state branch, administrative office, trust production office, or representative office of any trust company domiciled in Louisiana.	Any fees assessed pursuant to this rule plus any amounts assessed by the host state regulator for participating in the examination of the Louisiana entity.
N. Examination fee for each branch, administrative office, or representative office of any out-of-state trust company operating in Louisiana in the absence of a sharing agreement between OFI and the host state that establishes fees for examinations and other administrative cost. This fee shall be billed to the primary regulator of the out-of-state entity being examined, and due upon receipt of the OFI invoice.	\$50/hour per examiner plus the actual expenses incurred by this office to conduct or assist in conducting such examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121; 6:576; 6:592; and 6:613.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:871 (May 2008).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part III. Banking

Chapter 1. General Provisions
(Reserved)

Chapter 3. Powers

Subchapter A. Miscellaneous Lending
Activities

§301. Direct Lease-Financing Transactions

A. Direct lease-financing transactions are valid and proper activities that Louisiana state banks may engage in, in their course of business under the following.

1. A Louisiana state bank may become the owner and lessor of personal and real property upon the specific request of and for the use of a lessee-customer.

2. The leasing agreement is to serve as the functional equivalent of an extension of credit to the lessee while preserving to the banks such lessor's rights as are contained in the lease.

3. The lease must provide for definite monthly payments, the total of which, together with a reasonable "residual," will return to the lessor bank its full investment in the property, its cost of financing and a reasonable profit.

4. The lease must be on a nonoperating basis whereby the lessee assumes all expenses of maintaining the property.

5. The term of the lease shall in no event exceed 10 years.

6. The total investment by a bank for the benefit of any customer engaged in a lease-financing transaction shall at no time exceed 10 percent of the capital and surplus of such bank.

7. The total investment by a bank in leasing shall not exceed 3 percent of total assets.

8. The commissioner may at any time inspect and review any and all lease-financing transactions engaged in by state banks in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 3:475 (December 1977).

§303. Banker's Acceptances

A. A state bank may participate in total eligible bankers' acceptances to any one bank in an amount not to exceed 200 per centum of the paid-up and unimpaired capital stock and

surplus of the purchasing bank. Eligible acceptances shall be those defined in Title 12 of the United States Code, Sections 372 and 373. A state bank may participate in total ineligible bankers' acceptances subject to the legal loan limits prescribed by R.S. 6:259.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B) and R.S. 6:259.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 9:314 (May 1983).

§305. Loans Secured by Bank or Bank Holding
Company Stock

A. Definitions

Bank—Louisiana state-chartered banks and state-chartered savings banks.

Commissioner—the Commissioner of Financial Institutions.

Executive Officer—an employee who participates or has authority to participate in major policy-making functions of the bank but does not include a director who is not also employed as an officer of the bank.

Holding Company—any company that directly or indirectly controls a bank.

B. General Provisions

1. If holding company stock is used as collateral, provisions of Section 23A of the Federal Reserve Act may apply. The bank should review this Section of the law and ensure compliance with its provisions.

2. The total dollar volume of all loans secured by own bank or holding company stock (hereinafter collectively referred to as "stock"), when aggregated with the total dollar amount of stock acquired for debts previously contracted, shall not exceed 10 percent of the bank's Tier 1 leverage capital. For the purposes of this calculation, any stock held as a result of debts previously contracted shall be valued at fair market value. For a loan which is partially secured by such stock, the amount of the loan to be included in this calculation shall be the loan amount less the collateral value of the nonstock collateral.

3. The bank shall maintain a list of all loans which are secured by its stock. The list shall, at a minimum, contain the borrower's name, the account number of the loan, the original amount of the loan and the certificate number(s) of the shares pledged as collateral.

4. Any loan made to a director or executive officer under the provisions of this rule must be fully disclosed to the bank's board of directors and approved by a majority of

the directors in advance, with the interested party not present or participating in the discussion or approval process. Loans made to directors and executive officers under provisions of this rule must be made on substantially the same terms, including interest rates and collateral margins, as those prevailing at the time for comparable transactions by the bank with other persons who are not employed by or associated with the bank. Loans made to directors and executive officers for the purpose of disposition of stock acquired for debts previously contracted must have an adequate, well supported assessment of the stock value documented within the file.

5. Loans secured by a bank's stock made prior to the effective date of R.S. 6:416(A), as amended by Act Number 371 of 1991, effective July 6, 1991, shall not be subject to the requirements of this rule provided:

- a. there have been no changes in terms of the loan;
- b. no additional funds have been advanced;
- c. subsequent renewals were made with full board approval and are fully documented in the board's meeting minutes; and
- d. the loan is amortized over a reasonable period.

C. Regulation. A bank may have loans secured by its own stock under any of the following circumstances.

1. The stock is taken as additional collateral on an existing credit in order to minimize potential loss exposure to the bank, provided all of the following conditions are met.

- a. The original terms of the loan and its initial collateral margin were consistent with the bank's lending policy.
- b. The bank can demonstrate that a loss is probable because the borrower no longer has the ability to perform or collateral protection is inadequate or may soon become inadequate.
- c. The taking of the stock as collateral is not used as a means of circumventing other provisions of this rule.

2. The loan is made to facilitate the disposition of stock acquired through debts previously contracted, provided there is no significant deviation from the bank's lending policy with regard to amortization and borrower credit worthiness.

3. The stock of the bank or its holding company is publicly traded by a nationally recognized stock exchange.

D. Other

1. Any exception and/or waiver of any provision of this rule requires the written approval of the commissioner.

2. This rule shall be effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:416(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1219 (November 1995).

§307. Agreement Corporations

A. Activities engaged in by a corporation ("agreement corporation") (under an agreement with the Board of Governors of the Federal Reserve System (the "Federal Reserve"), including an agreement under Section 25 of the Federal Reserve Act (12 U.S.C. §§601-604(a)), pursuant to which agreement such corporation's activities are limited to those which may be performed by a corporation ("edge corporation") organized under Section 25(a) of such act (12 U.S.C. §§611-613), shall be deemed not to constitute a banking business and an agreement corporation engaging in such activities shall be deemed not to be a bank, so long as its activities are at all times subject to regulation by the Federal Reserve and limited to those activities which may be performed in accordance with any regulations issued by or agreements with the Federal Reserve applicable to such agreement corporation. The Commissioner of Financial Institutions may, however, visit and examine an agreement corporation engaging in such activities in Louisiana whenever in his judgment an examination of its affairs is necessary or expedient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:4 (January 1984).

Subchapter B. Legal Lending Limit Exception—Real Estate Financing

§311. Authority and Purpose

A. This regulation is issued pursuant to the authority provided by §415(7) of Title 6 of the Louisiana Revised Statutes (R.S.).

B. It is the purpose of this regulation to provide a method by which a state bank may exceed lending limit restrictions, imposed by R.S. 6:415(A), when financing the sale of other real estate.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:36 (January 1993).

§313. Definitions

A. For purposes of these regulations, the following terms shall have these meanings.

Commissioner—the Commissioner of Financial Institutions.

Directors, Executive Officers, and Principal Shareholders of the Originating Bank—persons so defined under the Federal Reserve Board's Regulation O, Title 12, *Code of Federal Regulations*, Section 215.2, and shall apply with respect to every director, executive officer, and principal shareholder of a non-member bank in the same manner and to the same extent as if the non-member bank were a member bank.

Lending Limit(s)—lending restrictions imposed by R.S. 6:415(A).

Other Real Estate—an identified parcel or tract of land with or without improvements, and including easements, rights of way, undivided or future interests, and any accessory rights or interests involving the associated parcel or tract of land. *Other real estate* shall include property acquired in accordance with R.S. 6:243(A).

State Bank or Bank—for purposes of this regulation *state bank* or *bank* means any corporation organized under the provisions of Chapter 3 of R.S. Title 6, as a state commercial bank.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:36 (January 1993).

§315. Regulation

A. Any state bank may provide financing to facilitate the sale of other real estate, in excess of lending limits as established in R.S. 6:415(A), provided prior written approval of the commissioner has been obtained and, subject to compliance with provisions of this regulation, the extension of credit will be in accordance with all other applicable state or federal laws.

B. Submission of requests for the commissioner's approval must be in writing. Requests must have the prior approval of, and be detailed in the minutes of a meeting held by, the bank's board of directors. Approved transactions shall apply only to purchase money mortgages taken by a state bank in consideration for the sale of other real estate owned by the bank.

C. Approval of requests will be based on all relevant factors surrounding individual transactions; however, the following shall be required and will receive consideration.

1. A demonstration by the requesting bank that attempts to participate the proposed loan portion that is in excess of the bank's current lending limit have proven unsuccessful.

2. Copies of the original record of acquisition must be given. Should acquisition of other real estate have originated from a partnership or corporation, the state bank shall provide the names of the partnership or corporation principals.

3. Proposed transactions must be accompanied by documentation, which shall include accounting entries, indicating that the accounting treatment to be employed has been reviewed and approved by a certified public accountant for compliance with generally accepted accounting principles.

4. Other real estate to be used as supporting collateral for proposed transactions should be appraised, and copies of current appraisals (less than one year old) shall be submitted with each request. The buyer's anticipated use of the property must be indicated.

5. Before approval by the bank's directors, the bank shall have performed an appropriate credit analysis which shall indicate the potential borrower's ability to repay the extension of credit. A copy of the analysis shall be provided with each request, along with the bank's stated justification for engaging in the proposed transaction. The analysis must include a written summary of findings and disclose the names and financial information of the borrower(s) and any guarantor or endorser, as well as the terms of the proposed transaction. Directors, executive officers, and principal shareholders of the originating bank, and of other corporations, partnerships, associations, joint ventures, or other unincorporated entities, having related interests in the proposed extension of credit must be revealed. Previous business relationships with the potential borrower shall be disclosed, with a summary of the borrower's current and related debts, if any, given. All prior losses, renegotiations, or delinquencies related to the potential borrower must be shown.

6. The structure of any proposed transaction shall conform with prudent underwriting standards. Justification of all special terms and lending policy exceptions must be disclosed.

7. If other real estate proposed for sale has been marketed, the bank should provide information detailing how, and for how long, the property has been offered, including original and subsequent asking prices. Additional information should be given listing all offers received and details of subsequent counter-offers made. The bank must disclose if potential buyers have withdrawn offers. If offers were rejected by the bank, the bank shall provide its reasons for the rejection.

8. Changes in the book value and a history of the bank's expenses and income associated with the other real estate identified for sale must be provided.

9. Each bank shall be subject to requests for additional information, as needed, in order to facilitate an appropriate review of all transactions presented for the commissioner's approval.

D. Each request shall be accompanied by a nonrefundable fee to be set by the commissioner.

E. This regulation shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:36 (January 1993).

Subchapter C. Exchange of Other Real Estate

§321. Authority and Purpose

A. This regulation is issued pursuant to the authority provided by R.S. 6:243(B)(5).

B. It is the purpose of this regulation to provide for those exceptions where a bank may exchange any property, lawfully acquired as provided by R.S. 6:243 A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:243(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:35 (January 1993).

§323. Definitions

A. For purposes of these regulations, the following terms shall have these meanings.

Commissioner—the Commissioner of Financial Institutions.

Current Appraisal—an appraisal which has been obtained within 12 months prior to the exchange, provided there has been no significant change to the property.

Exchanged Property—property lawfully acquired by a bank pursuant to R.S. 6:243(A) which is exchanged for property in compliance with this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:243(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:35 (January 1993).

§325. Regulation

A. A bank, solely for the purpose of minimizing potential loss, may exchange property which is complex (including an undivided interest), difficult and/or uneconomical to maintain for property which is less complex, less difficult and/or more economical to maintain. This would include residential property exchanged for residential property of a lesser value.

1. Any such exchange must have prior approval of the bank's board of directors. The approval must be documented in the board minutes and contain the rationale to support the exchange.

2. The exchange must be supported by current appraisals of both the exchanged property and the property acquired in the exchange. The appraisals must be performed by an independent appraiser and contain sufficient documentation to support the value derived.

3. The bank must maintain on file for examiner review, supporting documentation of any exchange made since the previous examination, including the bank's marketing efforts to dispose of the previously held and exchanged parcel of real estate.

4. The 10-year divestiture period as required by R.S. 6:243(B)(1) shall begin on the original date of acquisition of the exchanged property, not the date of exchange. As allowed by R.S. 6:243(B)(2), a bank may choose to reduce the value of immovable property by at least one-tenth of the original book value each year that the property is held. If the bank has chosen this option for the exchanged property, the property acquired from the exchange must be reduced by at least an equal rate each year to insure a zero balance at the end of the divestiture period.

5. The book value of the property acquired in the exchange cannot exceed either the book value of the exchanged property or appraised value, whichever is less.

B. In an attempt to achieve its strategic plan, a bank may exchange property held in another real estate account for property to be used as premises or for future expansion. However, the approval of the commissioner must be obtained prior to the exchange of the properties. Also, the exchange must comply with the provisions of §325.A.1 and 2.

C. All requests for prior written approval of the commissioner must contain sufficient documentation to support the bank's request. Transactions requiring prior written approval of the commissioner include:

1. transactions which directly or indirectly involve insiders, affiliates, or their related interests, as defined by Federal Reserve Board's Regulation O and Section 23 A of the Federal Reserve Act. A request for approval must include documentation to show the transaction is an arms-length transaction and will not violate state or federal laws, rules or regulations;

2. transactions which include any additional cash investment made by the bank to facilitate the exchange;

3. transactions which include the exchange of other real estate for property which is not in the bank's normal trade area, as defined by the bank's board of directors policy.

D. Property exchanged in violation of this rule, in addition to any other actions authorized by law or regulation, may result in the following:

1. a requirement that the bank remove the exchanged real estate from its books and the citation of violation of R.S. 6:243 until such time as the bank disposes of the exchanged real estate;

2. a requirement that the directors directly responsible for the exchange in violation of this rule be required to purchase or otherwise dispose of the property and be responsible for any loss sustained by the bank.

E. The commissioner has the authority to either waive or grant an exception to any provision of this rule provided a request is first made in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:243(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:35 (January 1993), amended LR 21:675 (July 1995).

Subchapter D. Legal Lending Limit Exception—Acquisition of Loan Pools

§331. Authority and Purpose

A. This rule provides an exception to a state bank's legal lending limit based on the treatment of a loan pool acquisition under R.S. 6:415(A)(6).

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:37 (January 1993).

§333. Definitions

Creditworthy—meeting established standards which are positive assessments of a borrower's ability to repay debt.

Executive Officer—an officer of the bank selected by the board of directors at the level of vice president or above possessing sufficient technical knowledge of and experience in the lending and collection functions of the bank.

Legal Lending Limit—the level of both direct and indirect extensions of credit that a bank may have outstanding at one time to any one individual borrower as established under R.S. 6:415.

Loan Pool—a group of individual loans that are packaged by the present owner for sale to another party.

Originating Officer—officer of the bank who initiates and/or is involved in negotiation for the bank's consideration of the purchase of a pool of loans.

Qualified Third Party—a person contracted by the bank who has prior experience in and technical knowledge of the lending and collection functions of a bank and/or sufficient prior experience in credit analysis.

Recourse—the added protection that if a certain event or chain of events occurs, the seller will buy back or reimburse purchaser for loss sustained on those assets previously sold. May include a guaranty and/or reserve placed with bank by the seller.

Representative Portion—a sampling of loans included in the pool sufficient in dollar volume and/or number to reasonably assure the bank that the total package complies with all of the bank's internal underwriting guidelines.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:37 (January 1993).

§335. Review of Representative Portion

A. Designation of Person. The board of directors shall adopt a resolution in writing designating an executive officer of the bank or qualified third party to conduct a review of a representative portion of the pool of loans to determine that the individual borrowers appear creditworthy. If the board designates an officer of the bank to conduct the review, the person designated shall be someone other than the originating officer.

B. Documentation of Sample. The person designated by the board shall document the method by which the bank selected a representative portion of loans from the pool for review. The board shall document both its review of the method chosen and its reasons for acceptance of the method of selection.

C. Board Discussion of Initial Review. Prior to purchase, the board should discuss all aspects of the purchase, including the initial review of sampling of loans within the

pool, agreements to be entered into between the bank and the seller, and any additional information that is necessary for the board to make a fully informed decision. This discussion shall be fully noted within the board minutes.

D. Loan Review

1. On each loan selected for review, the following information should be documented:

- a. date of review;
- b. borrower's name;
- c. original loan amount;
- d. present balance of the loan;
- e. purpose of the loan;
- f. description of collateral pledged, if applicable;
- g. collateral value and how obtained;
- h. holder of any prior liens and the balance of same, if applicable;
- i. payment history of the loan, if applicable;
- j. credit history of borrower;
- k. any documentation exceptions;

1. any other information deemed necessary for the proper analysis of the credit.

2. Documentation exceptions noted during the review process shall be corrected prior to the purchase. The bank shall conduct its review of the individual loans for compliance with its own underwriting standards established within its loan policy and state its reasons for acceptance of those loans which do not meet these standards.

E. Compliance with Applicable Laws. The bank shall be responsible for reviewing appraisals to determine their compliance with state and federal statutes addressing appraisal standards for loans which are above a certain level established within these statutes and are secured by real estate. The bank shall maintain a copy of all such appraisals which document its review for compliance. On those applicable loans for which the appraisal does not meet the established standards, the bank shall take all steps necessary to bring it into compliance. In addition, the bank shall also be responsible for taking reasonable steps to ensure that all other applicable laws and regulations are being followed.

F. Agreements between Seller and Bank. Any agreements to be entered into between the bank and the seller of the pool shall be reviewed by the bank's legal counsel to ensure that no unreasonable restrictions or undue risk is placed upon the bank. The agreement shall address the seller's liability for reimbursement to the bank in the event that records evidencing the bank's ownership rights are lost or misplaced.

G. Safekeeping of Records. Once the decision to purchase the loan pool is made, the bank shall take all steps necessary to ensure that notes for individual loans contained in the pool are properly identified as sold to the bank.

H. Retention of Initial Review. If the board approves and the bank purchases the pool, it shall maintain the initial review of the selected representative portion of the pool for inspection at subsequent regulatory examinations.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:37 (January 1993).

§337. Pool Treated as Individual Loans for Lending Limit Purposes

A.1. For treatment of the pool as individual loans for legal lending limit calculations, the bank must maintain an affidavit signed by the person or persons conducting the review and countersigned by the board of directors stating that:

a. a representative portion of the individual loans contained within the pool were reviewed to determine that the individual borrowers appear creditworthy; and

b. the bank is relying primarily on the individual maker's responsibility for payment of the loans.

2. Without the above affidavit, the pool will be deemed a direct borrowing of the seller for purposes of determining compliance with the bank's legal lending limit.

B. The bank shall maintain a listing of all loans included in the pool at the time of purchase.

C. On all payments received, the bank shall procure a breakdown of such payments by borrower name and the amount of payment applicable to principal and interest.

D. Delinquent Loans

1. The bank shall obtain a monthly listing of all loans in which payments are overdue and shall report those loans overdue 30 days or more in its overdue loan calculations.

2. The bank shall obtain a monthly listing of all loans contractually requiring monthly payments of principal and interest which are currently paying interest only. These loans should also be reflected in the bank's overdue calculations based on their amortization schedule.

3. The bank shall obtain a quarterly status report, corresponding with call report dates, on all loans in process of foreclosure along with collection efforts being made on those loans which are delinquent but not in the process of foreclosure.

4. The bank shall obtain a quarterly status report, corresponding with call report dates, on any collateral seized through foreclosure.

E. Loan Loss Reserve Analysis. Although the pool may have a partial recourse endorsement and/or guarantee of the seller, the bank shall assess risk and provide for such risk on an individual loan basis in its loan loss reserve analysis.

F. Subsequent Reviews. At least semi-annually, the bank shall conduct subsequent reviews of a portion of the loans within the pool to ensure that all information being provided

by the servicer of the pool is substantially correct. Subsequent reviews should also be conducted by someone other than the originating officer. Documentation of subsequent reviews should be maintained by the bank for review at subsequent examinations.

G. Reporting of Pools. These pools shall be reported in accordance with the Federal Financial Institutions Examinations Council's Instructions for Consolidated Reports of Condition and Income (Call Report Instructions). The treatment of a pool as individual loans is only for purposes of assessing the bank's compliance with its legal lending limit.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:38 (January 1993).

§339. Other

A. Although the pool may be considered as individual loans for legal lending limit purposes, the bank shall also review the financial condition of the seller on a regular basis, including condition at purchase date, on those agreements where full or partial recourse exists.

B. The bank shall take steps to ensure its compliance with the above criteria and maintain separately the necessary documentation of such for each pool being considered for purchase.

C. Effective Date. This rule shall become effective upon publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with Act 1129 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:38 (January 1993).

Subchapter E. Sale of Annuities

§341. Definitions

A. The commissioner has determined that the following terms are not defined under the Louisiana Banking Code, R.S. 6:1 et seq., and adopts the following definitions for all purposes set forth therein.

Fixed Annuity—a form of financial investment instrument whose primary function is to pay periodically during the life of the annuitant or during a term fixed by contract, but not upon the occurrence of a loss on a specified subject by specified perils.

Insurance—a contract, the primary purpose of which is for a stipulated consideration one party undertakes to compensate the other for loss on a specified subject by specified perils.

Variable Annuity—a form of financial investment instrument whose primary function is to pay periodically during the life of the annuitant or during a term fixed by contract (but not upon the occurrence of a loss on a specified subject by specified perils) an amount based upon the value of the securities portfolios in which an investment is made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, 6:242 and 6:5.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:611 (May 1993).

§343. General Provisions

A. Upon approval of the Commissioner of Financial Institutions, a state-chartered bank and/or its subsidiary and employees may engage in the sale of fixed or variable annuities and earn commissions thereon.

B. A state-chartered bank and/or its subsidiary and employees shall obtain any license(s) as may be required by and available from the Louisiana Department of Insurance before engaging in the sale of fixed or variable annuities.

C. In order to obtain approval, a state-chartered bank that desires to engage in the sale of fixed or variable annuities pursuant to this rule shall submit a written proposal covering the following items to the Commissioner of Financial Institutions:

1. a description of the type or types of annuities to be sold;
2. the name of each company whose annuities are to be sold and its most recent rating compiled by at least two nationally recognized rating services;
3. the name of each employee engaging in the sale of annuities;
4. a copy of the bank's policy with respect to the sale of annuities which shall include the following:
 - a. a description of the bank's program for servicing its customers who purchase annuities;
 - b. a description of the bank's marketing program;
 - c. copies of all annuity contracts and other documents which will be executed by the parties;
 - d. a statement that there will be no tying arrangements between the sale of annuities and other bank products.

D. A state-chartered bank that has been approved to engage in the sale of fixed or variable annuities must disclose in all advertising for the solicitation of such annuities and must advise any person seeking to purchase an annuity that the annuity is not a deposit of the bank and that the annuity is not insured by the Federal Deposit Insurance Corporation or any other federal or state agency. The bank must also have any purchaser of an annuity sign a disclosure statement prior to the time of purchase in the form substantially as follows:

ANNUITIES DISCLOSURE FORM

It is important to us that you understand that an annuity is different from other investments you may purchase from ___ Bank. Please consider the following factors when purchasing an annuity.

*The annuity product is an obligation of the _____ insurance company only. It is not an obligation of _____ Bank or its subsidiaries or affiliated companies.

*The annuity product is not insured by the Federal Deposit Insurance Corporation ("FDIC") or any other federal or state agency.

*Early withdrawals from your annuity may be subject to surrender charges, taxation as ordinary income, and an additional nondeductible excise tax.

You are encouraged to consult with a tax advisor familiar with your individual situation and needs in order to determine the federal, state, local and other tax consequences associated with annuities.

By signing below, you certify that you have read and understand the information contained in this disclosure.

Date: _____
Purchaser's Signature _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, 6:242 and 6:5.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:612 (May 1993).

Subchapter F. Sale of Insurance

§351. Bank Insurance Activities

A. As used in this regulation:

Affiliate—a corporation which owns or controls a bank, and any other corporation which is owned or controlled by the corporation which owns or controls the bank, including but not limited to entities defined as affiliates under the provisions of 12 U.S.C.A. §221a.(b), and 12 U.S.C.A. §371c.(b), as those provisions from time to time may be amended or revised.

Bank—any state bank and, to the extent applicable, any national bank. When the context so requires, the term *bank* shall mean an ECB as defined herein.

Commissioner—the Commissioner of the Louisiana Office of Financial Institutions.

Department—the Louisiana Department of Insurance.

Eligible Community—any community the population of which, as determined by the last decennial census, does not exceed 5,000.

Eligible Community Bank (ECB)—any state bank with an office located in an eligible community. As used herein, unless the context indicates otherwise, the term shall include any bank subsidiary, affiliate, or any officer, director or employee of the bank, bank subsidiary, or affiliate.

Insurance—a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term shall include any kind of insurance recognized under the laws of Louisiana, but shall not include the following:

- a. annuities, including but not limited to annuities governed by the provisions of §§341 and 343;
- b. any credit insurance which banks are authorized to sell pursuant to the provisions of the Louisiana Banking Law R.S. 6:1 et seq., the Louisiana Consumer Credit Law, R.S. 9:3510 et seq., or the Motor Vehicle Sales Finance Act, R.S. 6:951 et seq.; or

c. any insurance product sold by a bank which was engaged as a general insurance agent or broker on January 1, 1984, and continues to be so engaged, when sold by such bank.

Insurance Agent—a person appointed in writing by an insurer to submit applications for a policy of insurance or to negotiate a policy of insurance on its behalf. As used herein, the term shall also include insurance brokers, surplus lines insurance brokers, and insurance solicitors.

Insurer—any domestic, foreign, or alien insurer possessing a certificate of authority to transact any fire, life, or other insurance business in Louisiana.

Location or Located—in reference to a state bank means any place in Louisiana in which the state bank maintains an office at which money is lent, or deposits received, or checks paid.

Office of an ECB—the main office, or any branch, loan production office, or other manned physical facility of the bank or of any subsidiary or affiliate thereof.

Person—a natural or juridical person.

Subsidiary—a corporation owned or controlled by a bank, including but not limited to a service corporation governed by the provisions of LAC 10:I.501-509.

B. Authority

1. An ECB shall have and possess the rights, powers, privileges and immunities of a national bank or national bank branch domiciled in this state to engage in insurance activities.

2. An ECB may act as agent for any domestic, foreign, or alien insurer approved by the department to transact business in Louisiana.

3. An ECB may solicit and sell any insurance, may collect premiums on policies issued, and may receive such fees and commissions from the sale of such insurance as may be agreed upon between the bank and the insurer for which the bank is acting as agent.

4. An ECB may engage in the insurance activities covered by this rule directly, through its own officers, directors or employees, or through the officers, directors or employees of its subsidiary, or affiliate.

5. An ECB may also engage in the insurance activities covered by this rule indirectly by contracting with a third party, through officers, directors, or employees of a third party acting on behalf of the bank, or through persons acting as employee of both the ECB and the third party. The agreement between the bank and the third party shall be in writing and approved by the bank's board of directors.

6. The persons who act as insurance agents on behalf of the ECB shall operate from an office located within an eligible community as listed on the agents' license applications submitted to the department. The ECB's insurance agents shall have the same authority to solicit, negotiate, and sell insurance subject to the same restrictions applicable to Louisiana licensed insurance agents in general engaged in the sale of similar kinds of insurance.

C. Licensing

1. An ECB wishing to engage in insurance sales activities, or any third party wishing to engage in insurance sales activities on behalf of the ECB, shall obtain a license from the department to act as an insurance agent, insurance broker, surplus lines insurance broker or insurance solicitor.

2. The person applying on behalf of the ECB for a license as an insurance agent shall comply with the department's requirements, including continuing education requirements, applicable to insurance agents in general engaged in the sale of similar kinds of insurance.

3. Insurance agent services shall be provided only by licensed insurance agents. Unlicensed employees of the ECB or its subsidiary may provide clerical assistance in connection with the solicitation, negotiation, and sale of insurance, may collect premiums when so authorized by a licensed agent, and may refer customers to the ECB's licensed insurance agents.

4. As part of his regular examination of the ECB and of its subsidiary, the commissioner shall determine whether all persons engaged in insurance sales activities as insurance agents have been licensed by the department. If any person has failed to comply with the department's nondiscriminatory licensing requirements applicable to all insurance agents selling the same kinds of insurance, the commissioner may institute any enforcement action authorized by the Louisiana Banking Law in addition to referring the violations to the department, pursuant to the authority of R.S. 6:103 B(8)(b).

D. Disposition of Income from Sale of Insurance

1. Pursuant to the requirements of R.S. 22:1113(D), no unlicensed employee, officer, or director of an ECB may receive, directly or indirectly, commissions, brokerage, or other valuable consideration, for services as an insurance agent performed in connection with the sale of insurance authorized herein.

2. Compensation based upon commissions is a common method of selling insurance, and can increase customer awareness of the availability of insurance products offered by the ECB.

3. Compensation programs for ECB personnel engaged in insurance sales activities must be structured in such a way as to assist the customer in making informed product selections.

4. The ECB should receive compensation in recognition of the role played by its personnel, premises, and good will in connection with the ECB's insurance sales activities.

E. Consumer Protection

1. The way in which insurance products are sold within a bank can assist customers to distinguish between deposits that are insured or are obligations of the bank and uninsured products offered by the bank or a third party.

2. The commissioner shall review measures taken by an ECB with regard to the setting and circumstances of its insurance sales activities designed to minimize potential customer confusion over the nature of the product sold. Sales of insurance should take place in a location that is distinct from the teller window setting in which retail deposits are taken.

3. The ECB should give the customer the disclosures provided in Clause E.4.a.iv when it first informs the customer that required insurance is available from the ECB if:

- a. insurance is required in order to obtain a loan; or
- b. loan approval is contingent on the customer obtaining acceptable insurance; or

c. the customer obtained insurance required in connection with the loan from another insurance provider and the ECB is soliciting the sale of insurance to replace the customer's existing coverage.

4.a. At the time a written application for insurance is made, the insurance agent shall obtain a separate written statement, signed by the customer, acknowledging that the customer has received and understands the following disclosures:

- i. the insurance policy is not insured by the FDIC;
- ii. the insurance policy is not a deposit or other obligation of, or guaranteed by, the bank;
- iii. the bank does not guarantee performance by the insurer issuing the policy;
- iv. the customer is not required to purchase insurance through the bank, and the customer's choice of another insurance provider will not affect the bank's credit decision or credit terms in any way.

b. These disclosures should be conspicuous and presented in a clear and concise manner.

5. All advertisements, sales literature, and other materials which relate to the marketing of insurance sold through the ECB shall clearly state that the insurance is not insured by a federal agency or guaranteed by the bank, shall indicate whether the insurance agent is employed by the bank or by a third party, and shall indicate that an insurance company, not the bank, is underwriting the insurance product.

6. Any ECB engaging in the insurance agency activities described herein shall establish an orderly process for responding to consumer complaints arising from the sales of insurance. Whether the ECB engages in insurance activities through its own employees, employees of its subsidiary, or those of a third party, the ECB shall maintain a file describing complaints lodged against the ECB, and steps taken by the ECB to resolve the complaints.

7.a. An ECB shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer shall obtain insurance from the bank or its subsidiary.

b. The following activities shall not violate this anti-tying provision.

i. A bank may cross-sell or cross-market products or services. A bank cross-sells when it informs a customer that insurance is available from the bank, its subsidiary, or through a third party.

ii. A bank which requires a customer to obtain insurance coverage in connection with a loan or other extension of credit may provide the insurance if the bank discloses in writing that coverage may be obtained from a person of the customer's choice, and the transaction is not conditioned upon the customer obtaining insurance from the bank.

8. An ECB shall establish compliance programs to promote compliance with this provision.

9. Bank activities which conform to the requirements of 12 U.S.C. §1972(1), or 12 CFR §225.7, as these provisions from time to time may be amended or revised, shall be deemed to satisfy the requirements of this Subsection, and any state statutes applicable to this aspect of bank insurance sales.

F. Disclosure of Financial Records. In connection with the insurance sales activities authorized herein, an ECB may disclose a customer's records to any person as authorized in R.S. 6:333.

G. Enforcement by Commissioner

1. The commissioner is committed to ensuring that ECBs conduct their insurance sales activities in a safe and sound manner. Adequate consumer protections, qualified employees, and responsible sales practices are essential for this result.

2. The commissioner may enforce compliance with the provisions of this rule by using any regulatory, investigative, examination or enforcement authority given the Louisiana Office of Financial Institutions by the provisions of the Louisiana Banking Law, including, but not limited to, R.S. 6:121 et seq.

3. Nothing contained herein shall limit the authority or responsibility of the department to regulate insurance in conformity with all applicable laws and regulations.

H. Continuing Parity

1. The provisions of this rule are to be construed liberally in order to promote and maintain competitive equality between state and national banks, preserve the dual banking system, and serve the public interest in the business of banking.

2. In addition to the authority conferred by this rule, an ECB shall have and possess, and may exercise, such rights, powers, privileges, and immunities of a national bank or national bank branch engaged in insurance sales activities in the state pursuant to the authority of 12 U.S.C. §92 as interpreted and applied by the Comptroller of the Currency, upon complying with the requirements of R.S. 6:242(C)(1). Upon receipt of the ECB's Notice of Intent, the commissioner shall transmit a copy thereof to the department.

I. Insurance Sales Exempted from Rule

1. The provisions of this Part shall be subject to the provisions of R.S. 6:242(A)(6) relative to banks which were engaged as general insurance agents or brokers on January 1, 1984.

2. The provisions of this Part shall not apply to any insurance sales activities in which banks were authorized to engage prior to the adoption of this rule, including, but not limited to, the sale of credit insurance and the sale of annuities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121 and 6:242 A(6)(a).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:47 (January 1997).

Chapter 5. Subsidiary Mortgage Corporation

§501. General; Considerations for Approval

A. A state bank or a bank holding company may establish or acquire a subsidiary mortgage corporation upon the prior written approval of the Commissioner of Financial Institutions and subject to the provisions of this rule. The ownership of a subsidiary mortgage corporation shall be deemed to be incidental to the exercise of powers enumerated in R.S. 6:241 and 242. Each location of the subsidiary mortgage corporation must obtain the prior written approval of the commissioner prior to its establishment.

B. To determine whether or not he shall approve the formation or acquisition of a subsidiary mortgage corporation, or the opening of an additional location, the commissioner shall consider the following:

1. the financial condition of the parent state bank or the state bank subsidiary of the parent holding company;
2. the economic impact on the parent of the operation of the proposed subsidiary mortgage corporation;
3. the proposed method of funding the operations of the subsidiary mortgage corporation;
4. the needs of the community to be served by the subsidiary mortgage corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237 and R.S. 6:322.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 7:484 (October 1981), amended LR 13:739 (December 1987).

§503. Powers

A. A subsidiary mortgage corporation may originate first mortgage loans, make first mortgage loans, service first mortgage loans, act as an agent in the warehousing and servicing of first mortgage loans, and, in general, engage in activities permitted mortgage company subsidiaries of national banks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 13:740 (December 1987).

§505. Regulation by Commissioner

A. Each subsidiary mortgage corporation shall be subject to examination by the commissioner. If upon examination, the commissioner shall ascertain that the subsidiary is created or operated in violation of law or regulation, or that the manner of operation is detrimental to the business of the parent bank or its depositors, he may order the subsidiary to cease and desist from such violation or practice. In addition, if the mortgage corporation is a subsidiary of a state bank or a holding company owning a state bank, he may order the bank or holding company to divest itself of the subsidiary mortgage corporation. If the mortgage corporation is a subsidiary of a holding company that owns only national banks, he shall report his findings to the comptroller of the currency and the appropriate federal reserve bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 7:484 (October 1981), amended LR 13:739 (December 1987).

§507. Separate Records and Funds

A. The books and records of the mortgage corporation subsidiary shall be kept separate and distinct from those of the parent or other subsidiaries and funds of the parent or other subsidiaries shall not be commingled with those of the subsidiary mortgage corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 13:740 (December 1987).

§509. Prohibited Stock Ownership

A. Under no circumstance shall the parent of the subsidiary mortgage corporation own any assessable stock of the subsidiary mortgage corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 7:484 (October 1981), amended LR 13:740 (December 1987).

§511. Transactions between Parent and Subsidiary

A. Transactions between a parent state bank or subsidiary state bank of a parent bank holding company and the subsidiary mortgage corporation shall, with respect to the state bank, be governed by all laws and regulations applicable to transactions between the state bank and any other borrower, customer or depositor of the state bank, including but not limited to provisions of law governing the state bank's lending limit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 13:740 (December 1987).

§513. Branching

A. An approved office of the subsidiary mortgage corporation shall not be considered a branch of a parent bank if no banking functions other than those listed in §503 are performed by the subsidiary mortgage corporation at that location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 7:484 (October 1981), amended LR 13:740 (December 1987).

§515. Automated Teller Machines Prohibited

A. No automated teller machine or similar electronic financial terminal whether owned by a parent bank or any other entity shall be located on the premises of any office of the subsidiary mortgage corporation. This prohibition shall not apply if the subsidiary mortgage corporation is located on the premises of a duly approved branch or main office of a parent bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 13:740 (December 1987).

§517. Name

A. The name of the subsidiary mortgage corporation shall not contain the word "bank" nor shall the subsidiary's operations, logo, advertising or marketing suggest that the subsidiary is an agent of the parent bank or bank holding company or that the parent is responsible for the liabilities of the subsidiary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:237(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 7:484 (October 1981), amended LR 13:740 (December 1987).

Chapter 7. Directors' Examination Requirements

§701. General Provisions

A. Introduction. R.S. 6:290, 6:793, and 6:1310, amended by Act Number 530 of the 2001 Legislative Session, requires at least once in each year every state bank, savings bank, and savings and loan association (each hereafter referred to as "institution") to cause its books, records, and accounts to be examined in accordance with a regulation promulgated by the Commissioner of the Office of Financial Institutions. This examination is called the annual directors' examination and constitutes the institution's annual external audit program. The annual external audit program must be conducted in accordance with the requirements prescribed in this rule.

B. Board of Directors Responsibilities. The board of directors of an institution is responsible for determining how to best obtain reasonable assurance that the institution's financial statements and regulatory reports are prepared in accordance with appropriate accounting and regulatory standards. In this regard, the board is also responsible for ensuring that its annual external auditing program is appropriate based on the size and complexity of the institution and includes an evaluation of all significant risk. To help ensure the adequacy of internal controls and accuracy of financial reporting, the board of directors is required to establish and elect an audit committee of not less than three members, a majority of which should be outside directors.

C. Audit Committee Responsibilities. The audit committee shall secure and oversee the annual external audit program required by this rule. The committee shall require that a written report be presented to the board of directors and documented in the board minutes.

D. Scope. This rule does not apply to all institutions regulated by the Office of Financial Institutions.

1. Institutions not subject to this rule include the following.

a. Those institutions with total assets of \$500 million or more. These institutions must comply with federal banking law annual external audit requirements, which are more stringent than the annual external audit options provided in this rule.

b. Those institutions that have been insured by the Federal Deposit Insurance Corporation (FDIC) for a period of less than four years. These institutions are required to obtain annual financial audits performed by an independent public accountant.

c. Those institutions that are under some type of enforcement action that requires an annual external audit program more stringent than the policy statement options.

2. Institutions subject to this rule include the following (must meet all three criteria):

a. those institutions with less than \$500 million in total assets at the beginning of their fiscal year; and

b. which have been insured by the Federal Deposit Insurance Corporation (FDIC) for more than three years; and

c. which are under no contractual or enforcement actions that would require an annual external audit program more stringent than the options contained in Subsection E of this rule.

E. Acceptable Types of Annual External Audit Programs. The types of annual external audit programs included in the Federal Regulatory Agencies' Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations (policy statement) will meet the requirements of this rule. The policy statement provides for the following four types of annual external audit programs:

1. a financial statement audit performed by an independent public accountant;
2. a balance sheet audit performed by an independent public accountant;
3. a report by an independent public accountant on an institution's internal control structure over financial reporting;
4. an agreed-upon procedures or state-required examination report.

F. Auditor Qualifications

1. If an institution's audit committee secures any of the types of annual external audit programs listed in Paragraphs E.1-3, the annual external audit program, as well as reports issued, must be performed by independent public accountants that have experience with financial institution accounting and auditing or similar expertise, are knowledgeable about relevant laws and regulations, and comply with the accounting, auditing, and other professional standards referred to in the Policy Statement.

2. If an audit committee selects the type of annual external audit program listed in Paragraph E.4, the annual external audit program, as well as reports issued, must be performed by either independent public accountants or qualified independent auditors. These individuals must have experience with financial institution accounting and auditing or similar expertise, are knowledgeable about relevant laws and regulations, and comply with the accounting, auditing, and other professional standards established for the professional designations they hold.

G. Annual Reporting Period. The annual external audit program shall cover a maximum of a 12-month period of operations. Each subsequent annual report shall have the same ending period as the prior year report for comparison purposes, unless the institution obtains prior written permission from the commissioner to change its reporting date. The preferable time to schedule the performance of an annual external audit program is as of an institution's fiscal year-end. However, a quarter-end that coincides with a regulatory report date provides similar benefits. Therefore, an institution may choose either alternative as an acceptable reporting period for the annual external audit program, provided that same reporting date is used for future filings.

H. Due Date and Reporting Requirements. Within 120 days after the end of its fiscal year or quarter-end date that coincides with a regulatory report date for which the institution chooses as its annual reporting date, unless the institution obtains prior written permission from the commissioner to extend this date, each institution shall file with the commissioner two copies of the following:

1. the report, including all opinions and footnotes, if applicable, presented in connection with the type of annual external audit program selected by the audit committee and presented to the board of directors;

2. any management letters issued by the individual or firm that conducted the annual external audit services; and
3. management's response to any management letters issued.

I. Holding Company Subsidiaries. If an institution is owned by another entity such as a holding company and the group's consolidated financial statements for the same period are audited, the subsidiary institution is not required to obtain a separate audit of its financial statements provided the audit scope includes substantive testing of the subsidiary's financial records and activities. If the auditing firm considers the subsidiary institution's activities to be immaterial to the financial statements of the consolidated entity, the audit committee of the subsidiary institution shall obtain additional audit coverage that meets one of the four alternative annual external audit programs listed in Subsection E.

J. Due Date and Reporting Requirements for Consolidated Financial Statements. If an institution is included in an audited consolidated financial statement and the audit scope for the consolidated statement meets the requirements of Subsection I, within 120 days after the end of its fiscal year or period for which the consolidated financial statements are presented, unless the institution obtains prior written permission from the commissioner to extend this date, the institution shall submit two copies of the following:

1. the consolidated audited financial statements, which shall include the accountant's report, financial statements, and all footnotes;
2. consolidating worksheets for the balance sheet and statement of income that separately break out all entities within the consolidation on a separate basis;
3. any management letters issued by the individual or firm that conducted the annual external audit services; and
4. management's response to any management letters issued.

K. Multiple Institutions Included in a Consolidated Audited Financial Statement. If more than one institution is included in a consolidated audited financial statement, only two copies of the information listed in Subsection J should be submitted, with a cover letter identifying all institutions covered by the reports submitted. This information must be submitted to the Commissioner of Financial Institutions within 120 days after the end of the fiscal year or period for which the consolidated financial statements are presented, unless the institution obtains prior written permission from the commissioner to extend this date.

L. Requirements for a Written Engagement Letter. The audit committee shall obtain a written engagement letter from an independent accountant or individual performing services, before such services are performed. The engagement letter shall include a description of all services to be performed, as well as any additional contractual conditions agreed to between the institution and the provider of the services.

M. Access to Examination Workpapers

1. Management shall provide the independent public accountant or other individuals that perform the annual external audit program access to all examination reports and written communication between the institution and the federal agencies or state bank commissioner since the last annual external auditing activity.

2. All independent public accountants and independent internal auditors that perform any of the types of annual external audit programs listed in Subsection E shall agree in the engagement letter to grant all authorized state and federal examiners access to all workpapers and other materials pertaining to the institution prepared in the course of performing the annual external audit program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:290, 6:793 and 6:1310.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 16:17 (January 1990), amended by the Office of the Governor, Office of Financial Institutions, LR 28:481 (March 2002).

§702. Definitions

Agreed-Upon Procedures/State Required Examination Report—the fourth type of annual external audit program allowable under the Federal Regulatory Agencies' Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations. If an audit committee chooses this type of annual external audit program, the audit program must be performed in compliance with a policy statement issued by the commissioner.

Annual Directors' Examination—an annual examination of an institution's books, records, and accounts that must be:

1. the responsibility of and performed under the direction of the audit committee of the board of directors;
2. one of the types of audit programs permitted in this rule;
3. performed by individuals that meet the requirements stated in this rule;
4. summarized in a written report that is presented to the board of directors; and
5. submitted to the Commissioner of the Office of Financial Institutions and the FDIC, along with copies of management letters and management's response, within the time frames established in this rule.

Federal Regulatory Agencies—the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). These agencies cooperatively issue interagency policy statements.

Immediate Family Members—an individual's spouse, minor children and any children, including adult children, residing in the individual's home.

Independent Internal Auditor—a qualified internal auditor that is, in fact, independent as defined in the Standards for the Professional Practice of Internal Auditing by the Institute of Internal Auditors and/or the Statements of Principle and Standards for Internal Auditing in the Banking Industry by the Bank Administration Institute.

1. An internal auditor will not be considered independent if, for example:

a. he/she is employed by or accountable to anyone other than the board of directors of the institution or holding company, if applicable;

b. his/her performance is evaluated by, and salary and annual bonus are set by anyone other than the board of directors of the institution, or holding company if applicable;

c. his/her duties consist of non-audit responsibilities within the institution or holding company;

d. he/she has any proprietary interest in any partnership, firm or corporation which controls the institution, directly or indirectly, except that he or she may own and/or have a beneficial interest (including any shares of a retirement and/or incentive plan) of up to a maximum of 1 percent of the total outstanding shares of the institution or holding company which employs the internal auditor;

e. he/she has any loan (including any overdrafts, cash items, unposted items, drawing against uncollected funds, or any other such items) to or from the institution or holding company or any officer, director, or principal stockholder thereof. This latter prescription does not apply to the following loans from a financial institution, if they are free from classification by bank regulatory authorities, and made under normal lending procedures, terms and requirements:

i. automobile loans and leases collateralized by the automobile;

ii. loans secured by the surrender value of an insurance policy;

iii. loans fully collateralized by cash deposits at the same institution;

iv. credit cards and cash advances on checking accounts with an aggregate unpaid balance of \$5,000 or less, provided that these are obtained from a financial institution under its normal lending procedures, terms, and requirements and are at all times kept current as to all terms;

f. he/she is a member of the immediate family of an officer, director, attorney, or employee of the institution or holding company.

2. The aforementioned examples are not to be construed as all-inclusive criteria in judging the independence of an internal auditor, as other conditions may also contribute to the lack of independence. It is the responsibility of the board of directors to determine if there are any unusual relationships or affiliations, which the internal auditor may have with the institution and to have any questions as to his or her independence resolved before

he or she proceeds with the examination. Any unusual relationships shall be disclosed to the Commissioner of the Office of Financial Institutions.

Independent Public Accountant—an accountant who is independent of the institution and registered or licensed to practice, and holds himself or herself out as a public accountant, and who is in good standing under the laws of the state or political subdivision of the United States in which the home office of the institution is located. The independent public accountant must comply with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct and any related guidance adopted by the Independence Standards Board and the agencies. No certified public accountant or public accountant will be recognized as independent if he/she is not independent both in fact and in appearance.

Outside Director—members of an institution's board of directors who:

1. are not officers, employees, or principal stockholders (as defined below) of the institution, its subsidiaries, or its affiliates; or
2. are not immediate family members of officers, employees, principal stockholders of the institution, its subsidiaries, or its affiliates; or
3. do not have any material business dealings with the institution, its subsidiaries, or its affiliates.

Policy Statement—the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations issued by the Federal Regulatory Agencies.

Principal Stockholder—any person that, directly or indirectly or acting through or in concert with one or more persons, owns, controls, or has the authority to vote more than 20 percent of any class of voting securities of the financial institution or its parent company. Voting securities owned or controlled by a member of a person's immediate family are considered held by that person.

Qualified Independent Internal Auditor—an internal auditor that meets the *independent internal auditor* definition in this Subsection who is a duly registered certified public accountant in good standing under the laws of this state, a certified internal auditor, a chartered bank auditor, or an individual that has functioned as an internal auditor in financial institutions for a minimum period of two years that recognizes and adheres to the rules of conduct and personal standards established for the professional designation(s) he or she holds. Any certified public accountant functioning as an internal auditor must adhere to the rules of conduct and standards applicable to the CPA in practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:290, 6:793 and 6:1310.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR. 28:483 (March 2002).

§705. Audit Program

A. Asset Accounts

1. Cash, Cash Items, Clearings, and Exchanges (Including Automatic Teller Machines and Related Settlement Accounts)

- a. Count cash on a test basis and reconcile totals with the general ledger account.
- b. Balance all categories of cash items and reconcile totals to the general ledger account; investigate any unusual or noncurrent items; trace disposition of selected amounts.
- c. Confirm totals of clearings and exchanges direct with drawee banks or paying agents; trace disposition of selected incoming and outgoing return items.
- d. Review and test the following:
 - i. procedures for safeguarding teller's cash during operating hours and relief and vacation scheduling;
 - ii. procedures for quarterly internal surprise cash counts. If the internal cash counts are performed adequately on a quarterly basis, the examiner need not count cash as a part of this examination;
 - iii. adequacy of dual control procedures over vault items;
 - iv. adequacy of review tellers' over and short activity.

2. Due from Banks

- a. Obtain confirmation of balances as of the examination date.
- b. Reconcile bank statements to the related general ledger accounts as of the examination date. Use subsequent statements to identify items that clear in a normal time period. Investigate all items still outstanding after that. Obtain a special cut-off statement as considered necessary.
- c. Trace disposition of selected incoming and outgoing return items recorded by correspondents on examination date and at least two days thereafter.
- d. Review control procedures for the origination of entries (i.e., incoming and outgoing wire transfers, IACHA items, etc.) and safeguarding of unissued drafts.

3. Investment Securities (and other assets considered as investment securities, plus Federal Funds Sold, Securities Purchased under Agreement to Resell, and Banker's Acceptances)

- a. Reconcile subsidiary records for investments to the general ledger account and test significant reconciling items. Confirm with safekeeping agent, or if held in-house, physically inspect and check for proper safeguards.
- b. On a test basis, verify correctness and authorization of original entries by references to minutes of investment committee or board of directors' and to purchase, sale, and maturity advices.

c. Reconcile accrued interest receivable subsidiary records to general ledger accounts and test significant reconciling items. Test the reasonableness of the individual balances by recalculating the accrued interest for a sample from each category of investment securities.

d. Test income recorded by investment category through comparison to average asset balances and investigate unusual fluctuations between balances and/or calculated rates.

e. For all securities, excluding marketable equity and trading account securities, reconcile unamortized premium and discount subsidiary records to general ledger accounts and test significant reconciling items. Test the reasonableness of the balances by recalculating the unamortized portion and comparing the recalculation to the bank's recorded unamortized premium/discount for a sample of investment securities.

f. Determine that the lower of cost or market values were appropriately applied to marketable equity securities, as well as assets held in trading accounts.

4. Commercial, Agricultural, Installment, Real Estate, Student, Credit Card Loans, and Discounts and Commercial Paper (and other assets considered as loans)

a. Reconcile subsidiary records for each loan category to the general ledger account and test significant reconciling items.

b. Reconcile accrued interest receivable subsidiary records to general ledger accounts and test significant reconciling items. Test the reasonableness of the individual balances by reviewing the accrual rates, recalculating the accrued interest, and comparing the recalculation to the bank's recorded accrued interest for a sample from each category of loans.

c. Test income recorded by loan category through comparison to average asset balances and investigate unusual fluctuations between balances and/or calculated rates.

d. Review and test the accrual procedures for manual systems by:

i. recalculating outstanding principal balances from loan rate records to the general ledger account for the date of the accrual;

ii. recalculating daily accruals on a test basis;

iii. reviewing related journal entries;

iv. reviewing the most recent note-by-note calculation of accrued interest and the related adjustment to the general ledger;

v. other steps as considered necessary.

e. Reconcile unearned income subsidiary records to general ledger accounts and test significant reconciling items. Test the reasonableness of the individual balances by recalculating the unearned income and comparing the recalculation to the bank's recorded unearned income for a sample of loans.

f. Direct confirmation with borrowers.

i. Mail negative confirmation requests to at least 10 percent number and dollar of each loan category, excluding participation loans purchased and sold.

ii. Confirm all participation loans purchased and sold. For participation loans purchased, secure a 100 percent positive confirmation with the selling bank. For participation loans sold, secure a 100 percent positive confirmation with the purchasing bank; negatively confirm 10 percent of the total balances with the borrower.

iii. Any positive confirmation request not acknowledged shall be followed by a second confirmation request. A listing of significant positive confirmation requests not acknowledged after mailing of both a first and second request shall be included in the report.

g. Review the allowance for loan losses.

i. Reconcile subsidiary records for charged-off loans to control record and test significant reconciling items.

ii. Check all significant charge-offs for proper authorization by the board of directors.

iii. Review test control procedures for loan charge-offs and recoveries.

iv. Mail confirmation requests to a selected number of customers whose loans have been charged-off, including some from prior years.

v. Trace details of activity recorded on individual charged-off loan records to the allowance for loan loss general ledger account on a test basis.

h. Compare the following information, where applicable, from subsidiary records to the loan document for all categories of loans on a test basis:

i. name(s) of borrower(s);

ii. original amount of loan (and current balance, if applicable);

iii. original interest rate (if interest rate has changed, trace to appropriate supporting documentation for the change);

iv. note date.

i. Schedule loans to officers, directors and their related interests and notate if any are on the institution's watch list.

5. Fixed Assets

a. Reconcile cost and accumulated depreciation subsidiary records to the related general ledger accounts and test significant reconciling items.

b. Test significant purchases and dispositions since the previous examination for proper authorization, classification, and recording, by reference to supporting documentation.

c. Review and test procedures for recording depreciation expense and related allowance for depreciation.

6. Other Assets

a. Reconcile pre-paid expense subsidiary records to the general ledger accounts and test significant reconciling items. Determine the reasonableness of the balances by comparing the original cost to supporting documentation, reviewing the amortization rate, recalculating the prepaid expense, and comparing the recalculation to the bank's recorded pre-paid expense on a test basis.

b. Reconcile the subsidiary records for other real estate and other tangible property to the general ledger accounts and test significant reconciling items. Review and test the accounting procedures for the recording of other real estate or other tangible property, including income and expense attributable to such property.

c. Evaluate transactions concerning the sale and financing of other real estate. Have transactions involving 100 percent financing or financing at less than market interest rates been properly booked in conformity with current accounting standards?

d. Review procedures for recording commercial and standby letters of credit issued to third parties and balance to the control record. Confirm on a test basis with the customer.

e. Review the calculations and propriety of deferred income tax charges as of the prior fiscal year-end and compare to the recorded amount.

f. Determine if the bank is involved in one or more of the following activities and, if so, perform the procedures indicated below.

i. Lease Financing. Test for compliance with generally accepted accounting principles.

ii. Discount Brokerage. Review and test procedures (including segregation of duties) over the execution of trades.

iii. Insurance and/or Real Estate Agency. Determine how the agency is owned. If the bank owns the agency, review and test significant assets and liabilities as considered appropriate. Review the adequacy of the accounting system.

iv. Real Estate Subsidiary

g. Review and test the propriety of any other asset accounts. Confirm and/or trace to supporting documentation as appropriate.

B. Liability Accounts

1. Deposits

a. Reconcile the subsidiary records for all deposit accounts by category to the general ledger account and test all significant reconciling items.

b. Review unposted items and debit and credit rejects, and follow through to ultimate return or posting for all significant items.

c. Mail negative confirmation requests to at least 10 percent number and dollar of each deposit category. Include a sample of due to bank accounts.

d. Reconcile subsidiary records for accrued interest payable to the general ledger accounts and test all significant reconciling items. Test the reasonableness of the individual balances by recalculating the accrued interest and comparing the recalculation to the bank's recorded accrued interest for a sample from each category of deposit accounts.

e. Test interest expense recorded by each deposit category through comparison to average liability balances and investigate unusual fluctuations between balances and/or calculated rates.

f. Review procedures for classifications of dormant and/or inactive accounts, as well as method of control over activity in such accounts. Test one day's reporting and supervisory review of activity.

g. Review procedures for the issuance and control of certificate of deposit forms as outstanding, voided, or redeemed. For at least two days subsequent to examination date, prove the total of all certificates redeemed by day. Review selected redeemed certificates for authorized signature and endorsements. Trace to the trial balance of certificates outstanding as of examination date to test for timely recording.

h. Obtain statement of treasury tax and loan account including any note-option account. Reconcile the statement with the general ledger accounts and test all significant reconciling items. Confirm balance(s).

i. Obtain a list of all internal deposit accounts. Review the controls over and the nature and volume of activity in each account and test as considered necessary.

j. Reconcile subsidiary records for overdrafts and overdraft protection lending accounts to the general ledger and test all significant reconciling items. Make sure that these are included in either the loan or deposit confirmation samples as appropriate. Trace subsequent disposition of selected overdrafts. List in the report all overdrafts and cash items as of examination date, regardless of amount, to employees, officers, and directors, including their related business interests.

k. If any portion of deposit account balances are temporarily invested in a third party's investment accounts, perform the following.

i. Reconcile subsidiary records for the invested deposits to the general ledger account and test significant reconciling items.

ii. Confirm the investment(s) with the third party through a positive verification.

iii. Review procedures for receipt and payment of income and for opening and closing of investment relationships.

iv. Review and test for compliance with the investment agreement.

2. Mail confirmation requests to a selected number of deposit customers whose accounts have been closed since last examination.

3. Official Checks

a. Balance all categories and reconcile totals to the general ledger accounts.

b. For at least two days subsequent to examination date, prove the total of all checks paid by day. Review selected paid checks for authored signatures and endorsements and for any unusual payees. Trace to the listing of official checks outstanding as of examination date to test for timely recording.

c. Review procedures for control of unissued checks and test for compliance.

d. Obtain a list of all outstanding official checks payable to the bank. Review the nature and propriety of the checks as considered necessary.

e. Review procedures for classification of dormant official checks; method of control over the checks; and test for compliance.

4. Other Liabilities

a. Review and test the accounting procedures for recording income taxes and determine the reasonableness of the balances by:

i. determining that the prior fiscal year's income tax liabilities were properly recorded;

ii. reviewing the calculation and propriety of deferred income taxes as of the prior fiscal year-end and comparing it to the recorded amount;

iii. recalculating the current fiscal year's provision for income taxes (through the prior month end) and comparing to the recorded amount.

b. Confirm all federal funds purchased by positive verification.

c. Reconcile subsidiary records for other borrowings (including items such as securities sold under agreement to repurchase, notes and mortgages payable, and capitalized leases) to the general ledger account and test significant reconciling items. Confirm each borrowing by positive verification. Test related interest accrual and expense accounts as considered necessary.

d. Reconcile subsidiary records for accrued expenses and deferred revenue accounts to the general ledger accounts. Determine the reasonableness of the balances by reviewing the accrual rate, recalculating the balance and comparing the recalculation to the bank's recorded accrued expense and deferred revenue accounts on a test basis.

e. Review and test any other liability accounts as to reasonableness and consistency. Confirm and trace to supporting documentation as considered appropriate.

C. Capital Accounts

1. Capital Stock. Reconcile subsidiary records for capital stock to general ledger account. If applicable, request a listing from transfer agent/registrar and reconcile to general ledger. Ascertain that there is adequate control of unissued certificates.

2. Capital Notes and Debentures

a. Reconcile subsidiary records to the general ledger.

b. Review all entries for compliance with terms of the agreement.

c. Test interest paid and interest accrued as applicable. Check sinking fund payments, if any, for compliance with terms of the agreement.

d. Confirm balances with holders on a test basis.

3. Surplus. Review all entries since last examination for proper authorization by the board of directors.

4. Undivided Profits

a. Review the prior year-end closing entries for propriety on a test basis.

b. Review all interim entries for proper authorization and accuracy.

c. Recompute the last dividend paid and agree to authorization in the board of directors minutes.

D. Other Income and Expense

1. Review other income and expense accounts not tested in connection with balance sheet accounts by comparison with prior periods and investigate unusual fluctuations.

2. Review salary and benefit expenses for comparability with prior periods and overall reasonableness, considering the number of employees and various pay classifications.

E. Other Customer Services

1. Collection Items

a. Schedule selected outstanding items at the examination date; inspect items or confirm with holders.

b. Examine credit or remittance advices, checks, or other evidence of payment applicable to scheduled items paid subsequent to examination date.

2. Safekeeping Department

a. Review accounting procedures for recording items held in safekeeping for customers.

b. Inspect selected items on hand and confirm items held in custody by other banks.

c. Mail negative confirmation requests on a sample of the customer safekeeping accounts.

3. Loan Collateral

- a. Inspect selected items on hand and confirm items held in custody by other banks.
- b. Mail negative confirmation requests on a sample of the loan collateral accounts.
- c. Compare loan collateral with collateral receipts outstanding on a test basis.
- d. Review the bank's procedures for receipt, custody, substitution, and release of that collateral.

4. Consignment Items. Determine the adequacy of inventory records and control procedures over the unissued reserve supply of travelers checks, United States Savings Bonds, and other consignment items. If no quarterly internal surprise counts are performed or if they are not adequate, count all consignment items and confirm with the issuer(s).

F. Trust Department

- 1. Reconcile subsidiary records for trust investments and trust cash to the control accounts and general ledger accounts, respectively. Review the procedures to determine if entries are recorded accurately and on a timely basis.
- 2. Count trust assets or confirm with safekeeping agent on a test basis.
- 3. Review policies and procedures for identifying overdrafts and uninvested cash balances.
- 4. Review selected trust accounts and test transactions to supporting records and data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:290.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 16:20 (January 1990).

Chapter 11. Louisiana International Banking

§1101. General Provisions

A. The Depository Institutions' Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered depository institutions for services rendered. All fees detailed in this rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege

will not be afforded to applications that are not expected to be consummated within 12 months of the filing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1628 (August 2007).

§1103. Fees and Assessments

A. Pursuant to the authority granted under R.S. 6:551.7 and 6:551.24, the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the International Banking Statutes, R.S. 6:551.1 et seq.

Description	Fee
Application for a foreign bank, bank holding company, or financial holding company, to establish and operate a subsidiary bank in Louisiana.	\$10,000
Application for a foreign bank to establish and operate a branch, an international banking facility, a representative office, or an agency in Louisiana.	\$2,000
Application for a U.S. bank or foreign bank to organize or acquire a subsidiary to engage in international banking activities specifically authorized in the Edge Act or to operate as an agreement corporation.	\$2,000
Application for a foreign bank to establish and operate an administrative office in Louisiana.	\$1,000
Examination fee for each foreign bank, branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary operating in Louisiana. Fee per examiner.	\$50 per hour
Examination fee for each branch, agency, representative office, international banking facility, administrative office, or Edge Act subsidiary of an out-of-state foreign bank. This fee shall be billed to the primary state regulator of the out-of-state foreign bank being examined, and due upon receipt of the OFI invoice.	The greater of \$50 per hour per examiner or the actual expenses incurred by this office to conduct or assist in conducting such examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:551.7 and 6:551.24.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1628 (August 2007).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part V. Thrifts

Chapter 1. Reserved

**Chapter 5. Mutual to Stock
Conversion**

§501. Introduction

A. These rules govern the conversion of state-chartered savings and loan associations from mutual to stock form under the provisions of Sections 950 and 950.1 of Chapter 9 of Title 6 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:939 and R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§503. Definitions

A. As used in these rules:

Applicant—a mutual savings and loan association incorporated under the laws of the state of Louisiana which is applying to the Louisiana Commissioner of Financial Institutions, in his capacity as supervisor of Louisiana-chartered savings and loan associations, to convert to a capital stock savings and loan association.

Capital Stock Association—an association incorporated under the provisions of the Louisiana Capital Stock Association Law.

Commissioner—the Louisiana Commissioner of Financial Institutions in his capacity as supervisor of Louisiana-chartered savings and loan associations, or his successor.

FSLIC—the Federal Savings and Loan Insurance Corporation.

Mutual Association—a savings and loan association organized and operated on a mutual basis under the provisions of Parts I through XVI of Chapter 9 of Title 6 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§505. Application to Commissioner

A. An applicant shall file with the commissioner five copies of an application for Approval of Conversion, with supporting exhibits, in the form required by the FSLIC, including Forms AC, PS and OC. The applicant shall also

furnish to the commissioner such additional information as the commissioner may request which is not included in the applicant's filings with the FSLIC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§507. Content of Proposed Stock Articles of Incorporation and By-Laws

A. Articles of Incorporation. As part of the application, the applicant shall submit to the commissioner proposed amended articles of incorporation as a capital stock savings and loan association which shall comply with the requirements of R.S. 6:942 with regard to *de novo* stock articles of incorporation, except that Subsections (5) and (8) of R.S. 6:942 shall not apply to the amended articles of incorporation for a Louisiana-chartered mutual savings and loan association converting to stock form. The proposed amended articles of incorporation shall specify that the name of the applicant, upon conversion, shall contain the wording "corporation," "incorporated," "limited," or "company," an abbreviation of one of such words or other words sufficient to distinguish capital stock associations from mutual associations. The proposed amended articles of incorporation shall also state that the stock savings and loan association resulted from the conversion of the association from mutual form.

B. By-Laws. As part of the application, an applicant shall submit to the commissioner proposed stock by-laws which shall be similar as to content and form as the stock by-laws specified by the Federal Home Loan Bank Board for federally-chartered stock savings and loan associations, except to the extent that such federal stock by-laws are inconsistent with Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:705 and R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§509. Content of Applicant's Plan of Conversion

A. The applicant's plan of conversion shall comply with the requirements of the FSLIC, including the determination of the eligibility record date and supplemental record date (if applicable) with respect to subscription rights to purchase the applicant's conversion stock, and provides that the total number of shares which officers and directors of the converting insured institution and their associates may purchase in the conversion shall not exceed 35 percent of the

total offering of shares in the case of a converting insured institution with total assets of less than \$50 million, or 25 percent of the total offering of shares in the case of a converting insured institution with total assets of \$50 million or more; in the case of converting insured institutions with total assets in excess of \$50 million but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 30 percent in the case of a converting insured institution with total assets of \$275 million).

B. The applicant's plan of conversion may also provide for employment contracts for the applicant's officers and employees upon conversion and for a stock option plan (including a management incentive plan providing for stock options), which shall be subject to approval by the commissioner. The commissioner may require provisions in an applicant's plan of conversion in addition to the requirements of the FSLIC if he determines that such additional provisions are necessary for an equitable conversion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980), amended LR 8:470 (September 1982).

§511. Standard for Approval of Application

A. The commissioner will not approve a plan of conversion unless he finds that the plan is fair and equitable to the members of the applicant, that the interests of the applicant's savings account holders and the public are adequately protected, and that the plan conforms to regulatory requirements of the FSLIC. In approving an applicant's plan of conversion, the commissioner will also give preliminary approval by the applicant's proposed amended articles of incorporation and by-laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:939.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§513. Vote by Applicant's Members on Plan of Conversion

A. No plan of conversion shall be implemented unless it is approved at a meeting of the voting members of an applicant called to consider such action by a majority vote of the total number of votes eligible to be cast, in person or by proxy. Notice of the meeting, giving the time, place and purpose thereof, together with a proxy statement and proxy form approved by the commissioner covering all matters to be brought before the meeting, shall be mailed to the commissioner and each voting member of the applicant at such member's last address as shown on the books of the applicant at least 30 days before the date on which the meeting is to be held.

B. The applicant shall file with the commissioner promptly after the meeting of the applicant's voting members called to consider the plan of conversion a certified copy of

each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

1. the total number of votes eligible to be cast;
2. the total number of votes represented in person or by proxy at the meeting;
3. the total number of votes cast in favor of and against each such matter; and
4. the percentage of votes present in person or by proxy cast in favor of each such matter.

C. The applicant shall also file with the commissioner an opinion of counsel that the meeting was held in compliance with all applicable state and federal laws.

D. The certified copy of each resolution adopted at the meeting (being part of the minutes of such meeting), when filed, shall be presumptive evidence of the holding of the meeting and of the action taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:938 and R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§515. Filing of Offering Circulars

A. The offering circulars for the applicant's subscription offering and any additional offering to the general public shall be prepared in compliance with regulation of the FSLIC and any additional requirements imposed by the commissioner. Five copies of each such offering circular in preliminary form shall be filed with the commissioner, and no such offering circular shall be distributed to the applicant's members or to the general public in final form unless it has first been declared effective by the commissioner. In connection with an applicant's offering of its conversion stock, an applicant may employ the services of an investment banking or other firm to underwrite the public offering of the applicant's stock. The initial stockholders of a converted savings and loan association shall not be restricted to natural persons and residents of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:948.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:714 (December 1980).

§517. Effective Date of Conversion

A. Prior to the execution of orders for the applicant's conversion stock, the applicant shall obtain from the commissioner his approval affixed to the applicant's amended articles of incorporation. An authenticated copy of the amended Articles of Incorporation shall be filed with the secretary of state. The applicant shall cease to be a mutual savings and loan association and shall be a capital stock savings and loan association on the date and at the time specified in the approved articles of incorporation, which shall be concurrent with the execution of all orders received for the applicant's conversion stock.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:938 and R.S. 6:939.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:715 (December 1980).

Chapter 15. Related Organizations and Services

Subchapter A. Service Organizations

§1501. Generally

A. An association or combination of associations may establish a service organization or purchase capital stock, obligations or other securities of such a service organization organized under the laws of the state of Louisiana subject to prior approval in writing of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980).

§1503. Definitions

A. When used in this rule, the following words shall have the meanings as indicated.

Association—a savings association, homestead building and loan association, savings and loan association or society chartered under Chapter 9, Title 6, Louisiana Revised Statutes.

Commissioner—the Commissioner of Financial Institutions, State of Louisiana.

Service Organizations—an organization substantially all the activities of which consist of making of consumer loans as defined by R.S. 9:3516(13), originating, purchasing, selling and servicing loans upon real estate and participating interests therein, or clerical, bookkeeping, accounting, statistical, appraising, computer or similar functions performed primarily for financial institutions, plus such other activities as the commissioner may approve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980).

§1505. Application

A. In order to obtain such approval, the applying association shall file with the commissioner documentation from which the commissioner shall determine that:

1. there are no serious supervisory problems which would affect its ability to properly supervise and operate such subsidiary corporation;
2. there are adequate income and reserves to support the proposed investment;
3. operations of the subsidiary corporation will be clearly distinguishable from those of the parent association;

4. the subsidiary corporation is or will be profitably operating within a reasonable period of time;

5. an audited financial statement in the event of acquisition of an existing subsidiary corporation;

6. a certified resolution of the board of directors of the applying association approving the investment in the subsidiary;

7. a certified copy of the Articles of Incorporation, Certificate of Incorporation and bylaws of the subsidiary shall be filed with the commissioner.

B. The commissioner may require submission of other pertinent information:

1. acquisition terms, cost or investment requirements of the association;

2. projected operating statements of the proposed subsidiary for its first three years of operation;

3. attorney's opinion letter as to direct, indirect and/or contingent association and subsidiary liability;

4. outline of plans for operation of the subsidiary;

5. evidence that the subsidiary corporation will have adequate management and operating personnel with proper supervision by association management;

6. plans for the safeguarding of subsidiary assets;

7. affidavits from all directors of an association and subsidiary corporation fully disclosing any interest they may directly or indirectly have in the proposed or existing subsidiary.

C. Records of the subsidiary corporation will be made available at all times to state and federal supervisory authority for examination and review.

D. The subsidiary corporation will keep complete and adequate books and records in accordance with generally accepted accounting principles where there are no specific accounting guidelines set forth by Louisiana rules and the regulations of the Federal Savings and Loan Insurance Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980).

§1507. Pre-Authorized Subsidiary Investments

A. Pre-authorized activities of a subsidiary corporation, performed directly or through one or more wholly owned subsidiaries or joint ventures shall consist of one or more of the following:

1. loan origination, purchasing, selling and servicing;

2. acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

3. development and subdivision of and construction of improvements, including improvements to be used for commercial or community purposes when incidental to a housing project, for sale or for rental on, real estate referred to in §1507.A.2;

4. acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

5. acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

6. engage in real estate brokerage services if real estate laws, rules and regulations are complied with;

7. serving as an insurance broker, agent, or underwriter if insurance law, rules and regulations are complied with;

8. serving as a title insurance company if insurance laws, rules and regulations are complied with;

9. preparation of state and federal tax returns;

10. acquisition of real estate to be used for association offices and related facilities;

11. partial or complete ownership of computer center that provides services for the parent association and others;

12. make consumer loans as outlined in R.S. 9:3510, et seq;

13. perform debt collection services;

14. issue letters of credit as part of their commercial lending;

15. operate coin and currency services by contracting with Federal Reserve banks or commercial banks to make coin and currency available. This includes delivery and security arrangements;

16. engage in the leasing of consumer and business goods;

17. a subsidiary may act as agent for the parent association except that it shall not receive payments on new or established savings accounts, nor shall it perform any duties for the association other than those specifically authorized herein;

18. other activities which may be approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980), amended LR 8:471 (September 1982).

§1509. Operations

A. Each subsidiary corporation main office, branch, agency or any other type facility of the subsidiary corporation shall require prior written approval of the commissioner based on his findings of the facts as presented.

B. A verified copy of all contracts, instruments, joint ventures and partnership agreements and financing arrangements of the subsidiary investments shall be furnished to the commissioner within 30 days from date of approval.

C. The subsidiary agrees to furnish, at the expense of the subsidiary or association, an independent appraiser's report or other expert opinion as determined to be necessary by the commissioner for the purpose of establishing the value of any investments made by the subsidiary corporation.

D. Each subsidiary shall maintain bond coverage with an acceptable bonding company in an amount to adequately cover each director, officer, employee and agent who has access to cash or securities of the corporation. Such bond amount shall be in an amount equivalent to one percent of total assets but in no event shall be less than \$25,000 nor more than \$2,000,000. In lieu of a separate surety bond for the subsidiary, the association may obtain an extension rider to the surety bond coverage of the parent association.

E. All joint ventures and partnership agreements shall be reviewed by the attorney for the subsidiary, who shall render his opinion to the commissioner stating the obligation and responsibility of the subsidiary, as well as the parent association.

F. All directors of the association and subsidiary shall furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the subsidiary.

G. Each request for approval of an investment by a subsidiary shall include a projected cash flow statement and a projected profit and loss statement setting forth funding requirements of the parent association and/or others.

H. An association's wholly owned subsidiary may operate a loan production office within a 100-mile radius of the main office, subject to the approval of the commissioner.

I. An association may invest in the partial ownership of a service corporation which originates loans and performs other service functions, not only for the investing association, but for other investors as well; also employs and pays its own personnel, and uses its own selected name, then this type service organization could operate statewide, if approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980).

§1511. Investments and Debt Limitation

A. Investments in subsidiary corporations shall include investment in its capital stock, obligations, both secured and unsecured, or other securities of the service corporation, and shall not, in the aggregate, exceed 10 percent of the association's total assets. The limitation does not apply to subsidiaries organized solely as a holding corporation for business property as outlined in R.S. 6:822(F).

B. The subsidiary corporation engaged solely in the activities specified in §1507.A.1, may incur debt in a ratio of 10:1 of the subsidiary's consolidated net worth.

C. Subsidiary corporations engaged in activities other than that authorized in §1507.A.1, shall not incur debt in the aggregate in excess of the parent association's net worth less the aggregate investment in all subsidiary capital stock,

obligations, both secured and unsecured, and other securities of the subsidiary corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 6:541 (September 1980), amended LR 8:471 (September 1982).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part VII. Savings Banks

Chapter 1. General Provisions
(Reserved)

Chapter 3. Conversions

§301. Scope

A. This rule is enacted pursuant to the Louisiana Savings Bank Act of 1990. Except as the commissioner may otherwise determine, the provisions of this rule shall exclusively govern the conversion of Louisiana state-chartered savings banks from mutual to capital stock and no state savings bank shall convert to the capital stock form without the prior written approval of the commissioner. The commissioner may grant a waiver in writing from any requirement of this rule for good cause shown. The commissioner may adopt policies and procedures interpreting and implementing this rule. This rule supersedes all inconsistent articles of incorporation and bylaws of mutual savings banks converting to the stock form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§303. Definitions

A. For purposes of this rule, the following terms shall have the following meanings.

Acting in Concert—

a. knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise;

b. a person who acts in concert with another person ("other party") shall also be acting in concert with any person who is also acting in concert with that other party, except that an employee benefit plan will not be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated. No officer or director of an applicant shall be deemed acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated. No officer or director of an applicant shall be deemed acting in concert with another

officer or director merely by reason of holding those positions.

Affiliate of, or a Person Affiliated With, a Specified Person—a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Amount—pertaining to securities, means the principal if relating to evidence of indebtedness, the number of shares if relating to shares, or the number of units if relating to any other kind of security.

Applicant—includes a Louisiana state-chartered savings bank organized in mutual form which is making an application for conversion under this rule and may also be referred to herein as the "converting savings bank."

Associate—when indicating a relationship between persons, means:

a. any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person, or members of the person's immediate family, is an officer, director or partner, or is directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

b. any trust, as defined in R.S. 9:1731, or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity. Except as otherwise provided, for purposes of §§305 or 307, *associate* does not include any tax-qualified or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity;

c. any relative or spouse of such person, or any relative of such spouse, who has the same legal residence as or shares living quarters with such person; and

d. a director or officer of any of the applicant's parent organizations, holding companies or subsidiaries.

Broker-Dealer—a person in the business of effecting transactions in securities as defined in R.S. 51:702(5)(a).

Capital Stock or Stock—includes permanent stock, guaranty stock, permanent reserve stock, common stock, preferred stock, convertible preferred stock and any similar certificate evidencing nonwithdrawable capital of an institution, holding company or a subsidiary of the savings bank or savings bank holding company.

Commissioner—the Commissioner of Financial Institutions for the state of Louisiana, who is also the Commissioner of Securities.

Control—the power to direct or cause the direction of the management and policies of a person, through ownership of voting securities, by contract or otherwise.

Deposit Account—part of the liability of the savings bank which is credited to the account of the holder thereof, including certificates of deposit.

Deposit Account Holder—a person who holds a deposit account in an applicant and includes an eligible account holder and a supplemental eligible account holder.

Eligible Account Holder—any person holding a qualifying deposit as determined in accordance with §309, but shall include only those account holders with savings accounts in place for a minimum of one year prior to the board of directors' adoption of the plan of conversion.

Eligibility Record Date—the record date for determining eligible account holders of an applicant.

Employee—a person employed by the applicant as specified in the plan of conversion, but does not include a director or officer of the applicant.

Equity Security—any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

Local Community—all parishes in which the converting savings bank has its home office or a branch office, each parish's standard metropolitan statistical area or the general metropolitan area of each of these parishes and such other similar local area(s) as provided for in the plan of conversion, as approved by OFI.

Market Maker—a dealer who, with respect to a particular security:

- a. regularly publishes bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system; or
- b. furnishes bona fide competitive bid and offer quotations on request; and
- c. is ready, willing and able to effect transactions in reasonable quantities at his or her quoted prices with other broker-dealers.

Material—when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent member of the applicant ought reasonably to be informed in voting upon the plan of conversion of the applicant.

Member—any person qualifying as a member of a savings bank pursuant to its articles of incorporation and bylaws.

Offer—every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. *Offer* does not include preliminary

negotiations or agreements between an applicant, or any person directly or indirectly controlled by an applicant, or under direct or common control with an applicant, and any underwriter or among underwriters who are or are to be in privity of contract with an applicant or any person on whose behalf an offer is to be made.

Officer—the chair of the board of directors, president, vice presidents, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions, whether incorporated or unincorporated.

Person—an individual, a corporation, a limited liability company, a partnership, a limited liability partnership, an association, an institution, a joint-stock company, a trust, any unincorporated organization, a government or political subdivision, or any other organization.

Proxy—includes every form of authorization by which a person is, or may be deemed to be, designated to act for an applicant's member in the exercise of his or her voting rights in the business of an applicant. An authorization may take the form of failure to dissent or object.

Purchase and Buy—shall include every contract to acquire a security or interest in a security for value.

Sale—includes every contract to sell or otherwise dispose of a security or interest in a security for value but does not include an exchange of securities in connection with a merger or acquisition approved under this rule.

Security—includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, transferable share, investment contract, voting trust certificate, or any instrument commonly known as a *security*; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

Solicitation and Solicit—

- a. any request for a proxy whether or not accompanied by or included in a form of proxy;
- b. any request to execute, not execute, or revoke a proxy; and/or
- c. the furnishing of a form of proxy or other communication to an applicant's members under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy. The terms do not apply to the furnishing of a form of proxy to an applicant's member upon the unsolicited request of the member or to the performance of acts required by §327.I, or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

Subscription Offering—the offering of shares of capital stock, through nontransferable subscription rights issued pursuant to a plan of conversion.

Subsidiary—of a specified person is a company or an affiliate controlled by such person, directly or indirectly, through one or more intermediaries.

Supplemental Eligibility Record Date—the supplemental record date for determining supplemental eligible account holders of an applicant.

Supplemental Eligible Account Holder—any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record date.

Tax-Qualified Employee Stock Benefit Plan—any defined benefit plan or defined contribution plan, such as an employee stock ownership plan (ESOP), stock bonus plan, profit-sharing plan or other plan which, with its related trust, meets the requirements to be "qualified" under Section 401 of the Internal Revenue Code of 1986, as amended. A "non-tax-qualified employee stock benefit plan" is any defined benefit or defined contribution plan which is not so qualified.

Underwriter—any person as defined by R.S. 51:702(20).

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§305. Contents of Plan of Conversion

A. Each plan of conversion shall contain all of the following provisions.

1. **Stock Valuation.** The converting savings bank shall issue and sell its capital stock at a price based on an independent valuation in accordance with §331.F. The sale price of the shares of capital stock sold in the conversion shall be a uniform price and the plan shall specify the underwriting or other marketing arrangements or both to ensure the sale of all shares not sold to persons with subscription rights.

2. **Eligibility Record Date.** An eligibility record date shall be stated which shall be not less than one year prior to the date of the board of director's adoption of the plan of conversion, but which date shall be fair to a majority of the deposit account holders.

3. Eligible Account Holders' Subscription Rights

a. Eligible account holders have a priority to purchase conversion stock over all other eligible subscribers, subject to the acquisition limits of Paragraph A.9 of this Section. The plan shall define which deposit account holders constitute eligible account holders, in accordance with §309. Each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of:

i. the maximum purchase limitation established pursuant to Paragraph A.9 of this Section;

ii. 1/10 of 1 percent of the total offering of shares;

or

iii. fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction

of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the applicant.

b. If there is an oversubscription to the conversion stock, shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make that person's total allocation equal to 100 shares. Any shares remaining shall be allocated among subscribing eligible account holders on such equitable basis as provided in the plan of conversion. The plan of conversion shall provide a detailed description of the allocation in the event of an oversubscription of the capital stock.

4. **Employee Stock Benefit Plans' Subscription Rights.** Tax-qualified employee stock benefit plan(s) have a priority to purchase conversion stock after all eligible account holders. If an oversubscription occurs at the eligible account holder level, shares may be sold to the tax-qualified employee stock benefit plan(s), subject to the acquisition limits stated in Paragraph A.9 of this Section.

5. **Subordination of Subscription Rights of Insiders.** Of the eligible account holder subscription rights to purchase stock which are received by officers, directors, and their associates, that portion which is based on their increased deposits in the converting savings bank which were made in the one-year period preceding the eligibility record date, shall be subordinated to all subscription rights received by eligible account holders and employee benefit plans under Paragraphs A.3 and 4 of this Section.

6. Supplemental Eligible Account Holders' Subscription Rights

a. In plans involving an eligibility record date that is more than 24 months prior to the date of the latest amendment to the application for conversion filed prior to OFI's approval, a supplemental eligibility record date shall be determined whereby supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase conversion stock in an amount equal to the same limits established in Subparagraph A.3.a of this Section, but substituting "supplemental eligible account holder(s)" for the term "eligible account holder(s)" in Subparagraph A.3.a.

b. Subscription rights received under this Subparagraph shall be subordinated to all rights received by eligible account holders and employee benefit plans under Paragraphs A.3, 4 and 5 of this Section; further, shares received by an eligible account holder shall be applied in partial satisfaction of the subscription rights to be distributed to that person pursuant to this Subparagraph.

c. If an oversubscription to conversion stock occurs, shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each, to the extent possible, to purchase a number of shares sufficient to make the person's total allocation of shares (including those allocated to them as an eligible account holder) equal to 100 shares. Any shares thereafter remaining

shall be allocated on an equitable basis, as may be provided in the plan of conversion in a detailed description.

7. Other Voting Members

a. Savings bank voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase conversion stock in an amount equal to the greater of:

i. the maximum purchase limitations established pursuant to Paragraph A.9 of this Section; or

ii. 1/10 of 1 percent of the total offering of shares.

b. The stock to be offered and sold in the subscription offering shall give a preference to voting members residing in the savings bank's local community or within 100 miles of its home or branch office(s). Subscription rights received under this Subparagraph shall be subordinated to all rights received by eligible account holders, employee benefit plans and supplemental eligible account holders under Paragraphs A.3, 4, 5 and 6 of this Section. If there is an oversubscription, shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of conversion.

8. Public or Community Offering. Any shares of the converting savings bank not sold to persons with subscription rights shall be sold either in a public offering through an underwriter, or directly by the converting savings bank in a direct community offering, subject to the applicant demonstrating to the commissioner the feasibility of the method of sale, an equitable plan of distribution, and to any conditions as may be provided in the plan of conversion. Those conditions are subject to the prior written approval of the commissioner. In a public offering, the stock should be offered and sold in a manner that will achieve the widest distribution of the stock. A direct community offering by the converting savings bank should give a preference to natural persons residing in the local community or within 100 miles of the savings bank's home or branch office(s). The maximum purchase limitations of Paragraph A.9 of this Section apply to purchases made in the public and/or community offerings.

9. Stock Purchase Limits in Conversion. The total of shares which any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion, including any public or direct community offering, shall not exceed 5 percent of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than 10 percent of the total offering of shares. Shares held by one or more tax-qualified plans and attributable to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

10. Insiders' Aggregate Purchase Limits in Conversion. The officers and directors of the converting savings bank and their associates may purchase in the conversion, in the aggregate, up to 35 percent of the total offering of shares if the applicant has less than \$50,000,000 in total assets, and up to 25 percent of the total offering if the applicant has

more than \$500,000,000 in total assets. If the applicant has between \$50 million and \$500 million in total assets, the maximum percentage shall be equal to 35 percent minus one percent multiplied by the quotient of the total assets less \$50 million divided by \$45 million. In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions pursuant to this rule, any shares owned prior to the conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

11. Post-Conversion Restrictions on Insiders' Stock Purchases. For a period of three years following the conversion, officers, directors and their associates shall not purchase, without the prior written approval of the commissioner, the capital stock of the converted savings bank except from a broker-dealer registered with the Commissioner of Securities for the State of Louisiana and the Securities and Exchange Commission. This Paragraph shall not apply to:

a. purchases of stock made by and held by any one or more tax- or non-tax-qualified employee stock benefit plans which may be attributable to individual officers or directors; or

b. negotiated transactions involving more than one percent of the outstanding capital stock of the converted institution.

12. Limits on the Acquisition of Securities. Limits on the acquisition of securities of converting savings banks pursuant to §311 of this rule shall be described in detail in the plan of conversion.

13. Restrictions on Insiders' Stock Sales. All shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings bank (by subscription or otherwise) or from an underwriter, shall be subject to the restriction that the shares shall not be sold, for a period of at least one year following the date of purchase, except upon the death of the director or officer.

14. Restrictions Stated on Stock Certificate. In connection with shares of capital stock subject to restriction on sale for a period of time:

a. each certificate of stock shall bear a legend stating the restriction;

b. instructions shall be issued to the transfer agent for the converted savings bank's capital stock with respect to applicable restrictions on transfer of any restricted stock; and

c. any shares issued as a stock dividend, stock split or otherwise relating to any restricted stock shall be subject to the same restrictions as apply to the restricted stock.

15. No Loans to Purchase Stock. The converting savings bank shall not lend funds or otherwise extend credit on an unsecured basis or upon the security of the savings bank's capital stock to any person to purchase the capital stock of the converting savings bank.

16. Contributions to Employee Benefit Plans. The savings bank may make scheduled, discretionary contributions to tax-qualified employee benefit plans if the contributions do not cause the savings bank to fail to meet its regulatory capital requirements.

17. Marketing the Stock. The converting savings bank shall:

a. use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities; and

b. use its best efforts to list shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

18. Time Period for Conversion. A time period must be established within which the conversion must be completed. The time period shall be not more than 12 months from the date the savings bank's members approve the plan of conversion. This time period may be extended up to an additional 12 months with the prior written approval of the commissioner. Further extensions may be granted for good cause shown.

19. Transfer of Deposit Accounts. Each deposit account holder of the converting savings bank shall receive, without payment, withdrawable deposit accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of the account holder's deposit accounts in the converting savings bank.

20. Liquidation Accounts. A liquidation account shall be established and maintained, pursuant to §315, for the benefit of deposit account holders if a complete liquidation of the converted savings bank occurs. A savings bank shall include in its articles of incorporation the following section:

"LIQUIDATION ACCOUNT. The savings bank shall establish and maintain a liquidation account for the benefit of its deposit account holders as of the eligibility and/or supplemental eligibility record date. If there is a complete liquidation, it shall comply with any laws and rules with respect to the amount and the priorities on liquidation of each of the savings bank's (eligible/supplemental eligible) account holder's interest in the liquidation account, to the extent it is still in existence. However, an account holder's interest in the liquidation account shall not entitle that person to any voting rights at meetings of the stockholders."

21. Voting Rights. The holders of the capital stock of the converted savings bank shall have exclusive voting rights.

22. Reasonable Expenses. The expenses incurred in the conversion shall be reasonable. The plan of conversion shall state, in approximate amounts, the categories of expenses incurred.

23. Fairness of the Plan. The plan of conversion shall not contain any provision which the commissioner may determine to be inequitable or detrimental to the applicant, its deposit account holders or any other savings bank, or to be contrary to the public or community interest.

24. Amendments. The plan of conversion may be amended by the board of directors prior to the solicitation of proxies from members to vote on the plan, and at any time thereafter with the prior written approval of the commissioner. The conversion may be terminated by the board of directors at any time prior to the meeting of members called to consider the plan and at any later time with the commissioner's prior written approval.

25. Additional Info. The application shall include such additional information as the commissioner directs.

26. Full Disclosure Required. The plan of conversion, proxy and offering materials must contain thorough disclosures of all material facts and particularly as to all benefits which may be obtained by any person in the conversion. In addition, they shall address in detail:

a. the benefits to officers, directors, their associates, the applicant's employees and nonmembers (including charitable or community organizations) and any compensation agreements that will be entered into, with disclosure in chart form in addition to any textual descriptions;

b. the reasons for the conversion, including the relative advantages and disadvantages of undertaking the transaction proposed instead of other types of conversions and a comparison of any competing offers if merger or acquisition by or with another institution is involved;

c. whether management believes the conversion is in the best interests of the savings bank and its account holders, and the basis of that belief; and

d. the fiduciary duties owed to account holders by the savings bank's officers and directors and why the conversion is in accord with those duties and is otherwise equitable to the account holders and the savings bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§307. Optional Provisions in Plan of Conversion

A. A plan of conversion may provide any of the following, subject to the stated restrictions.

1. Timing of Public Offerings. The converting savings bank may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing of the proxy statement to members, pursuant to §329.C. The subscription offering may be closed before the meeting of members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the members' approval of the plan of conversion as provided in §329.

2. Minimum/Maximum Limits on Stock Purchases. Purchases of stock made by subscription or in any public or direct community offering may be subject to minimum

and/or maximum dollar and/or numerical share limits. Such limits shall be reasonable and fair in consideration of factors such as the size of the applicant, the amount of the typical qualifying deposit in the applicant, the reasons for such limitations, and other factors. Such limits are subject to approval by the commissioner.

3. Requirement That Offering Circular Be Requested. The converting savings bank may require its members and/or eligible account holders and supplemental eligible account holders who are not voting members pursuant to §329.D, (collectively referred to hereafter as "such persons") to return by a reasonable date certain a postage-paid written communication provided by the converting savings bank requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering under Paragraph A.4 of this Section, in order to be entitled to receive an offering circular from the converting savings bank, provided that such offering shall not be closed until the expiration of 30 days after the mailing to such members of the postage-paid written communication. If such offering is not commenced within 45 days after the meeting of members, the converting savings bank that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of such offering, to each of such members who had been furnished with either a notice or proxy soliciting materials, written notice of the commencement of the offering, which shall state that the converting savings bank is not required to furnish an offering circular to such members unless they return by a reasonable date certain the postage-paid written communication provided, requesting receipt of an offering circular.

4. Procedure for Exercising Subscription Rights. Instead of a separate subscription offering, all subscription rights issued in connection with the conversion may be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the commissioner the feasibility of the method of exercising the rights and the conditions as provided in the plan of conversion.

5. Unsold Shares. Any insignificant residue of shares of the converting savings bank not sold in the subscription, public or community offering may be sold in another manner as provided in the plan with the commissioner's approval.

6. Sale of Discounted Stock. The plan may require a six-month holding period prior to the sale of the converted institution's stock which was sold at a discount in connection with the conversion or a merger.

7. Local Community Preference. The plan may give a preference in the purchase of shares in the subscription offering to eligible and supplemental eligible account holders residing in the savings bank's local community or within 100 miles of the savings bank's home or branch office(s).

8. Other Provisions. The commissioner may approve other provisions as are reasonable or necessary for the conversion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§309. Determination of Amount of Qualifying Deposits

A. Unless otherwise provided in the plan of conversion, the amount of the qualifying deposit of an eligible account holder or a supplemental eligible account holder shall be the total of the deposit balances in the person's deposit accounts in the converting savings bank as of the close of business on the eligibility record date or the supplemental eligibility record date. However, the plan of conversion may provide that any deposit accounts with total deposit balances of less than \$100 shall not constitute a qualifying deposit. In this Section, "deposit account" includes a predecessor or successor account of a given deposit account which is held only in the same right and capacity and on substantially the same terms and conditions as the given deposit account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§311. Prohibited Stock Transfers, Offers, and Post-Conversion Acquisition Limit; Stock Options and Insider Benefits

A. Prohibited Transfers. Except as provided in Paragraph D.1, 2 or 5 of this Section, prior to the completion of a conversion, no person shall transfer or receive, or enter into any agreement to transfer or receive, the legal or beneficial ownership of conversion subscription rights, or the underlying securities, to or from another. Violations of this Subsection may void the person's subscription rights.

B. Prohibition of Offers and Certain Acquisitions. Except as provided in Paragraph D.1, 2 or 5, prior to the completion of a conversion, no person shall offer, or announce an offer, for any security of the converting savings bank issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings bank issued in connection with the conversion in excess of the maximum purchase limitations established in the applicant's plan of conversion and allowed by this rule.

C. Limitation on Acquisitions of Stock for Three to Five Years Following Conversion

1. Except as provided in Subsection D, for (specify number of years from three to five) following the date of the completion of the conversion, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of a savings bank converted under this rule without the prior written approval of the commissioner. When any person violates this Paragraph, the securities beneficially owned by such person in excess of 10 percent shall not be

counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in any matter submitted to the stockholders for a vote. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person. Shares held by non-tax-qualified employee benefit or similar plans shall be so aggregated. The limitations discussed in this Paragraph shall be contained in the plan of conversion and in the articles of incorporation of the converting institution.

2. A conversion shall be deemed complete on the date all of the conversion stock was sold.

3. An acquisition of shares shall be presumed to have been made if the acquirer entered into a binding written agreement for the transfer of shares. An offer shall be deemed made when communicated.

4. The commissioner may deny an application involving an offer or acquisition of any security or proxies to vote securities of a converted savings bank submitted under this Subsection C if the proposed acquisition:

- a. would frustrate the purposes of this rule;
- b. would be manipulative or deceptive;
- c. would subvert the fairness of the conversion;
- d. would be likely to result in injury to the savings bank;
- e. would not be consistent with economical home financing;
- f. would otherwise violate a law or rule; or
- g. would not contribute to the prudent deployment of the savings bank's conversion proceeds.

5. Pursuant to R.S. 6:1237, any person acting directly or indirectly or through or in concert with one or more persons, shall give the commissioner 60 days written notice of intent to acquire control of 10 percent or more of a savings bank or savings bank affiliate.

D. Exceptions

1. Subsections A and B of this Section shall not apply to a transfer, agreement, understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

- a. pertains only to securities to be purchased under §305.A.8 (public or community offering), §307.A.5 (unsold shares), or §307.A.8 (other provisions); and
- b. has the prior written approval of the commissioner.

2. Subsections B and C of this Section shall not apply to any offer with a view toward public resale made exclusively to the savings bank or to the underwriters or a selling group acting on its behalf.

3. Unless made applicable by the commissioner by prior notice in writing, Subsection C shall not apply to any offer or announcement of an offer which, if consummated,

would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the same class of securities.

4. Subsection C shall not apply to any offer to acquire or acquisition of the beneficial ownership of more than 10 percent of the common stock of a savings bank by a corporation whose ownership is or will be substantially the same as the ownership of the savings bank if the offer or acquisition is made more than one year following the date of completion of the conversion.

5. Subsections A, B and C shall not apply to the acquisition of securities of a savings bank or its holding company by any one or more tax-qualified employee stock benefit plan(s) of such savings bank or holding company, provided that, the plan(s) do not have beneficial ownership in the aggregate of more than 25 percent of any class of equity security of the converted savings bank or holding company.

E. Use of Stock Option and Management or Employee Stock Benefit Plans. No converted savings bank shall, for a one-year period from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan complying with this rule, unless each of the following requirements are met:

1. each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

2. all such plans, prior to their establishment and implementation, are approved by the holders of a majority of the total votes eligible to be cast at any duly called annual or special meeting of the shareholders of the savings bank or its holding company, to be held no earlier than six months after completion of the conversion;

3. in the case of a savings bank subsidiary of a mutual holding company, all such plans, prior to their establishment and implementation, are approved by the holders (other than its parent mutual holding company) of a majority of the total votes eligible to be cast at any duly called annual or special meeting of shareholders, to be held no earlier than six months after completion of the conversion;

4. for stock option plans, stock options are granted at not less than the market price at which the stock is trading at the time of grant;

5. for management or employee stock benefit plans, no conversion stock is used to fund the plans;

6. the commissioner may limit the number of shares or percent of total shares issued in the conversion which may be sold to or granted to particular persons, including management or employee stock benefit plans; and

7. prior to implementation, all such plans are submitted to the commissioner for review and approval in accordance with the foregoing standards. In connection with such review, the commissioner shall consider all relevant supervisory information, including, among other things, the savings bank's capital level, operating history and size of the savings bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§313. Manipulative and Deceptive Devices Prohibited

A. In the offer, sale or purchase of securities issued incident to its conversion, no savings bank or any director, officer, attorney, agent or employee thereof shall:

- 1. employ any device, scheme, or artifice to defraud; or
- 2. obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- 3. engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§315. Liquidation Account

A. Requirement. At the time of conversion, each applicant shall establish a liquidation account in an amount equal to the amount of net worth of the converting savings bank prior to conversion. The applicant shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in §319.B, the existence of the liquidation account shall not restrict the use or application of any of the net worth accounts of the converted savings bank.

B. Purpose. The liquidation account shall be maintained by the savings bank for the benefit of eligible account holders and supplemental eligible account holders who maintain their deposit accounts in the converted savings bank. Each eligible account holder and supplemental eligible account holder shall, with respect to each deposit account held, have a related inchoate interest in a portion of the liquidation account balance ("subaccount").

C. Distribution. In the event of a complete liquidation of the converted savings bank, each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for deposit accounts held, before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the applicant prior to conversion. A merger, consolidation, sale of bulk assets or similar combination or transaction with another institution is not considered a complete liquidation for these purposes,

and in this kind of transaction, the liquidation account shall be assumed by the surviving depository institution. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the savings bank not been converted as of the date of liquidation.

D. Calculating Individual Distributions. The initial subaccount balance for a deposit account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings bank on such dates. For deposit accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such accounts on the record dates. The initial subaccount balances shall not be increased, and it shall be subject to downward adjustment under Subsection E of this Section.

E. Account and Subaccount Balances

1.a. If the balance in any deposit account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of:

- i. the balance in the deposit account at the close of business on any other annual closing date subsequent to the eligibility record date or supplemental eligibility record date; or
- ii. the amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date;

b. then the subaccount balance for the deposit account shall be adjusted by reducing the subaccount balance in an amount proportionate to the reduction in the deposit balance.

2. If a downward adjustment is made, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related deposit account. The converted savings bank shall not be required to recompute the liquidation account and subaccount balances provided the converted savings bank maintains records sufficient to make necessary computations in the event of a complete liquidation or any other events requiring a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§317. Grounds for Denial of Application for Conversion

A. The commissioner may disapprove an application for conversion if:

1. the plan of conversion adopted by the applicant's board of directors is not in compliance with this rule or policies of OFI, or would violate another law or regulation;
2. the conversion would cause the applicant to fail to meet the regulatory capital requirements of R.S. 6:1206;
3. the conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended;
4. the converted savings bank would not have its accounts insured by the Federal Deposit Insurance Corporation (FDIC);
5. the commissioner determines that the application for conversion is manipulative, deceptive, or subverts the fairness of the conversion; or
6. the commissioner determines that the conversion is likely to result in injury to the savings bank;
7. the conversion will not meet the convenience and needs of the communities to be served by the converted savings bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§319. Prohibition on Repurchases of Stock and Restrictions on Payment of Dividends

A. **Stock Repurchases Prohibited.** A converted savings bank shall, pursuant to R.S. 6:1341, be subject to the provisions of R.S. 6:416, which prohibits the savings bank from purchasing or owning directly or indirectly any of its own stock or the stock of its parent company unless the stock has been subsequently taken for a debt previously contracted, in which case the stock shall not be held for more than one year.

B. **Dividend Payment Restrictions.** No converted savings bank shall declare or pay a dividend on any of its capital stock, if the effect would cause the regulatory capital of the savings bank to be reduced below the amount required for its liquidation account. Any dividend declared or paid on a converted savings bank's capital stock shall be in compliance with R.S. 6:1207.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§321. Statements Prior to Approval of Plan of Conversion

A. **Keeping Conversion Plans Confidential.** A savings bank considering converting under this rule and its directors, officers and employees shall keep such consideration confidential and shall only discuss the potential conversion as necessary to prepare information for filing an application for conversion. If this confidence is breached, the commissioner may require remedial measures, including:

1. a public statement by the savings bank that its board of directors is currently considering converting, pursuant to this rule;
2. providing for an eligibility record date so as to assure the conversion is equitable;
3. limitation of the subscription rights of any person violating or aiding the violation of this Section; and/or
4. any other actions the commissioner may deem appropriate and necessary to assure the fairness and equity of the conversion.

B. **Public Statement.** If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement under Paragraph A.1 of this Section may be made by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§323. Actions after Board Approves Conversion

A. Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors:

1. the savings bank shall:
 - a. notify its members of the action by publishing notice in a newspaper having general circulation in each community in which the home office and a branch office of the savings bank is located and/or by mailing a letter to each member. Copies of the published statement with publisher's affidavit of publication and any letter shall be filed with the commissioner as part of the application for conversion; and
 - b. have copies of the plan of conversion available for inspection by its members at each office;
2. the savings bank may also issue a press release with respect to the action. Copies of the press release shall be filed with the commissioner as part of the application for conversion;
3. the statement, letter, and press release, unless otherwise authorized by the commissioner upon a showing that the fairness or accuracy requires additional disclosures, shall be limited to, but need not contain all of, the following:

a. a statement that at least two-thirds of the board of directors has adopted a proposed plan to convert the savings bank from mutual to stock ownership;

b. a statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by members at a meeting at which the plan will be submitted for their approval;

c. a statement that existing proxies held with respect to voting rights in the institution will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

d. a statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to members prior to the meeting of members;

e. a statement that the proposed plan of conversion is subject to approval by the commissioner and, if applicable, by appropriate (named) federal regulatory authorities before such plan can become effective, and that members of the applicant will have an opportunity to file written comments with the commissioner, including any objections and materials supporting such objections;

f. a statement that the proposed plan is contingent upon obtaining favorable tax rulings or opinions;

g. a statement that there is no assurance that the approval of the commissioner or of federal authorities (named) will be obtained, and also no assurance that favorable tax rulings or tax opinions will be received;

h. the proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

i. a brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

j. a brief statement as to the extent to which voting members will participate in the conversion;

k. a brief description of the proposed plan of conversion;

l. the par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

m. a brief statement as to the extent to which directors, officers, employees, their associates and associates of the applicant will participate in the conversion;

n. a statement that deposit account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms, and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation (FDIC);

o. a statement that borrower's loans will be unaffected by conversion, and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed prior to conversion;

p. a statement that the normal business of the savings bank in accepting deposits and making loans will continue without interruption; and that the converted savings bank will continue after conversion to conduct its present services to deposit account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

q. a statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from regulatory authorities prior to the meeting and that the proposed plan may also be terminated by the board of directors; and

r. a statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the savings bank.

4. Such statement, letter, and/or press release shall not in any manner solicit proxies, include financial statements, or describe the benefits of conversion or the value of the capital stock of the savings bank upon conversion. In replying to inquiries, the savings bank shall limit its answers to the matters listed in Paragraph A.3 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§325. Notice of Filing

A. Form of Required Publication. Upon the commissioner's determination that an application for conversion is properly executed and is materially complete, he or she shall advise the applicant, in writing, to promptly publish a notice of the filing of the application. After receipt of the advice, the applicant shall prominently post the notice in each of its offices and publish the notice in a newspaper having general circulation in each community in which any office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION

FOR CONVERSION TO A STOCK SAVINGS BANK

NOTICE IS HEREBY GIVEN that _____ (name of applicant) has filed an application with the Commissioner of the Office of Financial Institutions for the State of Louisiana for approval to convert from a mutual to a stock savings bank.

The original copy of the application is on file with the Commissioner of the Office of Financial Institutions, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, Louisiana, 70809, and is available for public inspection or copying. A copy of the plan may also be inspected at any office of the applicant. Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or any aggrieved person will be considered by the commissioner if postmarked within twenty (20) calendar days after the publication of this notice. The commissioner may, in his discretion, and upon written request, extend the twenty (20) day comment period for an additional twenty (20) calendar days. Failure to timely file written comments may preclude the pursuit of any judicial or administrative remedies. Any such comments received will be available for inspection by any member of the applicant at the commissioner's office.

B. Verifying Publication. After publication of the notice, the applicant shall promptly file with the commissioner a copy of the published notice and a publisher's affidavit of publication from each newspaper in which the notice was published.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§327. Requirements as to Proxies

A. Solicitations to Which This Rule Applies. This Section applies to every solicitation of a proxy from a member of a savings bank for the meeting at which a conversion plan will be voted upon, except the following.

1. Any solicitation made other than on behalf of the management of the savings bank where the total number of persons solicited is not more than 50.

2. Any solicitation in a newspaper advertisement which informs the savings bank's members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other solicitation material and does no more than:

- a. name the savings bank;
- b. state the reason for the advertisement;
- c. identify the proposal or proposals to be acted upon by members; and
- d. urge members to vote at the meeting.

B. Use of Proxy Solicitation Material Must Be Authorized. No proxy solicitation material required to be filed with the commissioner prior to use shall be furnished to savings bank members or otherwise released for distribution until the use of such material has been authorized in writing by the commissioner. Proxy material authorized for use by the commissioner shall be mailed to the members within 10 business days of such authorization unless extended by the commissioner in writing upon a showing that adherence to the 10-day rule would work a hardship upon the savings bank and that the delay, if approved, would not be disadvantageous to any interested party. In addition, such proxy material shall be given to each savings bank member at least 20 days prior to the date of the meeting of members to vote on the plan of conversion, pursuant to §329.C.

C. Proxy Statement Must Be Furnished. No proxy solicitation under this Section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, by mail, a written proxy statement, the use of which has been authorized in writing by the commissioner pursuant to Subsection B of this Section.

D. Requirements as to Form of Proxy. The proxy form shall:

1. indicate in bold face type whether the proxy is solicited on behalf of the management;
2. provide designated blank spaces for dating and signing the proxy;

3. identify clearly and impartially each matter or group of related matters intended to be voted upon;

4. be clearly labeled "Revocable Proxy;"

5. describe any article of incorporation or state law or rule requirement restricting or conditioning voting by proxy;

6. contain an acknowledgment by the person solicited that he or she has received a proxy statement prior to signing the form;

7. state the date, time and place of meeting, if practical;

8. provide, by a box or otherwise, a means whereby the person solicited may specify a choice between approval or disapproval of each matter intended to be acted upon; and

9. indicate in bold type how the proxy shall be voted on those matters to which no choice is specified.

E. Limited Proxy. No proxy obtained pursuant to the conversion may confer authority to vote at any meeting other than the meeting or any adjournment thereof, to vote on the plan of conversion. A proxy confers authority to vote with respect to all matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted on matters not related to the plan of conversion.

F. Voting of Proxies. The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted. Where the person solicited, by means of a ballot provided pursuant to Paragraph D.8 of this Section, specifies a choice with respect to any matter to be acted upon, the votes will be cast in accordance with the specifications so made, and if no choice is so specified, the votes will be cast as indicated on the form of proxy.

G. No Prior Proxies May Be Used. Each voting member must be furnished a form of proxy conforming with Subsection D of this Section. No applicant shall use previously executed proxies.

H. Materials Required to Be Filed

1. Applicants shall file preliminary copies of the proxy materials with the commissioner. Such materials shall be presented on forms required by the commissioner.

2. Preliminary copies of any additional solicitation material subject to this Section, including press releases and radio or television scripts, to be used or furnished to members subsequent to furnishing the proxy statement, shall be filed with the commissioner at least five business days prior to the date on which the commissioner is requested to authorize the use of such material. Speeches may, but need not be, filed with the commissioner prior to use.

3. Copies of the proxy statement and of the form of proxy and all other solicitation material, in the form in which such material is furnished to members, shall be filed with the commissioner not later than the date such material is first sent or given to members. All such materials filed shall be accompanied by a statement of the date on which copies of such materials are to be released to members.

4. If the solicitation is to be made in whole or in part by personal solicitation, preliminary copies of all written instructions or other written material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the commissioner at least five business days prior to the date on which the commissioner is requested to authorize the use of such material.

5. All preliminary copies of material filed pursuant to this Section shall be clearly marked on the cover page "Preliminary Copy." Such preliminary copies shall be public unless otherwise deemed confidential by law or rule. The commissioner may make such inquiries or investigation in regard to the material as may be necessary for an adequate review.

6. Unless requested by the commissioner, copies of replies to inquiries from members and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to Subsection H of this Section.

7. Where any proxy statement, form of proxy or other material filed pursuant to Subsection H of this Section is amended or revised, a copy of such amended or revised material filed with the commissioner shall be marked to indicate clearly and precisely the changes effected subsequent to the previous filing.

I. Mailing Communications for Members. If the applicant has adopted a plan of conversion, the applicant shall perform any of the following acts which may be requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any member who will defray the reasonable expenses to be incurred by the applicant in the performance of the acts requested.

1. The applicant shall furnish to the requesting member the following information as promptly as practicable after the receipt of a request:

a. a statement of the approximate number of members who have been or are to be solicited on behalf of the board of directors, or any group of such holders which the savings bank member shall designate; and

b. an estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to the members.

2. The applicant shall mail copies of any proxy statement, form of proxy or other communication furnished by the member and as approved by the commissioner, to such of the savings bank's members specified in Subparagraph I.1.a of this Section as the requesting member may designate.

3. Any material which is furnished by the member shall be mailed with reasonable promptness after receipt of

the material to be mailed, envelopes or other containers therefor, and postage or the payment of costs of mailing.

4. Neither the management nor the applicant shall be responsible for another person's proxy statement, form of proxy, or other communication.

J. False or Misleading Statements

1. No solicitation of a proxy by the applicant or any other person of a proxy for the meeting to vote on the plan of conversion shall be made by means of any communication, written or oral, which contains any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary to make the statements not false or misleading, or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the meeting which has become false or misleading.

2. The fact that material has been filed with, examined by or authorized for use by the commissioner shall not be deemed a finding that the material is accurate or complete or not false or misleading or that the commissioner has passed upon the merits of or approved any proposal contained therein. No representation to the contrary shall be made by any person.

K. Correction of Proxy Statements. If a proxy solicitation violates this Section, the commissioner may require remedial measures including:

1. correction of the violation by means of a retraction and new solicitation;

2. rescheduling the meeting for a vote on the conversion; and/or

3. any other actions deemed appropriate by the commissioner in the circumstances in order to ensure a fair vote.

L. Prohibition of Certain Solicitations. No person soliciting a proxy from a member for the meeting to vote on conversion shall solicit any of the following:

1. an undated or post-dated proxy;

2. any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date in which it is signed by the member;

3. a proxy which is not revocable at will by the member; or

4. a proxy which is part of any other document or instrument (such as an account card).

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§329. Vote by Members

A. Procedure. Following approval by the commissioner, the plan of conversion shall be submitted to a meeting of members under provisions of the savings bank's articles of incorporation or bylaws or both.

B. Determining Members Eligible to Vote. The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall not be more than 40 days nor less than 10 days prior to the date of such meeting, pursuant to R.S. 6:1186.

C. Notice to Members. Notice of the meeting to consider the plan of conversion shall be given to the savings bank members by means of the proxy statement authorized for use by the commissioner. Such notice shall be mailed to the members within 10 business days of such authorization, unless extended by the commissioner pursuant to §327.B. In addition, such notice shall be given to each savings bank member at least 20 days prior to the date of the meeting. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity, where such holder possesses voting rights.

D. Notice to Nonvoting Members. The applicant may give notice of the proposed conversion and the meeting of members by letter or other written communication authorized for use by the commissioner to eligible account holders and supplemental eligible account holders who are not voting members.

E. Required Vote. The plan shall be approved by a vote of at least a majority of the total votes entitled to be cast by eligible members, except that a plan of merger shall receive the affirmative vote of two-thirds or more of the total votes entitled to be cast by eligible members, pursuant to R.S. 6:1277. Voting may be in person or by proxy, as authorized by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§331. Pricing and Sale of Securities**A. General**

1. No offer to sell securities of an applicant under a plan of conversion may be made prior to approval by the commissioner of the application for conversion and of the proxy statement.

2. No offering circular may be provided to any person in connection with an offer or sale of a security under a plan of conversion which has been filed with the commissioner unless the offering circular meets the requirements of this Section and if required, is the subject of an effective registration statement.

3. No sale of securities may be made except by means of a final offering circular which has been approved by the commissioner.

4. If the financial statements in a filing are in excess of 180 days prior to the date of the commissioner's approval of the plan of conversion, an interim financial statement as of a date within 180 days of such approval shall be furnished. This interim financial statement shall be at least as current as the most recent quarterly financial statement filed with the commissioner. This interim financial statement may be unaudited.

5. This Section shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

B. Distribution of Offering Circular. Any preliminary offering circular which has been filed with the commissioner may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to members under this Section. No final offering circular shall be distributed until it has been declared effective by the commissioner. The declaration of effectiveness of the final offering circular shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock under Subsection I of this Section or beyond the time as the commissioner shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under Subsection K of this Section.

C. Estimated Price. If the offering is to commence prior to the meeting of members held to vote on the plan of conversion, the authorized proxy statement shall set forth the estimated price or price range. Any preliminary offering circular shall set forth the estimated price or price range. The maximum of such price range shall be not more than 20 percent above the average of the minimum and maximum of the price range, and the minimum shall be not less than 20 percent below such average. The maximum price used in the price range should normally be no more than \$50 per share and the minimum no less than \$5 per share. However, the commissioner may approve a price range outside these maximums and minimums upon a showing that such price range enhances or does not discourage a broad dispersion of ownership and is not manipulative of the conversion process.

D. Prohibited Representations. The commissioner shall review the price information in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of members, and shall review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that the price information has been approved by the commissioner or that the shares of capital stock sold under the plan of conversion have been approved or disapproved by the commissioner or that the commissioner has passed upon the accuracy or adequacy of any offering circular covering the shares.

E. Underwriting Expenses. Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the commissioner. No underwriting commissions shall be allowed or paid with respect to shares

of stock sold in the subscription offering unless the plan contains the optional provisions permitted by §307.A.4. However, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the commissioner shall accept. In this Section, "underwriting commissions" includes underwriting discounts.

F. Pricing Materials

1. The applicant shall submit a full appraisal report on the value of the converting savings bank and the pricing of the stock to be sold in the conversion. The report must be prepared by an independent appraiser and must include a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein. The appraisal shall also include a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the savings bank proposing to convert may have from the peer group statistics and a complete analysis of the savings bank's pro forma earnings which should include its full potential once the savings bank fully deploys its new capital pursuant to its business plan.

2. In those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the commissioner may deem the entire application materially deficient and/or incomplete, and decline to further process the application.

3. The applicant shall submit information demonstrating to the satisfaction of the commissioner the independence and expertise of any person preparing the pricing materials.

4. The applicant shall file with the commissioner any additional information with respect to the pricing of the capital stock as the commissioner may request, including a full appraisal.

G. Order Forms for Purchase of Capital Stock

1. Promptly after the commissioner has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members, and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting savings bank shall have adopted in its plan of conversion the optional provisions in §307.A.3 and §307.A.4, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

2. Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering and a set of detailed instructions explaining how to complete the order forms.

3. The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the commissioner's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain in writing an amendment to the commissioner's approval. If appropriate, the commissioner may condition the approval on requiring a re-solicitation of proxies or order forms, or both. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who had paid the maximum subscription price, unless the subscriber affirmatively elects to have the difference applied to the purchase of additional shares of capital stock.

4. Each order form shall be prepared to indicate, in as simple, clear and intelligible a manner as possible, the actions which are required or available with respect to the form and the capital stock offered for purchase thereby. Each order form shall:

a. indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

b. indicate the time period within which the subscription rights must be exercised, which time period shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

c. state the maximum subscription price per share of capital stock;

d. indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

e. provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the person wishes to purchase;

f. indicate the manner of required payment and, if the payment may be made by withdrawal from a certificate of deposit, indicate that the withdrawal may be made without penalty. If payment is to be made by withdrawal from a deposit account or certificate of deposit, a box to check should be provided;

g. provide specifically designated blank spaces for dating and signing the order form;

h. contain an acknowledgment by the person signing the order form that he or she has received a final offering circular prior to signing; and

i. indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be considered received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

5. The order form may provide that it may not be modified without the applicant's consent after its receipt. If payment is to be made by withdrawal from a deposit account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If the withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if the amount had remained in the account from which it was withdrawn until the closing date.

H. **Withdrawal from Certificate Accounts.** Notwithstanding any regulatory or contractual provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock under the exercise of subscription rights by withdrawal from a certificate account without the assessment of penalties. In the case of early withdrawal of only a portion of such an account, the certificate evidencing the account shall be canceled if the applicable minimum balance requirement ceases to be met. The remaining balance shall earn interest at the passbook rate.

I. **Period for Completion of Sale.** The sale of all shares of capital stock of the converting savings bank under the plan of conversion, including any sale in a public offering or direct community offering, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the commissioner in writing for good cause shown.

J. **Interest on Subscriptions and Direct Community Offering Purchase Orders.** The converting savings bank shall pay interest at not less than the passbook rate on all amounts paid in cash, check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering, from the date payment is received until the conversion is completed or terminated.

K. **Extensions of Time; Post-Effective Amendments to Subscription Offering Circular**

1. The commissioner may grant one or more extensions to the time required to complete the sale of all shares of capital stock under Subsection I of this Section if no single extension of time exceeds 90 days. No such extension shall be granted unless the savings bank shows that the circumstances leading to the request for an extension were beyond the control of the savings bank and that the investors who purchased stock during the initial subscription period will not be disadvantaged by the extension.

2. Immediately upon the granting of an extension of time pursuant to Paragraph K.1 of this Section, the converting savings bank shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the commissioner, which shall notify each subscriber and each ordering person of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind their subscription, either:

a. at any time prior to 20 days before the end of the extension period; or

b. at any time prior to the date of the commencement of the public offering or the direct community offering. If the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings bank.

3. Under this Paragraph, the public offering shall be deemed to commence upon the filing with the commissioner of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the commissioner of the final offering circular.

4. After the expiration of subscription rights, the converting savings bank shall file with the commissioner a post-effective amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering. The amendment must be approved by the commissioner before it is effective.

5. Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings bank immediately after the declaration of its effectiveness to each subscriber, and, if applicable, to each person who has ordered stock in the direct community offering, and the converting savings bank shall grant to each subscriber and ordering person the right to increase, decrease or rescind his or her subscription or order for a period which shall be no less than the greater of 10 days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted in writing by the commissioner pursuant to Paragraph K.2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§333. Procedural Requirements for Filing Application

A. The commissioner may adopt internal policies relative to the procedural requirements for filing an application for conversion pursuant to this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§335. Conversion of a Savings Bank in Connection with the Formation of a Stock Holding Company

A. A savings bank may convert to stock form under this rule as part of a transaction in which a stock holding company is organized to acquire upon issuance all the

capital stock of the converted savings bank. In this type of transaction, eligible account holders, supplemental eligible account holders, and voting members of the converting savings bank shall receive, without payment, nontransferable rights to purchase capital stock of the newly formed holding company in lieu of capital stock of the converting savings bank. Unless clearly inapplicable, all of the requirements of this rule shall apply to a conversion under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§337. Conversion of a Savings Bank Involving Acquisition by an Existing Stock Holding Company

A. A savings bank may convert to stock form under this rule as part of a transaction in which an existing stock holding company acquires upon issuance all the capital stock of the converted savings bank. In this type of transaction, the eligible account holders, supplemental eligible account holders, and voting members of the converting savings bank shall receive, without payment, nontransferable rights from the holding company to purchase its capital stock in lieu of capital stock of the converting savings bank. Unless clearly inapplicable, all of the requirements of this rule shall apply to a conversion under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§339. Merger with an Existing Stock Savings Bank

A. A savings bank may convert to stock form by merging with an existing stock savings bank as part of a transaction in which the equity securities of the existing stock savings bank are issued. In a transaction in which the existing stock savings bank is the surviving institution, the eligible account holders, supplemental eligible account holders, and voting members of the converting savings bank shall receive, without payment, nontransferable rights from the existing stock savings bank to purchase its capital stock in lieu of capital stock of the converting savings bank. Unless clearly inapplicable, all of the requirements of this rule shall apply to a conversion under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§341. Merger with an Existing Stock Savings Bank Owned by a Stock Holding Company

A. A savings bank may convert to the stock form under this rule by merging into an existing stock savings bank which is a wholly-owned subsidiary of a stock holding company. In this type of transaction, the eligible account holders, supplemental eligible account holders, and voting

members of the converting savings bank shall receive, without payment, nontransferable rights from the holding company to purchase its capital stock in lieu of capital stock of the converting savings bank. Unless clearly inapplicable, all of the requirements of this rule shall apply to a conversion under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

§343. Penalties

A. The commissioner may enforce this rule or any policy adopted hereunder, pursuant to the provisions of R.S. 6:121.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1069 (October 1995).

Chapter 5. Mutual Holding Company Reorganizations

§501. Scope

A. This rule is enacted pursuant to the Louisiana Savings Bank Act of 1990. Except as the commissioner may otherwise determine, the provisions of this rule shall exclusively govern the reorganization of Louisiana state-chartered mutual savings banks into mutual holding companies with one or more subsidiary stock savings banks and the issuance of stock by such savings banks. The prior written approval of the commissioner is required for such actions. The commissioner may grant a waiver in writing from any requirement of this rule for good cause shown and may adopt policies and procedures interpreting and implementing this rule. This rule supersedes all inconsistent articles of incorporation and bylaws of state-chartered mutual savings banks reorganizing into mutual holding companies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1070 (October 1995).

§503. Definitions

A. For purposes of this rule, the following terms shall have the meanings set forth in §303 of the Savings Bank Conversions Rule:

1. *acting in concert*;
2. *affiliate*; *associate*;
3. *commissioner*;
4. *control*;
5. *person*;
6. *proxy*;

7. *stock*;
8. *tax-qualified employee stock benefit plan*; and
9. *non-tax-qualified employee stock benefit plan*.

B. For purposes of this rule, the following terms shall have the following meanings.

Acquiree Savings Bank—any savings bank other than a resulting savings bank, that:

- a. is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and
- b. is in the mutual form immediately prior to the acquisition.

Conversion Rule—refers to the Savings Bank conversions rule promulgated by the Louisiana Office of Financial Institutions in the *Louisiana Register*, Volume 21, page 1069 (October 20, 1995). For purposes of this rule, the term *conversion* as it appears in the conversion rule shall be deemed to refer to the *reorganization* or the *stock issuance plan*, as appropriate.

Member—any person who qualifies as a member of the savings bank or mutual holding company at issue, pursuant to the institution's articles and bylaws.

Mutual Holding Company—a savings bank mutual holding company, as further defined in R.S. 6:1151.

Parent—company that controls another company, either directly or indirectly, through one or more subsidiaries.

Reorganization Notice—a notice of a proposed mutual holding company reorganization that is in the form and contains the information required by the commissioner.

Reorganization Plan—a plan to reorganize into the mutual holding company format containing the information required by §511 of this rule.

Reorganizing Savings Bank—a mutual savings bank that proposes to reorganize into a mutual holding company under this rule.

Resulting Savings Bank—a stock savings bank that is organized as a subsidiary of a reorganizing savings bank to receive a substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing savings bank upon consummation of the reorganization.

Stock Issuance Plan—a plan providing for the issuance of stock by a savings bank subsidiary of a mutual holding company as provided in §513 of this rule.

Subsidiary—any company which is controlled by a person or by a company which is a subsidiary of such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1071 (October 1995).

§505. Procedural Requirements for Reorganizations

A. Approvals Required. Prior to reorganizing into a mutual holding company, a savings bank shall do all of the following:

1. obtain approval of a reorganization plan by a majority of the board of directors of the reorganizing savings bank and any acquires savings bank;
2. file the reorganization plan with the commissioner;
3. obtain the approval of the reorganization plan and any proxy statement by the commissioner and, if applicable, the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Board ("FRB"), and/or the Office of Thrift Supervision ("OTS");
4. obtain approval of the reorganization plan at a meeting of members held in accordance with the institution's articles and bylaws:
 - a. if the reorganization is a wholly internal reorganization and there is neither a merger nor a sale of all or substantially all of its assets to another financial institution, then an affirmative vote of a majority of the total number of votes which all members of the reorganizing savings bank and any acquires savings banks are entitled to cast is required; or
 - b. if the reorganization is not wholly internal or involves a merger, a two-thirds vote of such members is required.

NOTE: Meeting notice requirements shall comply with §329.C of the conversion rule.

B. Public Notice

1. Upon the commissioner's determination that an application for conversion is properly executed and is materially complete, the applicant shall be advised in writing, to promptly publish a notice of the filing of the application. After receipt of the advice, the applicant shall prominently post the notice in each of its offices and publish the notice in a newspaper having general circulation in each community in which any office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION FOR REORGANIZATION AS A SAVINGS BANK MUTUAL HOLDING COMPANY

NOTICE IS HEREBY GIVEN that _____ (name of applicant), located in _____, has filed an application with the Commissioner of the Office of Financial Institutions for the State of Louisiana for approval to reorganize as a savings bank mutual holding company.

The original copy of the application is on file with the Commissioner of the Office of Financial Institutions, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, Louisiana, 70809, and is available for public inspection or copying. A copy of the plan may also be inspected at any office of the applicant. Written comments including objections to the reorganization plan, and materials supporting the objections from any member of the applicant or any aggrieved person will be considered by the commissioner if postmarked within 20 calendar days after the publication of this notice. The commissioner may, in his discretion, and upon written request, extend the 20 day comment period for an additional calendar days. Failure to timely file written comments may preclude the pursuit of any remedies.

2. If any reorganization notice includes an acquires savings bank, the publication requirements of this Section shall be fulfilled both by the reorganizing savings bank and by the acquires savings bank, and the first paragraph of the form of notice in Paragraph 2 shall be replaced by the following paragraph:

NOTICE IS HEREBY GIVEN that _____ (name of applicant), located in _____, and _____ (name of applicant), located in _____, have filed applications with the Commissioner of the Office of Financial Institutions for the State of Louisiana for approval to join together to reorganize as a mutual holding company.

3. After publication of the notice, the applicant(s) shall promptly file with the commissioner a copy of the published notice and a publisher's affidavit of publication from each newspaper in which the notice was published.

C. Proxy Procedural Requirements

1. The provisions of §§305.A.26 and 327 of the conversion rule shall apply to all solicitations of proxies by any person in connection with any membership vote required under this rule, to the extent applicable. Proxy materials shall be approved by the commissioner, and contain information relevant to the action that members are being asked to approve. The term *conversion* as it appears in the conversion rule shall be deemed to refer to the *reorganization* or the *stock issuance plan*, as appropriate.

2. In addition to all disclosure requirements of Paragraph C.1 of this Section and of §515, all proxies requesting account holder approval of a mutual holding company reorganization shall address whether the mutual holding company intends to waive dividends, the implications to account holders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

3. Savings banks proposing nonconforming minority stock issuances pursuant to §513.D.2 of this rule must include in the proxy materials to account holders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

a. the consequences to account holders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

b. any intent by the mutual holding company to waive dividends, and the implications to account holders.

D. Actions by Commissioner. A proposed reorganization shall be acted on by the commissioner within 60 days after an application is filed and deemed completed, unless extended an additional 30 days by written notice, and, if approved, it shall be subject to the following conditions.

1. The reorganization shall be consummated not more than 12 months from the date the savings bank's members approve the reorganization plan. This time period may be extended up to an additional 12 months with the prior written approval of the commissioner. Further extensions may be granted for good cause shown.

2. The capitalization of the mutual holding company shall not cause the resulting savings bank to fail to meet its capital maintenance requirements under R.S. 6:1201 and 1206.

3. Any other conditions may be imposed which the commissioner finds necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1071 (October 1995).

§507. Grounds for Disapproval of Reorganizations

A. Basic Standards. The commissioner may disapprove an application for a mutual holding company reorganization on one or more of the following grounds.

1. Disapproval is necessary to prevent unsafe or unsound practices, or to otherwise maintain a sound financial system.

2. The reorganization plan is not fair to members of the reorganizing savings bank.

3. The reorganization plan does not protect the interests of deposit account holders of the reorganizing savings bank.

4. The financial or managerial resources of the reorganizing savings bank or any acquires savings bank warrant disapproval.

5. After the proposed capitalization of the mutual holding company, any savings bank subsidiary would fail to meet the requirements of R.S. 6:1201 and 1206.

6. A stock issuance is proposed in connection with the reorganization that fails to meet the standards established by §513.

7. The reorganizing savings bank or any acquires savings bank fails to furnish the information required to be included in the reorganization plan or any other information requested by the commissioner regarding the proposed reorganization.

8. The proposed reorganization would violate any applicable federal or state law, rule, or policy of OFI.

9. The resulting or acquires savings banks would not have their accounts insured by the FDIC.

B. Capitalization

1. The commissioner shall disapprove a proposal by a reorganizing savings bank or any acquires savings bank to capitalize a mutual holding company if, immediately following the reorganization, the resulting or acquires savings bank will fail to meet the capital requirements of R.S. 6:1201 and 1206. If the net worth of the reorganizing savings bank will, under the reorganization plan, meet the minimum net worth requirements of R.S. 6:1201 and 1206, a reorganization plan may permit a mutual holding company to retain assets of the reorganizing mutual savings bank.

2. Proposals by reorganizing and acquires savings banks to capitalize mutual holding companies shall also comply with any statutes and rules governing capital distributions by savings banks.

C. Convenience and Needs. The commissioner will also examine the extent to which the reorganization will affect the convenience and needs of the communities to be served, and the impact on operating efficiency of the affected savings banks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1072 (October 1995).

§509. Membership Rights

A. Depositors of Involved Savings Banks. The articles of incorporation or bylaws of a mutual holding company must:

1. confer upon existing and future depositors of the resulting savings bank the same membership rights in the mutual holding company as were conferred upon depositors by the articles and bylaws of the reorganizing savings bank as in effect immediately prior to the reorganization;

2. confer upon existing and future depositors of any acquires savings bank or any savings bank that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the articles and bylaws of the acquires savings bank immediately prior to the acquisition, provided that if the acquires savings bank is merged into another savings bank from which the mutual holding company draws members, the depositors of the acquires savings bank shall receive the same membership rights as the depositors of the savings bank into which the acquires savings bank is merged;

3. confer upon the borrowers of the resulting savings bank who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the articles and bylaws of the reorganizing savings bank immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowing made after the reorganization; and

4. confer upon the borrowers of any acquires savings bank or any savings bank that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition, the same membership rights in the mutual holding company as were conferred upon them by the articles and bylaws of the acquires savings bank immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowing made after the acquisition, provided that if the acquires savings bank is merged into another savings bank from which the mutual holding company draws members, the borrowers of the acquires savings bank shall instead receive the same grandfathered membership rights as the borrowers of the savings bank into which the acquires savings bank is merged received at the time the savings bank became a subsidiary of the mutual holding company;

5. provide that membership in a mutual holding company ends if the member withdraws the full withdrawal value of all deposit accounts in subsidiary mutual savings banks. A member who requests the full withdrawal value of the member's deposit accounts remains a member until the withdrawal value is paid in full.

B. Depositors of Stock Savings Banks. A mutual holding company that acquires a stock savings bank other than a resulting savings bank or an acquires savings bank, shall not confer any membership rights in the mutual holding company upon the depositors of such savings bank unless the savings bank is merged into a mutual savings bank from which the mutual holding company draws members, in which case the depositors of the stock savings bank shall receive the same membership rights as other depositors of the mutual savings bank into which the stock savings bank is merged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1073 (October 1995).

§511. Contents of Reorganization Plans

A. Each reorganization plan shall contain a complete description of all significant terms of the proposed reorganization, and shall include or provide all of the following:

1. any stock issuance plan proposed in connection with the reorganization plan;

2. an opinion of counsel or a ruling from the Internal Revenue Service as to the tax treatment of the proposed reorganization;

3. the proposed articles of incorporation and bylaws of: the reorganizing association, the resulting savings bank, the mutual holding company, and any acquires savings bank indicating that such acquires will be in the stock form;

4. a description of the method of reorganization;

5. that upon consummation of the reorganization, substantially all of the assets and liabilities, including all deposit accounts of the reorganizing savings bank, shall be transferred to the resulting savings bank, which shall immediately become an operating savings bank subsidiary of the mutual holding company;

6. that all assets, rights, obligations and liabilities of whatever nature of the reorganizing savings bank that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting savings bank;

7. that each holder of a deposit account in the reorganizing savings bank or any acquires savings bank immediately prior to the reorganization shall, upon consummation of the reorganization, receive without payment, an identical deposit account in the resulting savings bank or the acquires savings bank, or as appropriate if savings banks are being merged;

8. that a proxy that may be cast on behalf of a mutual savings bank member may be cast on behalf of a mutual holding company member until the proxy is revoked or superseded pursuant to the articles and bylaws of the institution;

9. that the reorganization plan adopted by the boards of directors of the reorganizing savings bank and any acquires savings bank may be:

a. amended by those boards of directors as a result of any regulator's comments prior to any solicitation of proxies from the members by the board of directors of the reorganizing savings bank and any acquires savings bank to vote on the reorganization plan and at any later time with the consent of the commissioner; and/or

b. terminated by the board of directors of the reorganizing savings bank or any acquires savings bank at any time prior to the meeting of the members called to consider the reorganization plan and at any later time with the consent of the commissioner;

10. that the reorganization plan shall be terminated if not completed within a specified period of time which shall be not more than 12 months from the date the savings bank members approve the plan, unless extended up to an additional 12 months with the prior written approval of the commissioner for good cause shown;

11. a statement, in approximate amounts, of the categories of expenses to be incurred in connection with the reorganization, which shall be reasonable; and

12. such additional information as the commissioner directs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1073 (October 1995).

§513. Stock Issuance Plans

A. Approval Required

1. No savings bank subsidiary of a mutual holding company, including a resulting or acquires savings bank, may issue stock to persons other than its mutual holding company parent without the prior written approval of the commissioner.

2. The commissioner may approve a proposed stock issuance if all of the following criteria are met.

a. The proposed issuance is to be made pursuant to a stock issuance plan that contains all the provisions required by this §513 and by §515.

b. The stock issuance plan is consistent with the articles of incorporation, including the type and amount of stock that may be issued.

c. The stock issuance plan would provide the savings bank, its mutual holding company parent, and any other savings bank subsidiaries of the mutual holding company with sufficient capital and would not be

detrimental to the savings bank, its mutual holding company, members of the mutual holding company or the interests of depositors of the savings bank.

d. The proposed price or price range, the classification and any terms or conditions of the stock to be issued are reasonable.

e. The savings bank furnishes the information required by the commissioner.

f. If the stock issuance plan is part of a reorganization plan under §511, then the stock issuance plan shall be approved by the members of the reorganizing savings bank pursuant to §505.A.4; however, if the stock issuance plan is subsequent to a previously approved plan of reorganization, then approval of at least a majority of the members of the mutual holding company is required.

g. The proposed issuance would fail to meet the convenience and needs of the community served by the savings bank.

h. The proposed issuance complies with all other applicable laws and rules.

3. In determining whether the criteria of A.2 of this Section are met, the commissioner may consider the following factors:

a. the savings bank's size, capital position, and quality of management;

b. the savings bank's business objectives;

c. the dollar amount and number of shares to be issued pursuant to the plan;

d. the market conditions which may affect the plan;

e. the existence of a trading market in, or methods of later resale or repurchase, of the stock to be issued under the plan;

f. any benefits provided to the savings bank through employee or director incentive aspects of the plan; and/or

g. the impact, if any, of the participation or nonparticipation in the offering by members of the mutual holding company parent of the savings bank or other shareholders.

B. Pricing of Stock. The pricing and sale of stock pursuant to a stock issuance shall comply with §331 of the conversion rule, to the extent applicable. If the proposed price or price range includes any discount due to the minority status of the stock to be offered, the plan shall also indicate the amount of the discount and how that discount was determined.

C. Offering Restrictions

1. No representation may be made in connection with the offer or sale of any stock issued under this Section that the price or price range of the stock has been approved or disapproved by the commissioner or that the commissioner has endorsed the accuracy or adequacy of any offering or sales document disseminated.

2. In connection with the offer, sale or purchase of stock, no person may:

- a. employ any device, scheme, or artifice to defraud;
- b. make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances, not misleading; or
- c. engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

3. Prior to the completion of a stock issuance pursuant to this Section, no person shall:

- a. transfer, receive or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person, except for one or more tax-qualified employee stock benefit plan(s) of the savings bank or mutual holding company provided the plan(s) do not have in the aggregate more than 25 percent of any class of security of the savings bank or mutual holding company; or
- b. make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the stock issuance plan and allowed by the commissioner, except as to offers for public resale made exclusively to the savings bank or to the underwriters or a selling group acting on its behalf.

D. Mandatory Provisions. Each stock issuance plan shall:

- 1. contain a complete description of all significant terms of the proposed stock issuance, shall attach a copy of each proposed stock certificate form, any proposed stock order form, and any agreements or other documents defining or limiting the rights of the stockholders;
- 2. provide that the offering be structured in a manner similar to the procedural and substantive requirements of a standard conversion under the conversion rule, including the stock purchase subscription rights and priorities, as applied to members of the issuing savings bank's mutual holding company, unless the savings bank demonstrates to the satisfaction of the commissioner that a non-conforming issuance would be more beneficial to the association compared to a conforming offering, considering, in the aggregate, the effect of each on the savings bank, its financial and managerial resources, its future prospects, and the convenience and needs of the community to be served;
- 3. provide that the aggregate amount of outstanding voting common stock owned or controlled by persons other than the mutual holding company at the close of any proposed issuance shall be less than 50 percent of the total outstanding voting common stock. This provision may be omitted if the proposed issuance will be conducted by a savings bank that was in the stock form when acquired by its mutual holding company parent if the savings bank is not a resulting savings bank or an acquires savings bank. Any stock which has no present or contingent voting rights may

be issued by a savings bank subsidiary of a mutual holding company to persons other than the savings bank's mutual holding company, consistent with applicable law;

4. provide that the aggregate amount of stock which any person and his/her associates, or any group of persons acting in concert, or any employee stock benefit plan may subscribe for or purchase in the stock issuance plus all prior stock issuances, shall not exceed 10 percent of the total outstanding shares of the savings bank held by persons other than the savings bank's mutual holding company parent at the close of the proposed issuance. This 10 percent acquisition limit shall not apply to shares purchased in the secondary market. Shares held by one or more tax-qualified employee stock benefit plans and attributable to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person; however shares held by non-tax-qualified plans shall be so aggregated:

a. the limitations discussed in this paragraph shall be contained in the plan and in the articles and bylaws of the savings bank;

b. when any person violates this paragraph, the stock beneficially owned by such person in excess of 10 percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in any matter submitted to the stockholders for a vote;

5. provide that the aggregate amount of stock acquired in the issuance, plus all prior issuances of the savings bank by all non-tax-qualified employee stock benefit plans, officers and directors of the savings bank and their associates, shall not exceed 35 percent of the total outstanding shares of the savings bank held by persons other than its mutual holding company parent at the close of the proposed issuance, if the savings bank has less than \$50 million in total assets, or 25 percent if its total assets are more than \$500 million. If the savings bank has between \$50-\$500 million in total assets, the maximum percentage shall be equal to 35 percent minus one percent multiplied by the quotient of the total assets less \$50 million divided by \$45 million. In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. The acquisition restrictions of this Paragraph shall not apply to shares acquired by the affected persons in the secondary market;

6. provide that the sale price of the stock sold in the issuance shall be a uniform price based on an independent valuation, as provided in Subsection B of this Section;

7. provide that the plan shall specify the underwriting or other marketing arrangements for the sale of stock;

8. provide that, for a period of three years following the issuance, an officer, director, or his/her associates shall not purchase, without the prior written approval of the commissioner, any stock of the savings bank except from a broker-dealer registered with the Commissioner of Securities for the State of Louisiana and the Securities and Exchange Commission. However, this Paragraph shall not apply to:

a. purchases of stock made by and held by any one or more tax- or non-tax-qualified employee stock benefit plans which may be attributable to individual officers or directors, provided that such plans do not have in the aggregate beneficial ownership of more than 25 percent of any class of stock; or

b. negotiated transactions involving more than one percent of the outstanding stock in that class;

9. provide that all shares of capital stock purchased by directors, officers, or their associates in the issuance, shall be subject to the restriction that the shares shall not be sold, without the prior written approval of the commissioner, for a period of at least one year following the date of purchase, except upon the death of the director, officer, or associate;

10. provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

a. each certificate of stock shall bear a legend stating the restriction;

b. instructions shall be issued to the transfer agent for the stock with respect to applicable restrictions on transfer of any restricted stock; and

c. any shares issued as a stock dividend, stock split or otherwise relating to any restricted stock shall be subject to the same restrictions as apply to the restricted stock;

11. provide that if, at the close of the issuance there are more than 100 shareholders of any class of stock, the savings bank shall use its best efforts to:

a. encourage and assist a market maker to establish and maintain a market for the stock; and

b. list that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

12. provide that the savings bank may make scheduled, discretionary contributions to tax-qualified employee stock benefit plans if the contributions do not cause the savings bank to fail to meet its regulatory capital requirements;

13. provide that after the stock issuance, the savings bank will comply with all applicable federal and state securities registration requirements;

14. provide that the savings bank shall not lend funds or otherwise extend credit on an unsecured basis or upon the security of the savings bank's stock to any person to purchase the stock of the savings bank;

15. provide that, if necessary, the savings bank's articles of incorporation will be amended to authorize the stock issuance;

16. provide that the expenses incurred in connection with the issuance shall be reasonable and specified in the plan;

17. provide that, if proposed as part of a reorganization plan, the stock issuance plan may be amended or terminated in the same manner as the reorganization plan under §511.A.9.a and b; otherwise it may be amended or terminated by the board of directors of the issuing savings

bank prior to approval by the commissioner, or thereafter with the commissioner's approval;

18. the stock issuance plan shall be terminated if not completed within a time specified in the stock issuance plan unless an extension is requested in writing for good cause shown and approved in writing by the commissioner.

E. Optional Provisions. A stock issuance plan may provide that:

1. if the proposed stock issuance is part of a reorganization plan, the offering may be commenced concurrently with or after the mailing of any authorized proxy statements to the members of the reorganizing savings bank and any acquires savings bank. The offering may be concluded prior to the required membership votes, provided the offer and sale of the stock is conditioned upon the approval of the reorganization plan and stock issuance plan by the members of the reorganizing savings bank and any acquiree savings bank;

2. any insignificant residue of stock not sold in the offering may be sold in any other manner provided in the stock issuance plan that is approved by the commissioner in writing;

3. orders for stock purchases made in connection with the reorganization may be subject to minimum and/or maximum dollar and/or numerical limits. Such limits shall be reasonable and fair in consideration of factors such as the size of the savings bank, the amount of the typical qualifying deposit, the reasons for such limitations, and other factors, all subject to approval by the commissioner;

4. the plan may require a six-month holding period prior to the sale of stock which was sold at a discount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1074 (October 1995).

§515. Full Disclosure Required

A. The stock issuance plan, proxy and/or offering materials must contain thorough disclosures of all material facts, and particularly as to all benefits which may be obtained by any person in the transaction at issue. Benefits to officers, directors, their associates, employees and to non-members or non-stockholders (including charitable or community organizations) shall be disclosed in chart form with any necessary textual description and shall comply in all respects to the provisions set forth under §311 of the conversion rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1077 (October 1995).

§517. Activities of Mutual Holding Companies

A. Permitted Activities. A mutual holding company may, with the approval of its board of directors and/or members or

shareholders as required by its articles and bylaws, and by state law:

1. invest in or acquire control of a stock savings bank, a savings association or their holding companies;

2. acquire a mutual savings bank or mutual savings and loan association by merger of such mutual into an interim or existing subsidiary savings bank of the mutual holding company from which the mutual holding company draws members in accordance with the Louisiana Savings Bank Act of 1990, R.S. 6:1131, et seq.;

3. with the consent of the commissioner and subject to such conditions as the commissioner may prescribe, acquire control of another mutual holding company by merging with or into it or a subsidiary interim holding company;

4. acquire control of a savings bank holding company, savings and loan holding company, or a bank holding company in the stock form with the written approval of the commissioner. An acquired holding company may be held as a subsidiary or merged into the mutual holding company;

5. invest in or acquire control of any corporation, other than a mutual holding company, which is engaged exclusively in activities approved by the commissioner;

6. invest in securities a savings bank may invest in under the Louisiana Savings Bank Act of 1990;

7. engage in activities a savings bank may engage in under the Louisiana Savings Bank Act of 1990;

8. furnish or perform management services for a subsidiary;

9. hold, manage, or liquidate assets owned by or acquired from a subsidiary;

10. hold or manage property which it or a subsidiary uses;

11. unless limited or prohibited by the commissioner, engage in any activity that the Federal Reserve Board permits a bank holding company to engage in under 12 CFR 225 (Regulation Y), Subpart C.

B. Prohibitions on Stock Repurchases

1. A subsidiary savings bank of a mutual holding company shall, pursuant to R.S. 6:1341, be subject to the provisions of R.S. 6:416, which prohibit the savings bank from purchasing or owning directly or indirectly any of its own stock or the stock of its parent company unless the stock has been subsequently taken for a debt previously contracted, in which case the stock shall not be held for more than one year.

2. A mutual holding company may, at any time, and without prior approval of the commissioner, acquire additional shares of the stock of a subsidiary savings bank.

C. Dispositions. With the prior written approval of the commissioner, a mutual holding company may directly or indirectly, transfer any interest in stock which it holds in any subsidiary savings bank, savings association, holding

company or other corporation; or cause or permit the transfer of all or a substantial portion of the assets or liabilities of any such subsidiary entity.

D. Restrictions on Waiver of Dividends. Unless authorized by the commissioner, no mutual holding company may waive its right to receive any dividend declared by a subsidiary.

E. Restrictions on Indemnification. R.S. 6:1190(c)(6) shall apply to mutual holding companies in the same manner as if they were mutual savings banks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1077 (October 1995).

§519. Registration, Reports, and Examinations

A. Reports of Mutual Holding Companies. Each mutual holding company shall furnish, in the manner and form prescribed by the commissioner, an annual report of its operations for the fiscal year in which it becomes a mutual holding company, and for each fiscal year during which it remains a mutual holding company. Additional information and reports shall be furnished as the commissioner may require.

B. Examinations and Inspections. The commissioner may examine or inspect any mutual holding company and each of its subsidiaries and prepare a report of their operations and activities. The commissioner may rely on examination reports made by the primary federal regulatory agency of the mutual holding company's subsidiary savings bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1077 (October 1995).

§521. Conversion or Liquidation of Mutual Holding Companies

A. Conversion. A mutual holding company may convert from mutual to stock form in accordance with a plan of conversion approved by the commissioner pursuant to the procedures for conversion of a mutual savings bank under the conversion rule.

B. Voluntary Liquidation. The provisions of R.S. 6:1282 shall apply to a mutual holding company in the same manner as they apply to a savings bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1078 (October 1995).

§523. Procedural Requirements for Filing Applications

A. The commissioner may adopt internal policies relative to the procedural requirements for filing an application for reorganization pursuant to this rule.

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1141.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 21:1078 (October 1995).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part IX. Credit Unions

Chapter 1. General Provisions

§101. Assessments

A. Fees and Charges

1. During 1991 and each year thereafter, all state-chartered credit unions shall pay an annual operating fee, the exact amount of which shall be fixed from time-to-time by the commissioner. During 1990, credit unions shall continue to be charged and be liable to the Louisiana Office of Financial Institutions for the examination fees presently fixed by R.S. 6:646(B)(3) and (4).

2. Except as hereinafter provided, the annual operating fee set by the commissioner shall not exceed the fee calculated by the use of the following scale:

a. when the assets are less than \$100,000, the fee is \$100;

b. when the assets are greater than \$100,000, but less than \$1,000,000, the fee is \$250;

c. when the assets are \$1,000,000, but less than \$3,000,000, the fee is \$1,000;

d. when the assets are \$3,000,000, but less than \$4,000,000, the fee is \$2,000;

e. when the assets are \$4,000,000, but less than 6,000,000, the fee is \$3,000;

f. when the assets are \$6,000,000, but less than \$10,000,000, the fee is \$5,000;

g. when the assets are \$10,000,000, but less than \$18,000,000, the fee is \$7,500;

h. when the assets are \$18,000,000, but less than \$30,000,000, the fee is \$10,000;

i. when the assets are \$30,000,000, but less than \$40,000,000, the fee is \$12,000;

j. when the assets are \$40,000,000, but less than \$50,000,000, the fee is \$15,000;

k. when the assets are \$50,000,000, but less than \$60,000,000, the fee is \$18,000;

l. when the assets are \$60,000,000, but less than \$70,000,000, the fee is \$21,000;

m. when the assets are \$70,000,000, but less than \$80,000,000, the fee is \$24,000;

n. when the assets are \$80,000,000, but less than \$90,000,000, the fee is \$27,000;

o. when the assets are \$90,000,000, but less than \$100,000,000, the fee is \$30,000;

p. when the assets are \$100,000,000, the fee is \$30,000 plus \$5,000 for each 10,000,000 or fraction of 10,000,000 in excess of \$100,000,000.

3.a. Provided the fees assessed in Subparagraphs 2.a-p above fail to cover all rating costs of the credit union section of the Office of Financial Institutions, the commissioner shall have the authority to assess a floating rate fee based upon the total assets of each credit union as of the June 30 reporting date. This may only be done upon first notifying each credit union of the commissioner's intent to assess the additional fees and giving each credit union at least 30 days from providing notice of the proposed action to allow each credit union an opportunity to file oral or written objections to this action proposed by the commissioner.

b. Furthermore, in the event that future monetary assistance is received from the National Credit Union Share Insurance Fund (NCUSIF) for regulatory services provided by this agency in regulating state-chartered credit unions, such compensation shall be utilized to reduce the operating costs that would normally be billed to the state-chartered credit unions.

4. The annual operating fee shall be assessed on all state-chartered credit unions on a quarterly basis as provided for in Subparagraphs 2.a-p and Paragraph 3 above. Such fees are to be assessed no later than the last day of each quarter to be based on the total assets as reported at the end of the semiannual reporting dates of December 31 and June 30.

5. Any credit union failing to pay such operating fee by the last day of the month following each quarterly assessment, may be charged a penalty not to exceed \$50 for each day said fee remains unpaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:646.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 17:34 (January 1991), repromulgated LR 17:476 (May 1991).

Chapter 3. Credit Union Service Organizations

§301. Credit Union Service Contracts

A. A state-chartered credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in

activities and/or services which relate to the daily operations of credit unions. Agreements must be in writing, and shall clearly state that the Commissioner of Financial Institutions, or his representative, will have complete access to any books and records of the credit union service organization as deemed necessary in carrying out his responsibilities under the Louisiana Credit Union Law.

B. If any agreement requires, the payment in advance of the actual or estimated charges for more than three months, such payment shall be deemed an investment in a credit union service organization and subject to the limitations delineated in R.S. 6:644(B)(3)(d) and R.S. 6:656(A)(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:1093 (October 1994).

§303. Investments in and Loans to Credit Union Service Organizations

A. Scope. Sections 644(B)(3)(d) and 656(A)(4) of Title 6 of the Louisiana Revised Statutes authorize state-chartered credit unions to invest in and make loans to credit union service organizations. This rule implements that statute by addressing various issues, including monetary limits on loans and investments, the structure of credit union service organizations, their customer base, and the range of services and activities that they may provide. The rule also establishes prudent standards for a state-chartered credit union's involvement with credit union service organizations, through provisions concerning conflicts of interest, accounting practices, and access by the Office of Financial Institutions to books and records. The rule applies only in cases where one or more state-chartered credit unions have invested in or made loans to an organization pursuant to Section 644(B)(3)(d) or 656(A)(4). The rule does not regulate credit union service organizations directly; instead, it establishes conditions of state-chartered credit union investments in and loans to such organizations.

B. Limits Imposed by R.S. 6:644(B)(4)(d) and R.S. 6:656(A)(4). The provisions of Chapter 8, Title 6, Louisiana Revised Statutes, Credit Unions:

1. authorize a state-chartered credit union to invest in shares, stocks, loans, or other obligations of credit union service organizations in amounts not exceeding, in the aggregate, 1 percent of the credit union's paid-in and unimpaired capital and surplus;

2. authorize a state-chartered credit union to make loans to credit union service organizations in amounts not exceeding, in the aggregate, one percent of the credit union's paid-in and unimpaired capital and surplus;

3. require that a credit union service organization's activities be confined or restricted to credit unions and exist primarily to meet the needs of their member credit unions, and whose business relates to the daily operations of the credit unions they serve; and

4. require that a state-chartered credit union's investment in or loan to a credit union service organization must receive the prior approval of the board of directors and documented in its official minutes.

C. Definitions

Affiliated Credit Union—a credit union which has either invested in or made loans to a credit union service organization.

Immediate Family Member—a spouse or other family member living in the same household.

Official—any director or committee member.

Paid-in and Unimpaired Capital and Surplus—shares and undivided earnings.

Senior Management Employee—the credit union's president, vice president, secretary, treasurer, chief executive officer, any assistant chief executive officers, the chief financial officer, or any other elected officer of an affiliated credit union.

D. Regulatory Provisions

1. Limits on Funding. A state-chartered credit union, either alone or with other credit unions and/or with non-credit-union parties, may invest in and/or lend to a credit union service organization. A state credit union's investment in paid-in and unimpaired capital and surplus of a credit union service organization may not exceed, in the aggregate, one percent of the credit union's capital and surplus as of its last calendar year-end financial report. In addition, a state-chartered credit union's loans to credit union service organizations may not exceed, in the aggregate, one percent of the credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

2. Structure. A state-chartered credit union may invest in or lend to a credit union service organization only if the organization is structured as a corporation or a limited partnership.

a. Corporation. A credit union service organization chartered as a corporation or limited liability company must be adequately capitalized and operated as a separate entity. A state-chartered credit union investing in or lending to such a corporation must take all steps necessary to ensure that it will not be held liable for obligations of the corporation.

b. Limited Partnership. A state-chartered credit union may participate only as a limited partner in a credit union service organization structured as a limited partnership or registered limited liability partnership. As a limited partner, the credit union must not engage in those activities (e.g., control, management, decision making), which, under state law, would cause the credit union to lose its status as a limited partner, and, correspondingly, its limited liability, and be treated as a general partner.

3. Legal Opinion. A state-chartered credit union making an investment in or loan to a credit union service organization must obtain written legal advice as to whether the credit union service organization is established in a

manner that will limit the credit union's potential exposure to no more than the loss of funds invested in or lent to the credit union service organization.

4. Customer Base. A state-chartered credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of *affiliated credit unions*, as defined in Subsection C of this Section.

5. Permissible Services and Activities

a. A state-chartered credit union may invest in and/or loan to those credit union service organizations which provide only one or more of the following services and activities.

i. Operational Services. Credit card and debit card services; check cashing and wire transfers; internal audits for credit unions; ATM services; EFT services; data processing; shared credit union branch (service center) operations; sale of repossessed collateral; management, development, sale or lease of fixed assets; sale, lease or servicing of computer hardware or software; management and personnel training and support; payment item processing; locator services; marketing services; research services; record retention and storage; microfilm, microfiche, and optical disk services; alarm monitoring and other security services; debt collection services; credit analysis; consumer mortgage loan origination; loan processing, servicing and sales; coin and currency services; provision for forms and supplies.

ii. Financial Services. Financial services are limited to those activities as enumerated in 12 CFR §701.27(d)(5)(ii), and approved for federally-chartered credit unions operating in the state.

b. Additional services or activities MUST be approved by the Commissioner of Financial Institutions before a state-chartered credit union may invest in or loan to the credit union service organization that offers the service or activity.

6. Conflict of Interest

a. Individuals who serve as officials of, or senior management employees of an affiliated state-chartered credit union, as defined in Subsection C of this Section, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization, either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a state-chartered credit union from serving on the board of directors of a credit union service organization, provided the individual is not compensated by the credit union service organization.

b. The prohibition contained in Subparagraph D.6.a of this Section also applies to any affiliated state-chartered credit union employee not otherwise covered if that employee is directly involved in dealing with the credit union service organization, unless the board of directors determines that the employee's position does not present a conflict of interest.

c. All transactions with business associates or family members not specifically prohibited by Subparagraphs D.6.a-c must be conducted at arm's length and in the interest of the credit union.

7. Accounting Procedures; Access to Information

a. Credit Union Accounting. A state-chartered credit union must follow Generally Accepted Accounting Principles (GAAP) in its involvement with credit union service organizations.

b. Credit Union Service Organization Accounting; Audits and Financial Statements; OFI Access to Books and Records. An affiliated state-chartered credit union must obtain written agreements from a credit union service organization, prior to investing in or lending to the organization, that the organization will:

i. follow GAAP;

ii. render financial statements (balance sheet and income statement) at least quarterly and obtain a certified public accountant audit annually and provide copies of such to the affiliated state-chartered credit union; and

iii. provide the Commissioner of Financial Institutions, or his designated representatives, with complete access to any books and records of the credit union service organization, as deemed necessary in carrying out his responsibilities under the Louisiana Credit Union Law;

iv. notwithstanding the examinations fees, authorized by R.S. 6:646(B)(4), the commissioner may charge a fee of \$50 per hour per examiner for the purpose of determining whether an affiliated state-chartered credit union and the credit union service organization are in compliance with the Louisiana Credit Union Law and this rule. The cost of any such compliance review shall be billed directly to the credit union service organization.

E. Other Laws. A credit union service organization must comply with applicable state, federal and local laws.

F. Effective Date. This rule shall become effective on October 20, 1994.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:1093 (October 1994).

Chapter 5. Criteria to Organize within Residential Groups, and Add Associational Groups

§501. Definitions

A. As used in this Rule, and unless the content details otherwise, the following definitions apply.

Application—those documents submitted in a form acceptable to the commissioner, along with all supporting information, requesting approval of a bylaw amendment that provides for a residential group common bond.

Association—those individuals (natural persons) and/or groups (non natural persons) whose members participate in specific activities, share common goals and purposes; possess a charter, bylaws, or any other equivalent documentation that contains a specific definition of who is eligible for membership; conduct periodic meetings open to all members; and sponsor other activities which demonstrate that the members of the group meet to accomplish the goals and objectives of the association.

Commissioner—the Commissioner of the Office of Financial Institutions.

Field of Membership (FOM)—those persons and entities eligible for membership in the credit union.

LOFI—Louisiana Office of Financial Institutions.

Low Income Area—an area that includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

a. an area that wholly consists of or is wholly located within an empowerment zone or enterprise community in the state of Louisiana designated under Section 1391 of the IRC;

b. an area where the percentage of the population living in poverty is at least 20 percent;

c. an area in a metropolitan area where the median family income is at or below 80 percent of the metropolitan area median family income or the Louisiana median family income, whichever is greater;

d. an area outside of a metropolitan area, where the median family income is at or below 80 percent of the state-wide non-Metropolitan area median family income, whichever is greater;

e. an area where the unemployment rate is at least 1.5 times the national average;

f. an area meeting the criteria for economic distress that may be established by the CDFIs of the U.S. Treasury Department.

Residence Within—to live within a well-defined neighborhood, small community, or rural district.

Residential Group Common Bond—a common bond created by residence within a well-defined neighborhood, small community, or rural district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1629 (August 2007).

§503. Well-Defined Neighborhood, Small Community, and Rural District

A. *Well-Defined Neighborhood* shall mean a specified small part of a geographic area considered in regard to its residents or distinctive characteristics, specified by name, and must be described in writing.

1. Boundaries may be defined by streets, roads, or other delineations including boundaries of a municipality (such as the city limits) or other boundaries that reasonably demonstrate the end of one well-defined neighborhood and the beginning of another. For example, a written description typically will include the names of streets or other delineations surrounding the well-defined neighborhood.

2. Boundaries of a well-defined neighborhood may be defined as a small part of a municipality. Indicators of unifying characteristics may include, but are not limited to, recreation centers or athletic facilities, social clubs or organizations, neighborhood associations, or similar facilities or functions.

3. A written description of a well-defined neighborhood must demonstrate a viable residential common bond based upon its size, its level of activity, and safety and soundness criteria related to service of the proposed area.

B.1. *Small Community* shall mean an area where residents share common political, environmental, geographical, or economic characteristics that tend to create a mutual interest or, residents share common facilities or services such as an education or transportation system, recreational or cultural facilities, government, medical services, newspaper, fire or police protection, public utilities and services or other unifying characteristics that tend to create interaction or mutual interest. A small community must be described in writing and delineated on a map.

2. A single municipality or parish may qualify as a small community if a mutual interest can be properly documented. A credit union must demonstrate that it has or will establish, within two years, adequate facilities and staffing to serve the individuals that reside in the requested small community, including individuals residing in low income areas of the small community that have insufficient access to affordable (or non-predatory) financial services. In order to do so, a credit union must submit a business plan to the commissioner specifying how it will serve individuals in the small community, including individuals that reside in low income areas. The business plan must detail the credit and depository needs of the small community and address how a credit union plans to serve those needs. A credit union will also be expected to regularly review the business plan to determine if the small community is being adequately served. The commissioner may request periodic "service" status reports from a credit union to ensure that the needs of the small community, including individuals that reside in low income areas, are being met in an appropriate manner. The commissioner may also request such a report before allowing a credit union to further expand its field of membership.

C. *Rural District* shall mean an area that is outside a Metropolitan Statistical Area (MSA) as those areas are established from time to time by the United States Office of Management and Budget. It may also be represented by sharing common political characteristics or facilities such as utilization of a single police jury, election district, water district, or similar governing authority. A rural district must

be described in writing and be delineated on a map. A rural district may encompass a larger geographic area than a small community, if the area is demonstrated to have certain commonalities of interest. However, a rural district may not include multiple parishes.

D. Typically, the boundaries of a small community or rural district will be defined by streets and roads but may also be bounded by other delineations including boundaries of a town, municipality (such as the city limits), or other boundaries that reasonably demonstrate the end of one small community or rural district and the beginning of another. In many cases, it may be more appropriate to describe the small community or rural district by means of a map rather than listing all delineations that comprise its border. If the written description is so limited, a well drawn map may be needed to readily facilitate a determination that a prospective member qualifies for membership based upon residence within a well-defined area being served.

E. More than one credit union may be approved to serve the same residential group common bond.

F. The credit union must demonstrate that it has or will have adequate facilities and staffing to serve the requested residential group.

G. Various groups that have a common bond of residence may be combined in the same field of membership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1630 (August 2007).

§505. Residential Group Common Bond

A. The applying credit union must demonstrate by the weight and accumulation of facts presented that a residential group common bond has unifying characteristics that clearly meet the applicable definition(s). The commissioner will consider the volume and value of evidence in establishing the commonality criteria to meet the definitions for a well-defined neighborhood, small community, or rural district common bond.

B. Safety and Soundness Criteria

1. Credit unions are subject to safety and soundness criteria based on the financial and managerial capacity of the credit union to serve the proposed field of membership. The commissioner will not approve any application unless the credit union can meet the criteria set forth in this rule.

2. The following criteria may be considered in determining the financial and managerial capacity of a credit union to support a request for a residential group common bond.

a. A composite CAMEL rating of "1" or "2" was assigned at the most recent examination.

b. Any credit union receiving a CAMEL rating of "3" in any component area at its most recent examination shall be considered only after review of the following additional factors:

i. the underlying reasons for ratings outside the criteria in Subparagraph a above;

ii. the overall condition of the credit union and ability to support expanded activities;

iii. management's progress and commitment to improve such ratings; and

iv. the prospects for improving performance and ratings in the near term.

c. Credit unions with any CAMEL component rating more severe than a "3" in its most recent report of examination may not apply for a residential group common bond based on residence in a well defined neighborhood, small community, or rural district.

d. Credit Unions with a Composite CAMEL rating of "3", or more severe, may not apply for a residential group common bond until the overall condition of the credit union is restored to a satisfactory level.

e. The credit union must demonstrate in its application for a residential group common bond that it has a sufficient level and depth of management to meet the requirements of the residential common bond proposed.

f. The credit union must demonstrate in its application for a residential group common bond that it has sufficient data processing resources and capacity to serve the residential group that is being proposed.

g. If the commissioner deems it appropriate, he may require the credit union to submit a comprehensive business/strategic plan that addresses the following:

i. how the credit union intends to service the targeted well-defined neighborhood, small community, or rural district;

ii. a list of the financial services that will be provided to the targeted well-defined neighborhood, small community, or rural district;

iii. a projection of the expected size and penetration into the target market over a three year period, including an analysis of the market's current financial service providers;

iv. the impact of the proposed expansion upon the credit union's capital, property and equipment (including technology resources), and personnel resources;

v. the adequacy and sufficiency of fixed assets and data processing facilities to meet the expected levels of growth;

vi. the effect upon management's ability to recognize, monitor, and control all types of risks including, but not limited to, the following: audit, interest rate, liquidity, transaction, compliance, strategic, and reputation.

vii. a comprehensive income statement budget and proforma balance sheet reflecting realistic financial, capital, and operating goals for the next three calendar years beyond the year in which the field of membership expansion is requested.

3. If the commissioner deems it appropriate, he may require that the credit union submit revised loan and collection policies and procedures that recognize the additional complexities of a residential group common bond.

4. If the commissioner deems it appropriate, he may require that the credit union provide adequate policies related to asset/liability management, recognizing the additional complexities that could result from expanded lending and deposit taking activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1630 (August 2007).

§507. Applications

A. A residential group common bond request shall be submitted to the commissioner on the form(s) provided by the LOFI; and include the proposed amendment to the credit union's bylaws in accordance with Section 665 of the Louisiana Credit Union Law. In reviewing the application, the commissioner may consider:

1. whether the well-defined neighborhood, small community, or rural district has adequate unifying characteristics or a mutual interest such that the safety and soundness of the institution, and protection of the funds invested by members, is maintained;

2. service by the credit union that is responsive to the needs of prospective members, to promote thrift and create a source of credit at reasonable rates;

3. protection for the interest of current and future members of the credit union; and

4. the encouragement of economic progress in the state by allowing the opportunity to expand services and facilities; and

5. the purpose and/or intent of the Louisiana Credit Union Law.

B. The applicant credit union shall have the burden to show the commissioner such facts and data that support the requirements and considerations in these rules and/or any existing or future policies and procedures issued by LOFI in connection with the same and/or the Louisiana Credit Union Law.

C. The financial and managerial capacity of a credit union shall be an important consideration for the commissioner in approving any residential group common bond. The credit union must demonstrate that the size, capability, and experience of its management is adequate to meet the demands of the residential group proposed.

D. The applicant credit union shall submit a comprehensive strategic and ongoing business plan that addresses the services to be provided, impact on the credit union's capital and resources, adequacy of fixed assets and data management facilities, and ability of management to recognize, monitor and control risk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1631 (August 2007).

§509. Public Policy

A. In order to protect the interests of current and future members of the credit union, to be responsive to the needs of the membership for financial services, to encourage further economic growth in the state of Louisiana, and to foster the development of credit unions under a dual chartering system in the state of Louisiana pursuant to Section 641.1 of the Louisiana Credit Union Law, groups that are within the field of membership of the credit union prior to application for a residential group common bond shall be considered to remain within the FOM of the credit union, after the approval of a residential group common bond.

B. Upon application for a residential group common bond, the goal of the credit union shall be to adequately serve the residential area that may be approved by the commissioner, as well as any other group(s) included in its FOM.

C. In approving any further expansion of a credit union's field of membership, the commissioner may give consideration to its rate of market penetration and other pertinent criteria to determine if the credit union is properly and adequately serving the FOM in the residential area as projected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1631 (August 2007).

§511. Mergers

A. A credit union serving a residential group common bond may merge with another credit union, pursuant to Section 646(A)(2) of the Louisiana Credit Union Law, if the proposed merger neither creates a safety and soundness concern nor violates any other section of the Louisiana Credit Union Law. Credit unions must meet the safety and soundness criteria for a merger, and the continuing credit union must demonstrate that it can reasonably serve its members and the members of the credit union being merged. The plan of merger must also specifically indicate that the new FOM will be comprised of the combination of membership groups of the two credit unions.

B. In any merger involving a credit union serving a residential group common bond, the surviving credit union will be subject to the conditions of this rule. While the surviving credit union may continue to serve members of the merging credit union, no additional expansion will be allowed that does not comply with this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§513. Adding Associational Groups

A. Pursuant to his authority under the Louisiana Credit Union Law and the stated purpose of the same, the commissioner has determined that, if there are no safety and soundness concerns, it is appropriate to allow expansions of a credit union's FOM involving members and employees of an association in accordance with Sections 645(B) and 646(A)(2)(b) of the Louisiana Credit Union Law. At a minimum, the commissioner may consider the following when assessing an application to add an associational group to a credit union's FOM:

1. whether the group meets the definition of an association as contained in this rule;
2. whether members pay dues;
3. whether members have voting rights;
4. whether the association maintains a membership list;
5. whether the association maintains separate books and records; and
6. the frequency of meetings and other group activities.

B. The association may not be created or organized by the credit union or any of its officials or employees. The association must be a separate, legal entity that maintains separate financial records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§515. Public Notification

A. Upon approval of a residential group common bond, the commissioner shall include the name of the credit union and a brief description of the well-defined neighborhood, small community, or rural district that has been approved in

LOFI's next monthly bulletin, which is available on the OFI webpage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§517. Exceptions

A. Exceptions to this rule and/or waivers of the requirements contained herein may be granted by the commissioner on a case-by-case basis. 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(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§519. Effective Date

A. This Rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

§521. Severability

A. If any Section, term, or provision of this rule, LAC 10:IX.501-519, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining Sections, terms, or provisions contained herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 33:1632 (August 2007).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part XI. Consumer Credit

Chapter 1. Reserved

Chapter 7. Powers

§701. Sale of Thrift Club Membership

A. A licensed or supervised lender may offer and sell thrift club memberships at any location where supervised loans are made. In addition, the cost of such thrift club memberships may, at the consumer's option, be payable from the proceeds of consumer loans and included in the amount financed, provided that:

1. the sale of the thrift club membership is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer;

2. in order to obtain the thrift club membership, the consumer gives specific affirmative written indication of his or her desire to purchase if after receiving written disclosure of the cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:727.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:200 (March 1984).

Chapter 9. Additional Fees and Charges

§901. Definitions

Additional Fees and Charges—those fees and charges which are not specifically authorized by the LCCL but, as determined by the commissioner, are considered not to be inconsistent with the provisions thereof.

Creditor—a person who is a licensed lender as defined in R.S. 9:3516(22).

Petition—a written request of a creditor, in the form of a letter, directed to the commissioner seeking approval of an additional fee or charge and shall include an explanation as to which service or services will be provided and why a creditor believes a certain fee or charge is warranted for such service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3517(C).

HISTORICAL NOTE: Promulgated by Department of Economic Development, Office of Financial Institutions, LR 26:1991 (September 2000), re promulgated LR 26:2258 (October 2000).

§903. Procedure for Requesting Approval of an Additional Fee or Charge

A. A creditor extending credit under the LCCL shall petition the commissioner for authority to assess an additional fee or charge which is not inconsistent with the provisions thereof.

B. A petition shall include an explanation as to why a creditor believes the fee or charge is warranted, as well as a showing that such fee or charge is not inconsistent with the provisions of the LCCL. The creditor shall also include documentation supporting its request.

C. The commissioner may publish the creditor's request, in a form prescribed by him, in the *Potpourri* section of the next *Louisiana Register*, to solicit public comments.

D. After considering the request and any public comments received, the commissioner may approve the proposed fee or charge, as long as it is not inconsistent with the provisions of the LCCL, and it complies with the requirements established by policy promulgated by the commissioner.

E. A current list of all fees and charges which have been approved or disapproved by the commissioner shall be maintained on the OFI website and made available upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3517(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 26:1992 (September 2000), re promulgated 26:2258 (October 2000).

§905. Procedure for Consumers of Financial Services to Comment on Petitioner's Request for Approval of Additional Fees and Charges

A. When a creditor petitions the commissioner to request approval of an additional fee or charge in accordance with this rule, a notice may be published in the *Louisiana Register* that such petition has been received by the commissioner. The notice shall apprise the public that a formal request for an additional fee or charge has been made and that the commissioner will consider the merits of the request and make a decision regarding its approval within a time to be stated in the notice. Any interested person, shall have the opportunity to submit written comments, observations, or objections to the request. The comments, observations, or objections shall bear a postmark of not later than 15 days after publication of the notice in the *Louisiana Register*.

B. In addition to the public notice that is provided for by §903.C, the commissioner may inform the general public by a press release, which is distributed to newspapers which have a general circulation, that a creditor has filed a petition requesting approval of an additional fee or charge and that any interested person may make comments, observations, or objections known in the same manner and in the same time as is provided for in Subsection A of this Section.

C. The notice which is provided for by §903.C and the press release which is permitted by Subsection B of this Section shall briefly summarize the creditor's reasons for requesting the additional fee or charge. The notice and press release shall inform the general public that any person may obtain a copy of the creditor's request, including any attachments or documents filed therewith to support the request, at no cost to the person requesting it. A copy of the petition and attachments may be obtained by a written request sent via U.S. Postal Service, addressed to the Chief Examiner, Non-Depository Division, Office of Financial Institutions, 8660 United Plaza Boulevard, Baton Rouge, LA 70809. In the alternative, any person may obtain, in person, a copy at the same address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

D. By the end of the month following the month in which the petition for additional fees and charges was filed with the Office of Financial Institutions, if the fee or charge is approved, the commissioner may announce the decision and publish it in the Potpourri section of the *Louisiana Register* which is issued in the month following the decision.

E. The creditor shall, within 30 days after the Office of Financial Institutions receives the Office of the State Register's invoice for costs of publication, reimburse the Office of Financial Institutions the total cost of publishing the notices provided for by Subsections A, C and D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3517(C).

HISTORICAL NOTE: Promulgated Department of Economic Development, Office of Financial Institutions, LR 26:1992 (September 2000), repromulgated LR 26:2258 (October 2000).

Chapter 11. Lender Education

§1101. Application

A. This Chapter applies to all persons licensed by the commissioner pursuant to the Louisiana consumer credit law (LCCL) and the Louisiana Deferred Presentment and Small Loan Act (LDPSLA) who engage in the business of making small loans and deferred presentment transactions pursuant to the LDPSLA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., R.S. 9:3554(A)(5), R.S. 9:3554(B), and R.S. 9:3578.8(A) and (B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 41:537 (March 2015).

§1103. Definitions

A. Unless the context otherwise requires, as determined by the commissioner in his discretion, all terms used in this

Chapter 11 shall have the same meanings as in the Louisiana consumer credit law, (LCCL), R.S. 9:3510 et seq., as amended, and the Louisiana Deferred Presentment and Small Loan Act, (LDPSLA), R.S. 9:3578.1 et seq., as amended. In addition, unless the context otherwise requires, as determined by the commissioner in his discretion, the following definitions set forth in Subsection B below, apply in this Chapter 11.

B. Definitions

Chapter—this Chapter 11 of Part XI of Title 10 of the *Louisiana Administrative Code*.

Commissioner—the commissioner of the Office of Financial Institutions for the state of Louisiana.

Deferred Presentment Transaction—a transaction made pursuant to a written agreement whereby a licensee:

- a. accepts a check from the issuer dated as of the date it was written;
- b. agrees to hold the check for a period of time not to exceed 30 days prior to negotiation or presentment;
- c. pays to the issuer of the check the amount of the check less the fee permitted in R.S. 9:3578.4(A). The amount paid to the issuer of the check may not exceed \$350.

LCCL—the Louisiana consumer credit law, R.S. 9:3510 et seq., as amended.

LDPSLA—the Louisiana Deferred Presentment and Small Loan Act, R.S. 9:3578.1 et seq., as amended.

Lender Personnel—a person(s), as defined in R.S. 9:3516(24.1), who is employed by, contracted with, or engaged in the performance of services, that involve the general public, including, but not limited to, those that offer, market, negotiate, and/or sell deferred presentment transactions or small loans by or for a person licensed by the commissioner pursuant to the LCCL and the LDPSLA.

Person(s)—all persons, as defined in R.S. 9:3516(24.1) of the LCCL, licensed by the commissioner pursuant to the LCCL and the LDPSLA who engage in the business of making small loans and deferred presentment transactions pursuant to the LDPSLA.

Small Loan—a consumer loan, as defined in R.S. 9:3516(14), of \$350 or less, made for a term of 60 days or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., R.S. 9:3554(A)(5), R.S. 9:3554(B), and R.S. 9:3578.8(A) and (B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 41:537 (March 2015).

§1105. Required Education

A. Each person shall provide education to all lender personnel annually no later than January 1 of each year and to all new lender personnel within the first month upon attainment of this status or designation and each calendar

year thereafter no later than January 1. The education material to be utilized by the person shall be provided to persons by the commissioner electronically, through email transmissions, the website of the Office of Financial Institutions, or otherwise, as deemed appropriate by the commissioner. Such education shall consist of certain elements related to compliance with the LCCL, LDPSLA, and this Chapter, including but not limited to, those items enumerated in Subsection B below.

B. Elements:

1. all fees and charges allowed in connection with, and limitations pertaining to deferred presentment transactions and small loans, specifically the education shall include instruction regarding the 16.75 percent maximum fee limitation and \$45 cap, the documentation fee limitation, the default interest limitation for one year and beginning one year after contractual maturity, the delinquency fee limitation, and that no other fees or charges are allowable;

2. all rebates provided for in connection with deferred presentment transactions and small loans;

3. all prohibited acts specified in R.S. 9:3578.6 of the LDPSLA;

4. provisions of Acts 2014, No. 636 of the Louisiana Legislature, regarding deferred presentment transactions and small loans, and specifically those provisions regarding the repeal of the one-time delinquency charge authorized by R.S. 9:3527(A)(1), and the extended payment plan provision contained in R.S. 9:3578.4.1, and limitations in connection with the same; and

5. any other educational information provided to the person by the commissioner subsequently, electronically, through email transmissions, the website of the Office of Financial Institutions, or otherwise, and determined by the commissioner to be related to persons engaging in the business of making deferred presentment transactions and small loans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., R.S. 9:3554(A)(5), R.S. 9:3554(B), and R.S. 9:3578.8(A) and (B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 41:537 (March 2015).

§1107. Administration

A. Each person subject to this chapter shall retain such minimum records to show full compliance of the requirements set forth hereunder, which minimum records are deemed necessary by the commissioner, and set forth by the commissioner electronically, through email transmissions, the website of the Office of Financial Institutions, or otherwise, as deemed appropriate by the commissioner. This Chapter does not replace the person's responsibilities to comply with any other applicable record retention requirements, or to create, implement, and maintain its own comprehensive record retention program, consistent with the person's strategic goals and objectives. Such records may be retained in various forms as approved by the commissioner, including but not limited to, hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily accessed and reproduced into hard copies.

B. The commissioner may enforce this chapter pursuant to authority and in the manner provided to him, by the laws under his jurisdiction, including but not limited to R.S. 6:121.1, R.S. 9:3554, R.S. 9:3555, R.S. 9:3556, R.S. 9:3556.1, R.S. 9:3556.2, R.S. 9:3556.3, and R.S. 9:3578.8, and including but not limited to, the issuance of orders assessing civil money penalties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., R.S. 9:3554(A)(5), R.S. 9:3554(B), and R.S. 9:3578.8(A) and (B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 41:538 (March 2015).

§1109. Severability

A. If any Section, term, or provision of any of these rules, LAC 10:XI.1101-1109, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., R.S. 9:3554(A)(5), R.S. 9:3554(B), and R.S. 9:3578.8(A) and (B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 41:538 (March 2015).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part XIII. Investment Securities

Editor's Note: LAC 10.XIII.Subpart 2. Public Funds Investments
has been moved to LAC 71.I.Chapter 5 for topical arrangements.

Subpart 1. Securities

Chapter 1. General Requirements

§101. Application of Regulations

A. The regulations contained in this rule shall govern every registration of securities under the Act, except that any provision in a form covering the same subject matter as any such rules shall be controlling unless otherwise specifically provided herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:702.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§103. Definitions

A. Unless the context otherwise requires, all terms used in this regulation or in the form for registration have the same meanings as in the act and in the general rules and regulations. In addition, the following definitions apply, unless the context otherwise requires.

Affiliate, an Affiliate of, or a Person Affiliated With a Specified Person—a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Amount—when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

Certified—when used in regard to financial statements, means certified by an independent public or independent certified public accountant or accountants.

Charter—includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, affecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

Commissioner—the Commissioner of Securities.

Control—(including the terms *controlling*, *controlled by* and *under common control with*) possession (direct or indirect) of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Controlling Person—

a. any person selling a security, or group of persons acting in concert in the sale of a security, owning beneficially (and in the absence of knowledge, or reasonable grounds for belief, to the contrary, record ownership shall for the purposes hereof be presumed to be beneficial ownership) either:

i. 25 percent or more of the outstanding voting securities of the issuer of such security where no other person owns or controls a greater percentage of such securities; or

ii. such number of outstanding securities of the issuer of such security as would enable such person, or group of persons, to elect a majority of the board of directors or other managing body of such issuer;

b. in case of unincorporated issuers, the words *controlling persons* shall mean any person selling a security, or group of persons acting in concert in the sale of a security, who directly or indirectly controls the activities of the issuer.

Director—any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

Employee—does not include a director, trustee, or officer.

Equity Security—any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

Fiscal Year—the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

Majority-Owned Subsidiary—a subsidiary, 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

Material—when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing the security registered.

Officer—a president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

Parent—a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

Predecessor—a person the major portion of the business and assets of which another person acquired in a single succession, or in a series of related successions, or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

Principal Underwriter—an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

Promoter—includes:

a. any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer;

b. any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in considerations of property shall not be deemed a promoter within the meaning of this Paragraph if such person does not otherwise take part in founding and organizing the enterprise.

Prospectus—unless otherwise specified or the context otherwise requires, the term *prospectus* means a prospectus meeting the requirements of the act, and any rule or order issued by the Louisiana Commissioner of Securities.

Registrant—the issuer of the securities which are the subject matter of an application for registration or a report.

Share—a share of stock in a corporation or unit of interest in an unincorporated person.

Significant Subsidiary—a subsidiary meeting any one of the following conditions:

a. the assets of the subsidiary, or the investments in and advances to the subsidiary by its parent and the parent's other subsidiaries, if any, exceed 15 percent of the assets of the parent and its subsidiaries on a consolidated basis;

b. the subsidiary is the parent of one or more subsidiaries and together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

Subsidiary—a *subsidiary* of a specified person is an affiliate controlled by such person directly, or indirectly.

Succession—the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business, unless followed by the direct acquisition of its assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

Totally-Held Subsidiary—a subsidiary:

a. substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally-held subsidiaries; and

b. which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Underwriter—any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions. As used in this Paragraph, the term *issuer* shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

Voting Securities—securities the holders of which are presently entitled to vote for the election of directors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:702.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§105. Filing an Application; Requirements as to Proper Form

A. An application for registration shall be prepared in accordance with the form prescribed by the Commissioner of Securities of the State of Louisiana as in effect on the date of filing and in accordance with the requirements set out in Sections 51:706, 51:707, and 51:708 of the Louisiana Revised Statutes of 1950 as amended. Any application for registration shall be deemed to be filed on the proper form unless objection to the form is made by the Commissioner of Securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§107. Date of Filing

A. At least 10 days (Saturdays, Sundays, and holidays excluded) prior to the date on which the initial offering of any security is to be made, there shall be filed with the Commissioner of Securities one copy of the required application. The Commissioner of Securities may, however, in his discretion, authorize the commencement of the offering prior to the expiration of such 10-day period upon a written request for such authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§109. Number of Copies; Signatures

A. Two copies of the competed application for registration, including exhibits and all other papers and documents filed as a part of the application, shall be filed with the Commissioner of Securities.

B. At least one copy of every application for registration shall be manually signed by the applicant. If the application for registration is typewritten, the original "ribbon" copy shall be signed. Unsigned copies shall be conformed.

C. If any name is signed to the application for registration pursuant to a power of attorney, copies of such power of attorney shall be filed with the application for registration. In addition, if the name of any officer signing on behalf of the applicant, or attesting the applicant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the applicant's board of directors authorizing such signature shall also be filed with the application for registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§111. Requirements as to Paper, Printing and Language

A. Application for registration shall be filed on good quality, unglazed, white paper, 8 1/2 by 14 inches in size insofar as practicable. However, tables, charts, maps, and financial statements may be on larger paper, if folded to that size, and the prospectus may be on smaller paper if the registrant so desires.

B. The application for registration and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the application or any portion thereof may be prepared by any similar process which, in the opinion of the Commissioner of Securities, produces copies suitable for permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories shall be designated so as to be clearly distinguishable as such on photocopies.

C. The application for registration shall be in the English language. If any exhibit or other paper or document filed with the application for registration is in a foreign language, it shall be accompanied by a translation into the English language.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§113. Preparation of Application for Registration

A. Investment Companies. Applications for registration of securities of investment companies registered or required to be registered under the Investment Company Act of 1940 shall be filed on the Uniform Application Form.

B. Other Securities. Applications for registration by qualification of all other securities shall be filed on the Uniform Application Form.

C. Notification. Applications for registration by notification shall be filed on the Uniform Application Form.

D. Securities Registered with the Securities and Exchange Commission. In all cases in which an application for registration of securities by qualification or notification is filed and a registration statement covering the same securities has been filed with the Federal Securities and Exchange Commission, a copy of the registration statement and prospectus so filed will be accepted by the Commissioner of Securities in lieu of the exhibits required by Sections 51:706, 51:707, and/or 51:708 of the Louisiana Revised Statutes of 1950, as amended. The application shall substantially comply with the provisions of Section 51:706 of the Louisiana Revised Statutes of 1950, as amended and the regulations prescribed by the Commissioner of Securities of the State of Louisiana.

E. Interpretation of Requirements. Unless the context clearly shows otherwise:

1. the forms require information only as to the registrant;
2. whenever words relate to the future, they have reference solely to present intention;
3. any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

F. Additional Information. In addition to the information expressly required to be included in an application for registration, there shall be added such further material information, if any, as may be necessary to make the required statement, in the light of the circumstances under which they are made, not misleading. The Commissioner of Securities may require an applicant to submit other supplemental information at any time.

G. Information Unknown or Not Reasonably Available. Information required need be given only insofar as it is known or reasonably available to the registrant. If any

required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions:

1. the registrant shall give such information on the subject as it possess or can acquire without unreasonable effort or expense, together with the sources thereof;

2. the registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§115. Registration by Notification; Filing Fees

A. Notwithstanding the foregoing, one copy of the application for registration of securities which are permitted by Section 51:707 of the Louisiana Revised Statutes of 1950, as amended, to be filed by notification shall be filed at least two days (Saturdays, Sundays, and holidays excluded) prior to the date on which the initial offering is to be made or such shorter period as the Commissioner of Securities in his discretion, may authorize.

B. Filing Fees. All applications shall be accompanied by a check payable to "Commissioner of Securities, State of Louisiana." The applicant shall pay to the Commissioner of Securities 1/20 of 1 percent of the aggregate price of the securities to be offered to be sold in the state of Louisiana for which the applicant is seeking registration, but in no case shall the fee be less than \$25 nor more than \$200, and in addition thereto shall pay a charge of \$100, to be used to defray the expenses of the Commissioner of Securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§117. Registration by Qualification; Filing Fees

A. Notwithstanding the foregoing, one copy of the application for registration of securities which are permitted by Section 51:708 of the Louisiana Revised Statutes of 1950, as amended, to be filed by qualification, shall be filed at least 10 days (Saturdays, Sundays, and holidays excepted) prior to the date on which the next offering is to be made, or such shorter period as the Commissioner of Securities, in his discretion, may authorize.

B. Filing Fees. All applications shall be accompanied by a check payable to "Commissioner of Securities, state of Louisiana." The applicant shall pay to the commissioner a fee of 1/10 of 1 percent of the aggregate price of the securities to be registered and offered to be sold in this state, for which the applicant is seeking registration, but in no case

shall the fee be less than \$50 nor more than \$1,000, and in addition thereto shall pay a charge of \$100, to be used to defray the expenses of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§119. Incorporation of Certain Information by Reference

A. Where an item calls for information not required to be included in the prospectus, matter contained in any part of the application for registration, other than exhibits, may be incorporated by reference in answer, or partial answer, to such item.

B. Any financial statement or part thereof filed with the Commissioner of Securities pursuant to this act may be incorporated by reference in any application for registration if it substantially conforms to the requirements of the appropriate form and is not required to be included in the prospectus.

C. Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application for registration where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§121. Disclaimer of Control

A. If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof. In any case, however, the registrant shall state the material facts pertinent to the possible existence of control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§123. Title of Securities

A. Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

1. in the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect;

2. in the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1950 to 1960;" if the payment of principal or interest is

contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect;

3. in the case of any other kind of security, appropriate information of comparable character.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:708

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§125. Written Consents; Formal Requirements as to Consents

A. If the name of any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, has been made any part of the application for registration, or if such person is named as having prepared or certified a report, the written consent of such person shall be filed with the application for registration. All written consents of experts filed with an application for registration pursuant to these rules shall be dated and signed manually. A list of such consents shall be filed with the application for registration. Where the consent of an expert is contained in his report, a reference shall be made in the list to the report containing the consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:702.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§127. Consents Required in Special Cases

A. If any portion of the report of an expert is quoted or summarized as such in the application for registration or in a prospectus the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

B. If it is stated that any information contained in the application for registration has been reviewed or passed upon by any persons and that such information is set forth in the application for registration upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed with the application for registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:702.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§129. Application to Dispense with Consent

A. An application to the Commissioner of Securities to dispense with any written consent of an expert shall be made by the registrant and shall be supported by an affidavit or affidavits establishing that the obtaining of such consent is impracticable or involves undue hardships on the registrant. Such application shall be filed and the consent of the Commissioner of Securities shall be obtained prior to the date of registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:702.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§131. Consent to Use of Material Incorporated by Reference

A. If the act or the rules and regulations of the Commissioner of Securities require the filing of a written consent to the use of any material in connection with the application for registration, such consent shall be filed with the application for registration even though the material is incorporated therein by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§133. Additional Exhibits

A. This registrant may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§135. Omission of Substantially Identical Documents

A. In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commissioner of Securities may at any time, in his discretion, require the filing of copies of any documents so omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§137. Incorporation of Exhibits by Reference

A. Any document or part thereof filed with the Commissioner of Securities pursuant to any act administered by the Commissioner of Securities may be incorporated by reference as an exhibit to any application for registration.

B. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§139. Place of Filing

Editor's Note: The address for the office of the Commissioner of Securities has changed to:

Commissioner of Securities
State of Louisiana
8660 United Plaza Boulevard
Baton Rouge, LA 70809

A. All applications and papers in connection therewith and requests for information shall be addressed to:

Commissioner of Securities
State of Louisiana
315 Louisiana State Office Building
325 Loyola Avenue
New Orleans, LA 70112.

B. Every statement authorized or required to be filed with the commissioner under any of the provisions of this regulation shall be transmitted to the commissioner by mail, and the commissioner shall never receive, nor shall he be authorized to receive or accept for filing any statement or document transmitted to him by any mode other than by the United States mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707, and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§141. Formal Requirements for Amendments

A. One copy of each amendment to an application shall be filed with the Commissioner of Securities at least five days prior to any offering of the securities subsequent to the filing of such amendment, or such shorter period as the Commissioner of Securities, in his discretion, may authorize. The Commissioner of Securities may, in his discretion, authorize an offering to commence prior to the receipt of all amendments where he has been informed by telephone, telegraph or letter of the substance of such amendments, as in the case of "price amendments" or other amendments, where he may deem such action proper.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§143. Delaying Amendments

A. An amendment altering the proposed date of the public offering may be made by telegram or by letter. Each such telegraphic amendment shall be confirmed within a reasonable time by the filing of one copy, which shall be signed. Such confirmation shall not be deemed an amendment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§145. Withdrawal of Registration Statement or Amendment

A. Any application for registration or any amendment or exhibit thereto may be withdrawn upon application if the Commissioner of Securities, finding such withdrawal

consistent with the public interest and the protections of investors, consents thereto. The application for such consent shall be signed and shall state fully the grounds upon which made. The examination fee paid upon the filing of the application for registration will not be returned. The papers comprising the application for registration or amendment thereto shall not be removed from the files of the Commissioner of Securities but shall be plainly marked with the date of the giving of such consent, and in the following manner: "Withdrawn without prejudice, the Commissioner of Securities consenting thereto."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§147. Powers to Amend or Withdraw Registration Statement

A. All persons signing an application for registration shall be deemed, in the absence of a statement to the contrary, to confer upon the applicant and upon the correspondent named in the application for registration the following powers:

1. a power to amend the application for registration:

- a. by altering the date of the proposed offering;
- b. by filing any required written consent;
- c. by correcting typographical errors; or

d. by reducing the amount of securities registered, pursuant to an understanding contained in the application for registration;

2. a power to make application for the Commissioner of Securities' consent to the filing of an amendment;

3. a power to withdraw the application for registration or any amendment or exhibit thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§149. Registration of Additional Securities

A. The registration of additional securities of the same class as other securities for which an application for registration is already in effect, shall be effected through a separate application for registration relating to the additional securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§151. Reports Subsequent to Registration

A. Upon the termination of an offering, the registrant must file a Termination of Offering Report to the Commissioner of Securities of the State of Louisiana, within 30 days subsequent to the termination of the offering in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707, and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§153. Severability

A. If any provision or clause of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706, R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

Chapter 3. Form and Content of Prospectus

§301. Scope of Rule

A. This rule prescribes the form and content of the prospectus, intended as of the effective date to be used in connection with the offering of securities registered by notification, or required to be filed as a part of a registration statement for registration of securities by qualification and to be used in connection with the offering of securities so registered. (Louisiana Revised Statutes of 1950, as amended, Section 51:706, Paragraph B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706(B).

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§303. Registration by Qualification and Notification

A. A prospectus filed as part of a registration statement for registration of securities by qualification and notification shall contain all the information required by Schedule A, "Outline of Prospectus," located in §1103 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706(B).

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§305. Legibility of Prospectus

A. The prospectus may be printed, mimeographed or typewritten, or prepared by any similar process which will result in clear, legible copies. If printed, it shall be set in clear Roman type at least as large as 10-point modern type, with financial data or other statistical or tabular matter at least as large as 8 point. All type shall be leaded at least 2 points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706(B).

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§307. Presentation of Representation of Prospectus

A. The prospectus shall contain the information called for by all items of Schedule A, "Outline of Prospectus" located in §1103 of this Part, required to be answered, except

that no reference need be made to inapplicable items, and negative answers to any item may be omitted. None of the other information or documents filed as part of the registration statement need be included in the prospectus.

B. The prospectus should set forth information in a clear concise and understandable manner, free of unnecessary and irrelevant details or technical language. The information shall not be presented in such form as to obscure required information, or information necessary to keep the required information from being incomplete or misleading. The prospectus should not include:

1. references to other companies, not affiliates of the registrant, by way of comparison or in any other manner;
2. puffing of the registrant's history and prospects or of officials' background;
3. the use of colors, designs, or pictures; or
4. any subject matter which goes beyond a fair and factual presentation necessary to disclose the material facts.

C. Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross-references.

D. Every prospectus shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions and the page number of which each section or subdivision begins.

E. All pages in the prospectus must be numbered consecutively. If any page of a prospectus should be left blank then the following statement should appear centered on that page in capitals and parenthesis:

(THIS PAGE INTENTIONALLY LEFT BLANK)

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706(B).

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§309. Date of Prospectus

A. Each prospectus used after the effective date of the registration statement shall be dated approximately as of such effective date, provided however, that a revised or amended prospectus used thereafter bear both its original date and the "Amended as of _____" date. Each supplement prospectus shall be separately dated the approximate date of its issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§311. Exchange Offers

A. If any of the securities being registered are to be offered in exchange for securities of any other registrant, the prospectus shall also include the information with respect to the other registrant which would be required by §1103.L.1,

4, 5, 6, 7, 8, 9, 10, 12, 13, 16, 17, 19, 20, 21 and 22 of Schedule A, "Outline of Prospectus" of this Part, inclusive, if such securities of such registrant were being registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§313. Use of Prospectus

A. A copy of such prospectus shall be delivered to each prospective purchaser of securities before consummation of any sale or contract for sale.

B. When a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than 16 months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense.

C. In addition to the requirements of Subsection B of this Section if a prospectus becomes misleading or inaccurate in any material respect, its use shall be discontinued, and it shall be revised or supplemented in such a way that it shall not be misleading or inaccurate in any material respect. Three copies of such revised or supplemented prospectus shall be filed promptly with the Commissioner of Securities.

D. Nothing herein shall prevent the distribution of preliminary or final prospectuses pertaining to securities registered or being registered with the Securities and Exchange Commission if such distribution takes place in accordance with the rules and regulations of the Securities and Exchange Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§315. Circulation of Preliminary Prospectuses

A. Preliminary prospectuses may be distributed in Louisiana provided that an application to register the securities offered is pending before the commission, and provided:

1. an application to register the securities is also pending before the Securities and Exchange Commission;

2. the applicant has not been notified of proceedings under Sections 8(b) or 8(d) of the Securities Act of 1933 or by this commission that the application for registration is substantially deficient and the circulation of a preliminary prospectus is not appropriate in light of the deficient application;

3. the outside front cover page of such prospectus shall bear, in red ink, the caption, "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body thereof:

"A registration statement relating to these securities has been filed with the Securities and Exchange Commission, but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not

be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§317. Amendments to Prospectus

A. The prospectus shall constitute a part of the application and shall be amended in accordance with the provisions of the rules dealing with amendments to applications. The amended prospectus submitted to this office must be "red lined" in order to point out the changes made in said prospectus. The registrant may provide, in place of the "red lined" prospectus, a cross reference table which would reference the changes between the old and new prospectus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§319. Prohibition of Use of Certain Financial Statements

A. Financial statements which purport to give effect to the receipt and application of any part of the proceeds from the sale of securities for cash shall not be used unless the sale of such securities is underwritten and the underwriters are to be irrevocably bound, on or before the date of the public offering, to take issue. The caption of any such financial statement shall clearly set forth the names of the underwriters and the assumptions upon which such statement is based. The caption shall be in type at least as large as that used generally in the body of the statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§321. Pooling of Interests

A. All earnings statements required by Sections 51:701-51:720 of the Louisiana Revised Statutes of 1950, as amended to be filed with the Commissioner of Securities which reflect poolings of interest must be set out for each period reported:

1. total actual historical earnings and earnings per share of the issuer;

2. total earnings and earnings per share of the company or companies taken over;

3. show separately the detailed operating results for the company or companies taken over for the period reported up to the date of the take-over of the take-over occurred during the last fiscal year or interim period reported.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§323. Requirements as to Appraisals

A. There shall be included as an exhibit in every application for registration of securities of an issuer under this law which:

1. has not been engaged in the business in which it is engaged for five years; or

2. has not had a net profit in each of the last three years, an appraisal of the assets of the issuer as specified by the commissioner in each case prepared by a disinterested qualified person designated by the Commissioner of Securities. Such appraisal shall bear a dollar valuation as to the assets of the issuer and shall be prepared as of a date not more than 120 days prior to the date filed with the Commissioner of Securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

Chapter 5. Standards of Qualification**§501. Application of Standards**

A. Standards set forth in these regulations are intended to furnish guidelines for qualification, pursuant to the discretion of the commissioner authorized by Section 51:708(10) of Louisiana Revised Statutes of 1950, as amended, of offers and sales of securities. However, because it is impossible to foresee and provide for all variations of circumstances, these standards are not intended to preclude the application of more liberal or more stringent standards as the circumstances justify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§503. Promoters Equity Investment

A. The fair value of equity investment shall be deemed to mean the total of all sums conveyed to the issuer in the form of paid in or contributed cash or other tangible items with an established or determinable value.

B. The burden of justifying as equitable, the quantity of promotional securities to be issued for assets so conveyed, and of establishing reasonable or market value thereof, shall rest with the applicant.

C. Promoters Equity Investment Ratio. In offerings where the issuer is in a promotional or development phase and the ratio of equity investment by promoters or insiders is less than 15 percent of the total equity investment resulting from the sale of the entire offering, the offering will not be considered to be based on sound business principles unless:

1. the offering is supported by a firm commitment of an underwriter duly registered under the Securities Exchange Act of 1934; and

2. the net worth of the issuer is in excess of \$100,000.

D. Recognition of Appraised Value

1. In determining compliance with this rule, the commissioner may recognize the appraised value of the issuer's real property. In no event will the appraised value be considered if it is higher than the acquisition cost, unless (since the acquisition of the property) at least one of the following has occurred and it is reasonably indicated that a material increase in the value thereof has resulted:

a. erection of a structure on the land;

b. substantial improvements to existing structures located on the realty;

c. re-zoning to a broader zone;

d. availability of utility services previously unavailable to the property, but excluding such normal utilities as telephone, normal electric and normal gas. Examples of the utilities, but without being limited as to the general type thereof, are water, sewer, highline service and trackage;

e. a material change in the nature of the surrounding property;

f. elimination of an element that had a depreciatory effect on the value of the subject property (e.g., covering of a dump);

g. the existence of any other element (appropriately documented) which would normally indicate a substantial increase in the value of the property.

2. The utilization of an appraisal value in determining whether the minimum equity investment has been made lies within the sole discretion of the commissioner. Pursuant to R.S. 51:708(9), the commissioner may require, at the issuer's expense an independent appraisal by a qualified real estate appraiser selected by the commissioner prior to rendering his decision regarding recognition of the appraised value. This appraisal may be in addition to any independent appraisals that may have been made at the issuer's request prior to filing the application.

3. If the commissioner permits the appraised value to be used for the purposes of complying with the minimum equity investment, that appraised value may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§505. Commissions and Expenses

A.1. Selling Expenses of Offering of Securities. Selling expenses in connection with an offering of securities (whether such offering is sold entirely or partially within Louisiana) shall include underwriting discounts or commissions, the value of options or warrants to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors or shareholders, or otherwise as such underwriter

may lawfully direct; finder's fees paid or to be paid in connection with the offering; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer, issued within two years prior to the offering or proposed to be issued to an underwriter, or any of its partners, officers, directors or shareholders, to the extent such sales or issuances may be deemed by the commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, excluding, however:

- a. attorneys' fees for services in connection with the offer, sale and issuance of the securities and their qualification for offer and sale under applicable laws and regulations, except such attorneys' fees of the underwriter as are paid by the issuer or selling stockholders;
 - b. charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, accountants, engineers, appraisers and other experts;
 - c. cost of prospecti, circulars and other documents required to comply with such laws and regulations;
 - d. other expenses incurred in connection with such qualification and compliance with such laws and regulations;
 - e. cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.
2. Selling expenses shall, at all times, be reasonable and, unless good cause for an exception is shown, shall not exceed the following percentages for the specified types of companies or securities based upon percentages of the aggregate offering price.

	Firm Undertaking	Best Efforts Undertaking
Finance, mortgage and related companies	15%	10%
Bonds, notes, debentures and secured issuers	15%	10%
Common stock	15%	10%
Preferred stocks and other stock senior to common stock	15%	10%
Investment companies	10%	10%
Oil or gas interests	12 1/2%	12 1/2%

3. Securities of an issuer whose securities are sold under a Louisiana broker-dealer permit granted said issuer. In those cases, no commissions shall inure to the benefit of any officers or directors selling the securities of the issuer. All agents registered under said broker-dealer permit, who are not officers or directors will be allowed to receive a maximum commission as set out under the above column headed "Best Efforts Undertaking." For a company in the exploratory or development stage and whose securities are not registered under Federal Securities Act of 1933, one-half of the commissions which inure to the agents of an issuer broker-dealer, must be escrowed for a period of time as stipulated by the Commissioner of Securities of the State of Louisiana.

4. Options or warrants to underwriters, or their partners, officers directors or shareholders or otherwise as lawfully directed by such underwriters shall be valued at market value, if any exists. In cases where no market value exists, an option or warrant to acquire common stock shall be valued at 20 percent of the public offering price of such numbers of shares under option or warrant, unless it is shown to the satisfaction of the commissioner that a contrary valuation exists.

B. Other Expenses. Provision may be made for additional allowance by the issuer from the public offering price of securities actually sold to pay the sales expenses incurred in making the public offering. Such sales expenses shall, however, be limited to the following categories:

- 1. advertising directly associated with the sale of the public offering being registered;
- 2. attorneys' fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;
- 3. the cost of prospecti, circulars and other documents required to comply with such laws and regulations;
- 4. other expenses directly incurred in connection with such qualifications and compliance with such laws and regulations (filing fees and investigation fees prior to registration);
- 5. cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps;
- 6. charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, and of engineers, appraisers and other experts;
- 7. a listing of all "other expenses" must be presented to the office of the Commissioner of Securities of the state of Louisiana within a reasonable period of time not to exceed one month from the date the permit for a public offering was issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§507. Options, Warrants and Convertible Debenture

A. Warrants or stock purchase options, conversion privileges and other rights to acquire stock or other securities must be justified by the applicant. The following standards will be followed in determining whether the issuance of such warrants and stock options is justified.

- 1. Fifteen Percent Limitation. Unless good cause for an exception is shown, authorized warrants and options to purchase shares (excluding those specified in §507.A.3) shall not be in excess of 15 percent of the common shares to be outstanding if the entire public offering is sold, except as may otherwise be permitted under §507.A.7.g.
- 2. Five-Year Limitation. Except as otherwise permitted under §507.A.7.a, or unless good cause for an exception is shown, a warrant or option to purchase shares shall not be exercisable after the expiration of five years from the date such warrant or option is granted.

3. Pro-Rata Offerings. Prorate issuance of options or warrants to all purchasers in connection with a public offering will be considered justified if reasonable in number and method of exercise.

4. Employee Options. Options to employees shall be considered justified if reasonable in number and method of exercise.

a. Qualified stock options, as defined in Section 422(b) of the United States Internal Revenue Code of 1954, issued in accordance with the terms of a qualified stock option plan will be considered reasonable in number when the total number of shares subject to such options (and any restricted stock options outstanding) at any one time does not exceed 10 percent of the then outstanding common shares of the issuer.

b. Options granted to employees of the issuer which are not qualified stock options will be considered on an individual basis, provided, however, that the total number of shares subject to such stock options (and any options outstanding pursuant to a qualified stock option plan) shall not exceed 10 percent of the then outstanding common shares of the issuer, and further provided that, in determining whether such options are justified, consideration shall be given to whether such options contain a step-up provision similar to the one set forth in §507.A.5.c.

5. Options and Warrants to Underwriters. Ordinarily, warrants or options to underwriters will be considered with disfavor, unless all of the following conditions are met:

a. the warrants or options are issued to a managing underwriter in connection with a firm underwriting and are not exercisable for 11 months after the date of the offering, or, in connection with a best efforts basis, and are not issued and are not exercisable for 11 months following the sale of the entire issue or such lesser amount as is approved by the commissioner;

b. the warrants or options are nontransferable other than by will or pursuant to the laws of descent and distribution, except to a partner of the underwriter when the underwriter is a partnership or to a person who is both a stockholder and officer of the underwriter when the underwriter is a corporation;

c. the initial exercise price of the options is at least equal to the public offering price plus a step-up of said public offering price of either:

i. 7 percent each year they are outstanding, commencing one year after issuance, so that the exercise price throughout the second year is 107 percent; throughout the third year 114 percent; throughout the fourth year 121 percent; and throughout the fifth year 128 percent; or in the alternative;

ii. 20 percent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the underwriters at the time the options are issued to the underwriters;

d. the options and warrants are issued by a relatively small company which is in the promotional stage or which, because of its size, lack of public ownership of its shares or other facts and circumstances, makes it appear to the commissioner that the issuance of options is necessary to obtain competent investment banking services, and the direct commissions to the underwriters are lower than the usual and customary commissions would be in the absence of such options;

e. the prospectus issued in connection with the registration statement contains a full disclosure as to the terms and the reason for the issuance of the warrants and options, and if such reason is in connection with future advisory services to be performed by the underwriter without compensation in consideration of the issuance of the options, a statement to that effect shall be placed in the prospectus;

f. the same tests shall be applied to options issued by the selling shareholders unless evidence indicates that the selling shareholders are so separated from the corporate entity and so lacking in control of the corporate entity as to require more liberal treatment;

g. the number of shares or units called for by such warrants or options does not exceed 5 percent of the number of shares or units to be sold, or in fact, sold for the issuer in the offering;

h. selling expenses, commissions and discounts, including the value of such options to be issued, do not exceed the limitations contained in §505.

6. No Options to Issuer's Agents. No options or warrants shall be issued to an agent of the issuer.

7. Options, Warrants and Convertible Debentures Issued in Connection with Financing Arrangements. Ordinarily, options, warrants and convertible debentures issued in connection with financing arrangements made by the corporation will be considered with disfavor unless all of the following conditions are met.

a. The options, warrants or convertible debentures are issued to the lender for valuable consideration. "Valuable consideration" shall be deemed to have been given if the requirements of §507.A.7.g are satisfied in respect to the percentage limitation set forth therein.

b. The options or warrants shall expire not later than the original maturity date of the loan and the convertible debenture shall expire upon payment of the loan. Notwithstanding the limitation of §507.A.2 and §507.A.7.b, if the requirements of §507.A.7.g are met, the options or warrants may have an expiration date up to, but not exceeding 10 years from the date such option or warrants are granted, even if the maturity date of the loan is less than 10 years from the date the loan is made.

c. The options, warrants and convertible debentures shall have been issued as a result of bona fide negotiations between the corporation and the lender.

d. At the date of issuance, the lender shall not be affiliated with the corporation nor be a party to an agreement which creates or contemplates creating an affiliation. For the purposes of this provision, a lender will be considered affiliated with the corporation if it directly, or indirectly, controls, or is controlled by, or is under common control with the corporation. *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially (either directly or through one or more controlled companies) more than 25 percent of the issued and outstanding voting securities of any company shall be presumed not to control such company.

e. The exercise or conversion price of such options, warrants or convertible debentures shall not be less than the fair market value of the shares into which they are exercisable or convertible on the date the corporation receives a commitment in writing from the lender to make the loan. "Fair market value" shall be deemed to be the trading price of the stock if there is a public market therefor and if such public market is broadly based, meaningful and significant. Otherwise, "fair market value" will be deemed to be the price determined through bona fide negotiation of the parties. The existence of a public market shall not in itself be a presumption that it is broadly based, meaningful and significant.

f. Upon exercise of the options or warrants or conversion of the convertible debentures, both of the following conditions shall be satisfied.

i. The number of shares issuable shall be fair and reasonable both in number and method of exercise at the time of issuance of the options, warrants or convertible debentures. The standard required by the preceding sentence shall be deemed to be satisfied if the conditions set forth in §507.A.7 are met.

ii. At the time of issuance, the product obtained by multiplying the number of shares issuable by the exercise or conversion price did not exceed the face amount of the loan.

g. Notwithstanding any percentage limitation applicable to options, warrants and convertible debentures set forth in this Section, options, warrants and convertible debentures issued in connection with financing arrangements may cover shares which total in number 20 percent of the common shares to be outstanding, if the entire public offering is sold or if either of the following conditions is satisfied.

i. The issuance thereof to the lender was in conjunction with the lender's unconditionally guaranteeing the payment of a loan or loans being made to the company, provided, however, that as of the date of issuance of warrants, options or convertible debentures, the product obtained by multiplying the number of shares issuable by the exercise or conversion price thereof did not exceed an amount equal to that portion of the loan unconditionally guaranteed by the lender.

ii. If issued to the lender in conjunction with a loan by the lender of cash funds to the company and if:

(a) the loan is subordinated (including any security interest against the assets of the company) by its terms to all borrowing of the company from banks and other institutional lenders;

(b) no part of such loan was required by its term to be amortized during the first three years. The company may prepay such loan, however, without adversely affecting the exception granted by this Subparagraph; and

(c) as of the date of issuance of the warrants, options or convertible debentures, the product obtained by multiplying the number of shares issuable by the exercise of conversion price thereof did not exceed the face amount of the loan.

h. Options, warrants or convertible debentures held by other than the original holder, which options, warrants or convertible debentures were issued by the corporation in connection with financing arrangements, will be subject to the conditions provided by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§509. Promotional Securities of "Cheap Stock"

A. Securities which have been issued within two years of the date of filing, or are to be issued to underwriters, promoters or insiders for an amount less than the public offering price or for a consideration other than cash (unless the value of such consideration can be conclusively established) will be subject to the following conditions and restrictions.

1. The issue of such securities in connection with a public offering may be permitted if the application discloses:

a. a reasonable relationship between:

i. the consideration paid by such persons and the public offering price;

ii. the number of shares issued and the total amount of securities to be outstanding upon completion of the offering; and

iii. the ratio of the promoters' equity to the amount of their investment;

b. a representation by the grantees that such shares were acquired for investment and will not be traded, transferred or sold for a period of at least one year from date of commencement of the offering, or upon completion thereof, and until there has been compliance with all legal requirements imposed for the redistribution thereof;

c. that the shares issued (together with commission and expenses of sale) will not result in a dilution of more than 33 1/3 percent of the value of the shares outstanding in the hands of the public at any time, based on the public offering price.

2. Such shares will ordinarily be required held in escrow in accordance with the following provisions:

a. an escrow holder may be the commissioner or a bank or trust company, approved by him in this or any other state;

b. an application for escrow arrangements shall contain, in addition to whatever other information the commissioner may require, the following:

i. a list of the owners of such shares and respective amounts held;

ii. copy of resolution of the board of directors or letter of authorization selecting the agent, and written consent of the latter to act as such;

iii. copies of escrow agreements, instruments and instructions;

c. the escrow conditions shall provide that the securities subject thereto will not be released without notification and consent of the commissioner.

3. The same standards shall apply to shares acquired from selling shareholders unless it appears that they are so separated from the issuer and lacking in control as to permit waiver or modification of these requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§511. Impoundment of Proceeds

A. General

1. Where, in the opinion of the commissioner, the protection of public investors so requires, the commissioner may require as a condition of registration that all or a portion of the proceeds from the sale of the securities registered shall be impounded with an impoundment agent satisfactory to the commissioner. In cases where the offering of securities is not firmly underwritten, the commissioner shall require (unless reason for exception can be demonstrated) that the proceeds be impounded. The conditions of impoundment shall be determined by the commissioner in each case.

2. The commissioner shall determine conditions of impoundment which he deems applicable to all impoundment agreements, and shall prescribe forms embodying such general conditions. The commissioner may prescribe additional conditions applicable to each particular case, which shall be typed upon the form in space provided or upon separate sheets which shall be attached to and made a part of the prescribed form. All impoundment agreements shall be prepared on forms so prescribed by the commissioner. Upon notification by the commissioner of the additional terms and conditions of impoundment, the issuer shall submit a proposed impoundment agreement for approval as to form. Upon notification by the commissioner that the impoundment agreement is approved as to form, the issuer, the impoundment agent and any agent or underwriter shall execute an original and such copies of the

impoundment agreement as may be necessary and shall file the same with the commissioner. An original of said impoundment agreement will remain on file with the commissioner and copies noting acceptance for filing will be returned to the issuer. No order of registration shall issue until an executed original of the impoundment agreement is filed with the commissioner.

3. The conditions of the proceeds impoundment shall be incorporated by reference in the order of registration, and impounded proceeds shall be subject to the continuing jurisdiction of the commissioner until he directs termination of the impoundment.

B. Definitions. When used in this rule of these regulations or in any proceeds impoundment agreement entered into pursuant to these regulations, unless the context otherwise requires.

Conditions of Impoundment—those conditions specified in the impoundment agreement which must be performed before any issuer or impoundment agent may apply to the commissioner for termination of the impoundment agreement and the release of impounded proceeds.

Impoundment—the receipt by the impoundment agent of all proceeds from the sale of securities subject to the impoundment agreement, whether sold by the issuer, by an agent for the issuer or by an underwriter.

Impoundment Agent—an independent corporate fiduciary which will impound all proceeds from sale of securities subject to the impoundment agreement according to the conditions and for the term of the impoundment agreement.

Impoundment Agreement—an agreement, accepted by the commissioner for filing, and executed by the impoundment agent, the issuer, and any underwriter or agent engaged in the sale of securities subject to the impoundment agreement, specifying the conditions and terms of impoundment.

Proceeds—include all valuable consideration given by any person in connection with the purchase of any securities subject to the impoundment agreement.

Release of Impounded Proceeds—release of the impounded proceeds by the impoundment agent at the direction of the commissioner to any person entitled thereto according to the terms of the impoundment agreement.

Securities Subject to the Impoundment Agreement—all securities sold pursuant to an order of registration which requires the impoundment of proceeds.

Subscribers—include all persons who subscribe for securities subject to the impoundment agreement and deliver payment therefor.

Termination of Impoundment—a written authorization by the commissioner directing the impoundment agent to terminate the impoundment and to release the impounded proceeds.

Terms of Impoundment—the number of days, specified in the impoundment agreement, beginning from date of order of registration, within which the issuer of any agent or underwriter must sell the securities subject to the impoundment agreement in order to meet the minimum of impoundment relating to the amount of proceeds.

C. Termination of Impoundment and Release of Impounded Proceeds

1. The commissioner shall authorize the impounding agent to terminate the impoundment and release the impounded proceeds to the issuer when the full amount specified in the impoundment agreement has been impounded, and any other conditions to such release have been satisfied, unless there have been changes in the plan of operation or in other circumstances that would render the amount of impounded proceeds inadequate to finance the proposed plan of operation, or unless such other material changes have occurred as would render the representations contained in the prospectus by which securities were offered for sale to be fraudulent, false or materially misleading.

2. An application to the commissioner for authorization to terminate the impoundment and release the impounded proceeds shall contain:

a. a statement of the issuer any agent or underwriter engaged in the sale of securities subject to the impoundment agreement, setting forth the number of securities sold, and stating that all proceeds from sale of the securities subject to the impoundment agreement have been delivered to the impoundment agent in accordance with the terms and conditions of the impoundment agreement, and that there have been no material adverse changes in the financial condition of the issuer or in other circumstances that would render the amount of impounded proceeds inadequate to finance the proposed plan of operations and that there have been no other material changes which would render the representations contained in the prospectus or offering circular to be fraudulent, false or materially misleading;

b. a statement of the impoundment agent signed by an appropriate officer setting forth the aggregate amount of the impounded proceeds;

c. such other information as the commissioner may require in a particular case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§513. Offering Price

A. Securities shall be offered and sold at a price which is fair to the issuer or selling stockholders and to the purchasers. In determining whether a price is fair, the commissioner will give predominant weight to the standards set forth below as shown to the satisfaction of the commissioner.

1. If there is an active and informed public market in the class of securities to be offered and sold, the offering price shall bear a reasonable relationship to the recent public market price. An active public market may be evidenced by:

a. daily or weekly quotation of the class of securities in the *Wall Street Journal* for the period of at least six months preceding the offering; or

b. at least 300,000 shares outstanding to public shareholders; 20,000 or more shares traded by public shareholders during each of six or more preceding months; the absence of transactions by insiders during the preceding six months having a material effect upon the market price; the number of public stockholders at the beginning and end of each of said months of not less than 1,000; and at least two dealers regularly making a market in such class of securities; or

c. such other facts or circumstances which tend to show, to the satisfaction of the commissioner, that the class of securities is traded sufficiently by public stockholders unrelated to the issuer so that the prevailing market price at any given time during the six preceding months accurately reflected the fair value of the security and was a price independent of any influence other than the normal buying and selling of public stockholders. An informed public market may be evidenced by:

i. reports to the public shareholders which were provided by the issuer during the preceding year at least quarterly; or

ii. such other facts or circumstances which tend to show, to the satisfaction of the commissioner, that there is a free flow of information from the issuer about the business of the issuer to the investment community of the public. The commissioner may require an applicant for registration to submit sufficient evidence to show the existence of an active and informed public market.

2. If there is not an active and informed public market in the class of securities to be offered and sold, the offering price shall conform to at least one of the standards set forth below, except that the commissioner, in his discretion, may require conformity to more than one of the standards set forth below.

a. In connection with a public offering of securities for cash pursuant to a registration statement under the Securities Act of 1933, which offering is the subject of a firm underwriting commitment by an underwriter or syndicate of underwriters, all of whom are registered under the Securities Act of 1934, the offering price shall be the public offering price determined under such firm underwriting commitment by the parties thereto. For the purposes of this Subsection, a firm underwriting commitment shall not include an underwriting commitment subject to a "market out" or similar condition operative after the time of the commencement of the offering, which is based on something less than substantial or material changes in conditions deemed relevant by the parties, or otherwise subject to other than the usual or customary conditions, nor shall it include a firm underwriting commitment under which the commissioner may determine that the underwriter or syndicate of underwriters may not have the financial ability to perform such commitment in the light of its net capital position. The commissioner may require an applicant for registration to submit sufficient evidence to enable his determination under this standard to be made.

b. The offering price shall be reasonably related to the price at which similar securities of reasonably comparable companies in the same industry are being actively traded, subject to appropriate adjustment respecting dissimilarities between the companies being compared. Comparisons of companies may relate to relative sizes, products, earnings, financial history, management or other relevant factors, but must, in the aggregate, reflect a reasonable spectrum of companies in the particular industry. In the event the issuer does not fit into generally used industry classification, the "same industry" shall include such industries or segments of industries as most closely relate to the issuer's business. The commissioner will generally require an applicant for registration to submit sufficient evidence of such comparisons under this standard. An underwriter's memorandum evidencing a thorough and appropriate evaluation of the foregoing considerations may be used to provide such evidence, except the commissioner, in his discretion, may require more.

c. The offering price shall not exceed 25 times net earnings per share after taxes, or such higher price/earnings multiple as the commissioner may determine to be reasonable in light of the industry and/or the current general market. In determining the foregoing price/earnings multiple, the relevant net earnings per share shall be the net earnings per share for the last complete fiscal year of the issuer prior to the date of filing of application for registration as is set forth in the prospectus or offering circular. The net earnings per share for a portion of the current fiscal year may be considered relevant, provided:

- i. that such portion is for at least a three-month period;
- ii. that such portion of the current fiscal year and such comparable portion of the last complete fiscal year are adequately disclosed in the prospectus or offering circular; and
- iii. that the net earnings per share for such portion added to the net earnings per share for the appropriate portion of the last complete fiscal year, equal a sum not less than one twenty-fifth of the offering price or such other fraction of the offering price as may be appropriate in the discretion of the commissioner when the proposed offering price is in excess of 25 times earnings as described above, the burden shall be on the applicant to provide information with respect to industry or current general market as may be sufficient to permit determination by the commissioner that the proposed price/earnings multiple is not excessive or not based on unsound business principles.

d. The offering price shall be reasonably related to the book value of the securities, with appropriate adjustment for the earnings history of the issuer and its general business and for reasonable appraisals or valuation of the market value of its assets, shown to the satisfaction of the commissioner. The commissioner may require an applicant for registration to submit sufficient information to make his determination under this standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

§515. Rights of Security Holders

A. Voting Rights of Common Stock. The offering or proposed offering of securities of an issuer having more than one class of common stock authorized shall generally be considered unsound and unfair to public investors if the class of shares of common stock offered to the public:

1. has no voting rights; or
2. (except in exceptional circumstances) has less than equal voting rights, in proportion to the shares of each class outstanding, on all matters, including the election of members of the board of directors of the issuer.

B. Nonvoting Stock. Registration by qualification involving the sale of nonvoting common stock will not be permitted unless:

1. the corporation registering securities by qualification has been engaged in its business for at least two years prior to the registration;
2. dividend rights on voting and nonvoting stock are equal per share;
3. full and complete disclosure is made to the prospective purchaser and imprinted on the cover of the prospectus in bold face type in a contrasting color, the following notation:

"THESE SECURITIES DO NOT ENTITLE THE
HOLDER THEREOF TO VOTE"

C. Voting Rights of Preferred Stock. In the case of an offering or proposed offering of preferred shares (which are nonparticipating and nonconvertible) without full voting rights, provision should normally be made under which the holders of such preferred shares shall have the right to reasonable representation on the board of directors of the issuer upon default for a reasonable, specified period, whether consecutive or not, of payment of dividends on such preferred shares, which right shall continue until the full payment of all arrears in dividends on such preferred shares. For purposes of this Paragraph, the right to elect a majority of the board of directors is presumptively reasonable.

D. Protective Provisions for Preferred Shares. In the case of an offering or proposed offering of preferred shares (which are nonparticipating and nonconvertible) reasonable protective provisions for the holders of such preferred shares should normally be made, including where appropriate:

1. a provision that the dividends on such shares be cumulative;
2. a provision prohibiting any dividends on common stock during the existence of any arrears on the preferred shares;
3. an appropriate requirement for the approval by the vote or written consent of a specified percentage of the preferred shares of any adverse change in the rights of such shares and of the issuance of any shares having priority over such preferred shares; and

4. appropriate dividend restrictions on the common stock.

E. Debt Securities. The indenture or other instrument pursuant to which nonconvertible debt securities are proposed to be issued should normally provide for the following:

1. a sinking fund provision whereby all or a reasonable portion of the issue is to be retired in installments prior to maturity. The deferral of sinking fund payments and the amount of the balloon payment at maturity which will be permitted will depend upon the financial condition and other circumstances of the issuer;

2. an appropriate negative pledge or equal protection clause restricting the creation of liens on the property of the issuer;

3. if the debt is unsecured, an appropriate restriction on the creation of other funded debt;

4. an appropriate restriction on the payment of dividends upon stock of the issuer. Such provisions will not be required in connection with debt securities having a rating making such provisions unnecessary.

F. Trust Indentures. In the case of an offering or proposed offering of debt securities to be secured by mortgage, pledge or security agreement respecting real and/or personal property of the issuer, such debt securities will normally be required to be issued under a trust indenture. In the case of an offering or proposed offering of debt securities which are not secured, the issuance of such debt securities under a trust indenture may be required where appropriate. The form and substance of any such trust indenture shall be subject to the approval of the Commissioner of Securities. A trust indenture complying with the provisions of the Trust Indenture Act of 1939 is presumptively sufficient. The requirement of issuance of debt securities under a trust indenture pursuant to this Paragraph may be required, where appropriate, whether or not a trust indenture would be required pursuant to the provisions of the Trust Indenture Act of 1939.

G. Convertible Senior Securities. In the case of an offering or proposed offering of convertible preferred shares, convertible debt securities, options or warrants, provisions should normally be made containing an appropriate antidilution provision providing for an adjustment of the number of shares into which such shares or units are convertible or the number of shares purchasable pursuant to such options or warrants upon any stock split or stock dividend or other recapitalization of the issuer.

H. Assessments. Securities should be nonassessable, except that issuers organized solely to supply services or property to their members on a continuing basis may provide for an equitable assessment corresponding to the services or property supplied.

I. Restrictions on Transfer. No application or notification will be approved to issue securities the transfer of which is subject to any restrictions imposed by the charter documents of the issuer or the indenture or other instrument pursuant to which the securities are issued. Limited offering

qualifications may be approved for the issuance of securities subject to such restrictions, provided they are not of such a nature as to unfairly prejudice the opportunity of the holder to realize a reasonable price for his securities. Provisions which base the price at which the corporation or the other shareholders may purchase the securities, in the event of a desire to sell by the holder, upon the offer received from a third party, upon the appraised value of the securities, or upon the book value (except in the case of a type of business where book value is not a significant indication of the value of the securities) are presumptively reasonable. Provisions which base the price upon the par value or original purchase price, or which absolutely prohibit the transfer of securities or permit such transfer only upon the consent of the corporation or the other shareholders, or which give an option to the corporation or the other shareholders to purchase, regard less of the desire of the holder to sell (other than for a limited time upon termination of employment in the case of employees of the issuer or for a limited time upon the death of a holder) will only be permitted in unusual circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:707 and R.S. 51:708.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

Chapter 7. Private Offering Exemptions

§701. Preliminary Notes

A. The exemption contained in §703 of this Chapter is intended to provide a state safe-harbor exemption for private placements similar to the federal exemption provided by Rules 501, 502, 503, 505, 506, 507 and 508 promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended. The exemption contained in §705 of this Chapter is intended to provide a state exemption similar to the federal exemption provided by §4(2) of the Securities Act of 1933. As with the federal §4(2) exemption, the determination whether an offer or sale does not involve any public offering is to be made upon the basis of a consideration of all the relevant facts.

B. Nothing in Chapter 7 is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Louisiana Securities Law.

C. In view of the objective of this Chapter and the purposes and policies underlying the Louisiana Securities Law, these exemptions are not available to any issuer with respect to any transaction that, although in technical compliance with this Chapter, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Chapter.

D. Nothing in this Chapter is intended to relieve registered dealers or salesmen from the due diligence, suitability or know-your-customer standards or any other requirements of law otherwise applicable to such registered persons.

E. Attempted compliance with the following Sections of this Chapter does not act as an exclusive election the seller can also claim the availability of any other applicable exemption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:709(15).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:742 (October 1984), amended by the Department of Economic Development, Office of Financial Institutions, LR 16:677 (August 1990).

§703. Uniform Limited Offering Exemption

A. By authority delegated to the commissioner in R.S. 51:709(15) to promulgate rules thereunder, a transaction described in Subsection B is determined to be exempt from the registration provisions of R.S. 51:705.

B. Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rules 230.501-503 and 230.507-508, and any one of 230.505, or 230.506, as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758 and 33-6825 and as may be hereafter amended from time-to-time, and which satisfies the following further conditions and limitations.

1. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this Paragraph B.1 if the issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

2. No exemption under this Section shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252 Sections (c), (d), (e) or (f):

a. has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

b. has been convicted within five years prior to the filing of the notice required under this Section of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

c. is currently subject to any state administrative enforcement order or judgment entered by the state securities administrator within five years prior to the filing of the notice required under this Section or is subject to any state's administrative enforcement order judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;

d. is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

e. is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of false filing with the state entered within five years prior to the filing of the notice required under this Section:

i. the prohibitions of Subparagraphs 2.a-c and e above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this Paragraph 2 may act in a capacity other than that for which the person is licensed or registered;

ii. any disqualification caused by Paragraph 2 is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

3. If notice on Form D is then required by Regulation D under the Securities Act of 1933 to be filed with the Securities and Exchange Commission by the issuer, then the issuer shall file with the commissioner a notice on Form D (17 CFR 239.500):

a. no later than 15 days after the receipt of consideration from an investor in this state that results from an offer being made in reliance upon this exemption and at such other times thereafter and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission;

b. the notice shall contain an undertaking by the issuer to furnish to the commissioner, upon written request, the information furnished by the issuer to offerees, except where the commissioner pursuant to regulation requires that the information be filed at the same time with the filing of the notice;

c. unless otherwise available, included with or in the initial notice shall be a consent to service of process;

d. a person filing the initial notice provided for in Subparagraph 3.a above shall pay a filing fee of \$300.

4. In all sales to non-accredited investors in this state the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied.

a. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 25 percent of the investor's net worth, it is suitable.

b. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

C. Transactions which are exempt under this Section may not be combined with offers and sales exempt under any other section of the Louisiana Securities Law; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

D. Any general partner, or executive officer of any general partner, of an issuer or executive officer of an issuer, shall not be deemed to be in violation of §703.B.1 so long as he is not paid or given, directly or indirectly, any commission, fee, or other remuneration for soliciting any prospective purchaser in this state and such solicitation activities do not constitute his principal service to such issuer or such partner of such issuer. Such persons shall not be deemed to have received a commission, fee, or other remuneration within the meaning of §703.B.1 by reason of having received payments from an issuer or from a partner of an issuer for services performed for the payor that are not directly related to the solicitation of prospective purchasers.

E. The commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of the exemption.

F. The exemption authorized by this Section shall be known and may be cited as the "Uniform Limited Offering Exemption."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:709(15).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:742 (October 1984), amended by the Department of Economic Development, Office of Financial Institutions, LR 16:677 (August 1990).

§705. Private Offering Exemption

A. By authority delegated to the commissioner in R.S. 51:709(15) to promulgate rules thereunder, a transaction described in Subsection B is determined to be exempt from the registration provisions of R.S. 51:705.

B. Any offer or sale of securities, other than an offer or sale described in §703.B, made in compliance with §4(2) of the Securities Act of 1933 and which satisfies the following further conditions and limitations.

1. The transaction meets the requirements of §703.B.1.

2. The transaction meets the requirements of §703.B.2.

3. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

a. any advertisement, article, notice, or other communications published in any newspaper, magazine or similar media or broadcast over television or radio; and

b. any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

4.a. Any offer or sale not involving any public offering so long as:

i. the issuer or other seller shall reasonably believe that there are no more than 35 purchasers of securities from the issuer or other seller in any offering during any period of 12 consecutive months; and

ii. the buyers represent that they are buying for investment and not for public distribution or resale.

b. For purposes of calculating the number of purchasers under this Paragraph 4, Rule 501(e) promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, as that rule now exists and as it may hereafter be amended from time-to-time, shall apply.

c. For purposes of determining whether a purchaser is a resident of Louisiana within the meaning of this Paragraph 4, Rule 147(d) promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, as that rule now exists and as it may hereafter be amended from time-to-time, shall apply.

5. The transaction meets the requirements of Rule 502(d) promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, as that rule now exists and as it may hereafter be amended from time-to-time.

C. Without excluding other types of communications which may not constitute general solicitation or general advertising, the following types of communications shall not be deemed to violate the prohibitions of §705.B.3 of this Section:

1. a notice, circular, advertisement, letter, article, or other communication published or transmitted by an issuer, a sponsor, a dealer or an affiliate of an issuer, whether or not such communication is published during the time when an offering (the "current offering") is being made by such issuer, sponsor, dealer, or affiliate, that another offering has been completed, that another program has sold property owned by such program, that another program has been completed, or any similar notice not making any reference to the current offering;

2. generic advertising by a dealer which refers to the types of investments offered by such dealer and which does not make reference to any specific offering sponsored by the dealer or an affiliate of the dealer;

3. a notice, circular, advertisement, letter, article or other communication concerning the business of the issuer, a sponsor or one or more of their affiliates or concerning the industry in which the issuer, a sponsor or one or more of their affiliates is engaged and which communication does not make reference to the offering of securities by the issuer, the sponsor or their affiliates;

4. an article, speech, letter or other communication concerning the issuer, a sponsor, a dealer or one or more of their affiliates which is not paid for by any of such persons, and which is by nature more educational or informative than solicitory, even though such article, speech, letter or other communication makes reference to offerings by such persons in general;

5. an article, speech, letter or other communication concerning the issuer, a sponsor, a dealer or one or more of their affiliates, which is not paid for by any of such persons, which is by nature more educational or informative than solicitory, and which is published by someone other than such issuer, sponsor, dealer or one or more of their affiliates, even though such article, speech, letter or other communication makes references to offerings of such persons in general and to specific offerings of such persons currently being made;

6. a seminar or meeting whose attendees have not been invited by any general solicitation or general advertising.

D.1. For purposes of this Section, offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering will not be considered part of that offering, so long as during those six-month periods there are no offers or sales of securities by or for the issuer that are of the same or similar class as those offered or sold under the offering, other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended.

2. For purposes of this Section, offers, offers to sell, offers for sale and sales of interests, including preformation interests, in a partnership shall be deemed to constitute a discrete offering not integrable with other offers or sales of interests in other entities involving the same sponsor or an affiliate thereof (a common sponsor), even if other safe harbor provisions provided by rule and administrative or judicial interpretation are not available, if all of the following conditions are met. No presumption shall arise as to whether offerings that do not meet all of the following conditions are integrable with other offerings, and the administrative and judicial interpretations on integration in effect at the time thereof shall apply.

a. Separate Entity. The partnership shall be a separate legal entity with separate books and records, and funds received by or contributed to the partnership shall not be commingled with funds of a common sponsor or any other entity with a common sponsor.

b. Economic Independence. The partnership shall, at the time interests therein are offered and sold, have an independent opportunity to meet its primary investment objectives, i.e., the economic results of its investments shall not be substantially dependent upon the creation, continued existence or economic results of the investments of another entity previously, simultaneously, or subsequently formed with a common sponsor.

c. Application of Proceeds. Whether or not the assets in which the partnership proposes to invest are specifically identified to offerees, no material portion of the gross offering proceeds of the partnership shall be invested in properties in which another entity with a common sponsor shall invest, or shall have invested (and continue to hold invested) a material portion of its gross offering proceeds.

d. If the assets in which the partnership intends to invest at least 50 percent of its gross offering proceeds as its principal business or businesses are not specifically identified to offerees, then:

i. each other entity with a common sponsor previously formed to conduct the same general types of activities shall have invested or committed for investment the major portion of its gross offering proceeds prior to the commencement of the offering of the partnership interests; and

ii. no simultaneous or subsequent offering of interests in another entity with a common sponsor organized for the same general types of activities shall be commenced before the partnership has invested or committed for investment the major portion of its gross offering proceeds, unless the assets in which such other entity intends to invest at least 50 percent of its gross offering proceeds are specifically identified to its offerees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:709(15).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:742 (October 1984), amended by the Department of Economic Development, Office of Financial Institutions, LR 16:678 (August 1990).

§707. Effective Date of Chapter 7

A. This Chapter 7 shall become effective upon publication in the *Louisiana Register* §§701-725, both inclusive, of Chapter 7 of Title 10, Part XIII of the *Louisiana Administrative Code*, which includes the private offering exemption rules adopted by the commissioner effective October 20, 1984, as supplemented on March 20, 1987, are hereby rescinded in their entirety and shall be null and void on and after the effective date of this Chapter 7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:709(15).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Financial Institutions, LR 10:742 (October 1984), amended by the Department of Economic Development, Office of Financial Institutions, LR 16:679 (August 1990).

Chapter 8. Compensatory Benefit Plans

§801. Compensatory Benefit Plan Exemption

A. By authority delegated to the commissioner in R.S.51:709(15) to promulgate rules thereunder, a security or transaction described in Subsection B is determined to be exempt from the registration requirements of R.S.51:705.

B. Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan or contract, including, without limitation, a purchase, savings, option, bonus, salary appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in Rule 230.701 under Section 28 of the Securities Act of 1933.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:709(15)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:2125 (October 2008).

Chapter 9. Oil and Gas Auction

§901. Oil and Gas Auction Exemption

A. Mineral interest definition for purposes of this rule only, "mineral interest" an interest in or under an oil, gas, or mining lease, fee, or title, including real property from which the minerals have not been coveted, or contracts relating thereto. The offer and sale of a mineral interest, at an auction, by the seller itself, or a registered dealer or agent acting on behalf of the seller, is exempt from the securities registration requirements of R.S. 51:705, if all of the following conditions are met.

B. Auctioneer. The auctioneer or auction company through which the mineral interest is offered or sold must be licensed as a dealer by the Louisiana Commissioner of Securities in accordance with R.S. 51:703.

C. Seller

1. Intent. The seller did not acquire the mineral interest with a view to resale, unless the seller was forced to acquire the mineral interest in a package in order to obtain other properties in the package.

2. No Fractionalization of Mineral Interest

a. The seller has the full right and authority to sell the mineral interest and is selling 100 percent of its mineral interest, except that retention by the seller of a royalty or overriding royalty or the horizontal severance of the property is permissible as indicated in Subparagraph b below.

b. The seller must not be creating undivided interests out of its mineral interest for the purpose of resale. Where all the seller owns is a partial interest (such as a royalty, overriding royalty, or undivided fractional working interest), this requirement is met if the seller sells all of that interest. However, the seller shall not be considered to be

fractionalizing its interest in sales where the seller retains only a royalty or overriding royalty, or where the seller horizontally servers the property by retaining all of its existing rights in certain formations or depths under the whole property.

D. The mineral interest offered or sold pursuant to this rule does not constitute an investment contract.

E. Purchaser

1. Knowledge and Experience. The purchaser or its representative is engaged in the business of exploring for or producing oil or gas or other minerals as an ongoing business. By reason of this knowledge and experience, the purchaser or its representative has evaluated the merits and risks of the mineral interest to be purchased at auction and has formed an opinion based solely upon his knowledge and experience and not upon any statement, representation or printed material provided or made by auctioneer or seller. If a purchaser representative is used, such purchaser representative:

- a. has no business relationship with the seller;
- b. represents only the purchaser and not the seller;

and

- c. is compensated only by the purchaser.

2. Financial Ability. The purchaser has sufficient financial resources in order to bear the risk of loss attendant to the purchase of the property.

3. In all sales to purchasers in this state, the seller or any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the purchaser satisfies the requirements set forth in §901.A and B. This requirement could be met by obtaining a document signed by the purchaser to the effect that the purchaser meets these conditions.

F. Auction. For purposes of this rule only, *auction* shall mean the sale of the seller's mineral interest by public outcry.

G. The use of statistical information in trade journals and data bases as well as auction pamphlets concerning the mineral interests to be offered pursuant to this rule is not prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:710(D) and 709(15).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, Commissioner of Securities, LR 18:1115 (October 1992).

Chapter 11. Stock Exchanges

§1101. Stock Exchanges Exemption

A. Securities listed on the Chicago Board Options Exchange, Inc., shall be exempt from the securities registration requirements of R.S. 51:705.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:710(D) and 708(b).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, Commissioner of Securities, LR 18:1116 (October 1992).

§1103. Form A. Schedule A—Outline of Prospectus

A. Front Cover—Preface. The following is the form of the outline of a prospectus as suggested by the Commissioner of Securities of the State of Louisiana. This form is a suggested guide only and is not intended to limit disclosure in any manner where appropriate or necessary. The Commissioner of Securities of the State of Louisiana reserves the right to require additional disclosure.

1. Description of Securities Being Offered:

PROSPECTUS
THE _____ COMPANY
000,000 (Number of Shares) of Capital Stock
Par Value \$0.00 per share
\$000,000 (Total Principal Amount) of Debt Securities
Face Amount \$0.00 per unit

a. When more than one security is offered in units, describe briefly but clearly, the composition of such units.

B. Speculative Securities. There shall be set forth on the outside front cover page of every prospectus relating to a registrant under this law which:

1. has not been engaged in the business in which it is then engaged in for five years; or

2. has not had a net profit in each of the last three years, the following statement in capital letters printed in bold-face Roman type at least as large as 10-point modern type and at least two points leaded:

THESE SECURITIES INVOLVE A HIGH DEGREE OF RISK

C. Information Relative to Description of Securities

1. Describe herein the securities or units which will be sold through this prospectus. If only one type of security; i.e., common stock, debentures, shares of beneficial interest, etc. is to be sold in this offering, then the description given in Paragraph A.1 will be sufficient.

2. If present shareholders are selling their securities, the number and type of the securities to be sold by the shareholders and by the registrant should be clearly stated here.

D. Determination of the Public Offering Price

1. If there has been no public market prior to this offering, the statement below, or one similar to it should follow here:

"Prior to this offering there has been no public market for the company's common stock. The public offering price has been arbitrarily determined solely by negotiations between the company, the selling shareholders (if applicable), and the underwriters."

2. If the company plans to apply for an exchange listing of the securities it is selling via this prospectus, then this should be stated herein.

E. The following statements shall be set forth on every prospectus in capital letters printed in bold-face Roman type at least as large as 10-point modern type and at least 1-points leaded:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMISSIONER OF SECURITIES OF THE STATE OF LOUISIANA (or—THE SECURITIES and EXCHANGE COMMISSION—If the offering is registered with the United States Securities and Exchange Commission) NOR HAS THE COMMISSIONER OF SECURITIES OF THE STATE OF LOUISIANA (or—THE SECURITIES EXCHANGE COMMISSIONER—if the offering is registered with the United States Securities and Exchange Commission) PASSED UPON ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

F. Pricing Information

	Price to Public	Underwriting Discounts or Commissions	Net Proceeds to Company
Per Unit	\$ 0.00	\$ 0.00	\$ 0.00
Total Offering	\$00,000.00	\$ 00,000.00	\$ 00,000.00

1. Any variation from the price set forth in the first column of the table at which any proportion of the offering is to be made to any person or class of persons other than the underwriters shall be disclosed following the table with a reference thereto in the first column of the table. Specify the person or class and the proposed offering price to such person or class.

2. The term *commissions* means all cash commissions or discounts paid or to be paid, directly or indirectly, by the registrant or selling security holders to the underwriters in respect of the sale of the security to be offered. A commission paid or to be paid in connection with the sale of such security by a person in which the registrant has an interest or which is controlled or directed by, or under common control with the registrant, shall be deemed to have been paid by the registrant. Only commissions paid by the registrant or selling security holders are to be included in the table. Commissions paid by other persons shall be set forth following the table with a reference thereto in the second column of the table.

3. If securities, contracts or anything else of value (other than cash) are to accrue to the underwriters in connection with the offering, the amount and nature of such considerations shall be set forth following the table with a reference thereto in the second column of the table.

4. If any finder's fees are to be paid in connection with the offering, the name of each recipient thereof, together with the amount and nature of the fee, shall be set forth following the table with a reference thereto in the second column of the table.

5. If the securities to be offered are to be sold directly to the public by the company through licensed agents of the company, officers and directors of the company will not be paid any commissions on the sale of securities being offered. A statement to that effect must be made on the front page of the prospectus, following the table with a reference thereto in the second column of the table.

6. If the underwriting discounts or commissions are variable, set forth their maximum and minimum amounts in the second column of the table and set forth the maximum and minimum proceeds in the third column of the table. The basis of determining such discounts and commissions shall be set forth following the table with a reference thereto in the second and third columns of the table.

7. An estimate of the aggregate selling expenses (other than underwriting discounts and commissions and finder's fees) payable by the registrant or selling security holders shall be set forth following the table with a reference thereto in the third column of the table. Such estimate shall include printing, legal, engineering, accounting and other charges.

8. If a best effort underwriting, or if offered through the registrant's licensed agents, reference should be made to the third column to the table stating that "there is no assurance that all or any of the units offered will be sold and hence the proceeds to be received by the company are shown on the assumption that all shares will be sold."

9. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, indicate the market involved and the market price as of the latest practicable date.

10. If any of the securities being registered are to be offered for the account of security holders, refer on the outside front cover page of the prospectus to the information called for.

G. Special Features of the Offering. If any of the following are involved in this offering, a statement setting out each such feature shall be printed in capital letters in bold-face Roman type at least as large as 10-point modern type and at least 2-point leaded:

1. SPECIAL RISKS CONCERNING THE COMPANY—should be in similar 10-point type. (Refer readers to "Introductory Statement—Risk Factors.")

2. SUBSTANTIAL IMMEDIATE DILUTION OF THE INVESTMENT MADE BY THE PURCHASERS OF THE SHARES OFFERED HEREBY. (Refer Readers to "Introductory Statement—Dilution.")

3. SIGNIFICANT ADDITIONAL UNDERWRITING COMPENSATION THROUGH THE SALE TO name of the underwriter, THE REPRESENTATIVE OF THE UNDERWRITERS, (Relate here to the reader any warrants, stock options, or other such securities sold to the underwriter as additional compensation.) (Refer the reader to "Underwriting" for a description of such warrants, options, etc.)

H. Nature of Offering. State clearly the nature of the underwriter's obligation to take the securities.

I. Underwriter. The name of the underwriter should follow here in bold-face roman type at least as large as 10-point modern type and at least 2-point leaded. The address of the underwriter and the effective date of the prospectus should also be stated here. For intrastate issues, the following statement must appear in capital letters,

printed in bold-face roman type at least as large as 10-point modern type and at least 2-point leaded:

THESE SECURITIES ARE OFFERED BY PROSPECTUS ONLY TO BONA FIDE RESIDENTS OF LOUISIANA.

J. Example of the Front Cover

200,000 Shares

NO NAME COMPANY, INC.

Common Stock

(\$.10 Par Value)

THESE SHARES INVOLVE A HIGH DEGREE OF RISK

The company has not heretofore actively engaged in business and is in the process of commencing operations. Prior to this offering there has been no market for its common stock. The public offering price of the common stock offered hereby has been arbitrarily determined by negotiation between the company and the underwriters. The underwriters are offering these shares on a firm-commitment basis, subject to certain conditions referred to below.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discounts or Commissions(1)	Proceeds to Company(2)
Per Share	\$	\$	\$
Total	\$	\$	\$

1. The company has agreed to reimburse the representative of the underwriters for its costs in connection with this offering, up to a maximum of \$ _____ (\$ per share), which is included in the foregoing table. The table does not include substantial additional underwriting compensation to be received by the representative through the issuance to it of warrants. See c. below.

2. Before deducting expenses estimated at \$ This offering involves the following.

a. Special Risks Concerning the Company. See "Introductory Statement—Risk Factors" on page 3.

b. Substantial immediate dilution of the investment made by the purchasers of the shares offered hereby. See "Introductory Statement—Dilution" on page 4.

c. Significant additional underwriting compensation through the sale to _____, the representative of the underwriters, for _____ of warrants to purchase _____ shares of the company's common stock, exercisable during the four-year period commencing one year from the date of this prospectus. See "Underwriting" on page 16.

The shares of common stock are offered when, as and if delivered to and accepted by the underwriters, subject to prior sale, to approval of certain legal matters by counsel for the company and by counsel for the underwriters and to certain other conditions.

JOHN DOE SECURITIES CORPORATION

The date of this Prospectus is 1970

K. Inside Front Cover or Back Cover

1. Statements Relative to Offers or Solicitations of Sale by Prospectus

a. There shall be set forth on the inside front cover or the rear cover of every prospectus the following statements in capital letters printed in bold-face roman type.

i. No dealer, salesman or other person has been authorized to give any information or to make any representations, other than those contained in this prospectus, in connection with the offer contained in this prospectus, and, if given or made, such information or representations must not be relied upon as having been authorized by the company or the underwriter. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the securities by anyone, in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state, or in which the person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this prospectus nor any sale made hereunder shall, under any circumstances, create an implication that there has been no change in the affairs of the company since the date hereof.

ii. This prospectus does not contain all of the information set forth in the registration statement filed with the Commissioner of Securities of the State of Louisiana, New Orleans, LA 70112 (or Securities and Exchange Commission, Washington, D.C. 20549, where applicable). For further information with respect to the company and the securities offered by this prospectus, reference is made to the registration statement, including the financial statements, schedules and exhibits filed as a part thereof.

b. There shall also be set forth on the inside front cover of every prospectus dealing in a firm commitment offering the following or similar statement printed in bold-face type.

For a period of 90 days from the date of this prospectus, all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

2. Table of Contents

a. This table has been set forth as a guide for the assistance of the registrant and may be varied from by the particular registrant. Sections that do not apply should be omitted and additional Sections should be added where applicable. In all cases list all Sections with its corresponding page number.

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3. Statement as to Stabilizing

a. If the registrant or any of the underwriters knows or has reasonable grounds to believe that there is an intention to over allot or that the price of any security may be stabilized to facilitate the offering of the registered securities, there shall be set forth, either on the outside front cover page or on the inside front cover page of the prospectus, a statement in substantially the following form, subject to appropriate modifications where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as 10-point modern type and at least 2-point leaded.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (identify each class of securities in which such transactions may be effected) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

b. If the stabilizing began prior to the effective date of the registration, set forth in the prospectus the amount of securities bought, the prices at which bought and the period within which they were bought.

L. Body of Prospectus

1. Introductory Statement

a. Background of the Registrant. State the year in which the registrant was organized, its form or organization, and the name of the state under the laws of which it was organized, and a brief statement as to the type of business in which the company is engaged, or in which it proposes to engage. Also state the names of the person or persons considered to be the parents of the registrant.

b. Risk Factors. Set out a brief succinct summary of the risk factors with reference to a supporting explanation as set forth in the body of the prospectus. The risk factors should include but are not to be limited by the following suggested topics.

i. Competition in this type of business, whether competitive companies are larger than you own, and are they well established.

ii. How was the public offering price established?

iii. Has there been a public market for the shares? The following statement or one similar to it may be used:

"There is no market for the company's common stock and it is unlikely that a market will develop as a result of this offering. Consequently, investors may not be able to resell any shares purchased should they need or wish to do so for emergency purposes or otherwise."

iv. If the company is newly organized, without history or past business, so state. A statement similar to the following may be used:

"The company is still in the development stage, has not commenced its proposed business activities and has no property or assets other than those shown on the financial statements herein."

v. Will any of the proceeds of the offering be placed in escrow until such time as a definite dollar amount of stock has been sold? If so, state the escrow arrangements. If the definite dollar figure is not reached, are the funds returned to the investor?

vi. If it is necessary for the company to raise a definite amount with which to start business, indicate that there can be no assurance of any return on the investment, even if sufficient funds are raised.

vii. If the type of business in which you are engaged does not ordinarily earn profits from the outset, so state and fully explain.

viii. If the officers, directors or promoters are receiving or have received salaries, fees or other compensation from the company, indicate the amounts, how paid, and services rendered.

ix. If the officers or directors have little or no experience in the venture in which they are about to undertake via this offering, this should be stated clearly.

x. If the company is to be the underwriter for its own securities, so state, and clearly indicate that no officers or directors shall receive a commission for the sale of its securities.

c.i. Dilution Aspects of the Offering. Provide in detail the number of shares purchased by officers, directors, promoters and insiders at prices less than the public offering price, the consideration paid for such stock and, the book value of the stock prior to the offering, immediately after the offering, assuming all of the stock is sold, and the benefit to the officers, directors, promoters and insiders in increased book value.

ii. Provide figures setting out the number of shares owned by officers, directors, promoters and insiders, the consideration paid for such shares and the percentage of the total class of shares to be outstanding after the public offering that these shares represent. Set out the number of shares the public will own, the total consideration paid for such shares and the percent of the total class of shares that the public will own.

iii. The following dilution statement or one similar to it may be used.

"As of (date), the shares of the company's common stock had a net tangible book value of \$ _____ per share. After giving effect to the net proceeds received from this offering, such book value will increase to \$ _____ per share. Thus the public shareholders will have paid \$ _____ per share for common stock having a net tangible book value of \$ _____ per share and will sustain an immediate dilution of \$ _____ per share. On the other hand, the private investors will enjoy a gain in the net tangible book value of \$ _____ per share."

"Upon completion of this offering, the purchasers of the shares offered by this prospectus will own approximately _____ percent of the company's outstanding common stock for which they will have paid an aggregate of \$ _____ (\$ _____ per share) whereas the private investors will own approximately _____ percent of the shares outstanding for which they paid approximately \$ _____ (average price \$ _____ per share)."

"As of (date), options to purchase an aggregate of _____ shares of the company's common stock at prices ranging from \$ _____ to \$ _____ per share were outstanding (see "Stock Options and Warrants"). If all outstanding stock options and warrants were exercised subsequent to the public offering, the net tangible book value of the shares offered by this prospectus would be \$ _____ (\$ _____ per share), or approximately _____ percent of the public offering price."

2. Application of Proceeds

a. State the principal purposes for which the net proceeds to the registrant from the offering are to be used, the approximate amount to be used for each such purpose and the order of priority in which the proceeds are to be used for each such purpose.

b. Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

i. Details of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment.

ii. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied.

iii. If any material amount of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

iv. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe the assets and give the names and addresses of the persons from whom they are to be acquired. State the purchase price of the assets, the names of any persons who have received or are to receive commissions in connection with the acquisition, the amounts of such commissions and any other expense in connection with the acquisition.

3. Capitalization. Furnish the information called for by the following table in substantially the tabular form indicated, as to each class of securities of the registrant and each class of securities, other than those owned by the registrant of its totally held subsidiaries of all significant subsidiaries of the registrant:

Title of Class	Amount Authorized* or to be Authorized*	Amount Outstanding as of a Specified Date within 90 Days	Amount to be Outstanding if All Securities Being Registered Are Sold
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*"Authorized" is defined as meaning authorized by charter or indenture or in case of notes or similar securities, by resolution of the board of directors.

a. Securities held by or for the account of the registrant thereof are not to be included in the amount outstanding, but the amount so held shall be stated in a note to the table.

b. If any such securities were issued within the last two years or will be issued for a consideration other than cash at least equal to par value, disclose in appropriate footnotes to the table the amount and kind of such consideration.

4. Summary of Earnings. Furnish in comparative columnar form a summary of earnings for the registrant or for the registrant and its subsidiaries consolidated (or both as appropriate) for each of the last five fiscal years of the registrant; or for the life of the registrant and its immediate predecessors, if less; and for any period between the end of the latest of such fiscal years and the date of the latest balance sheet furnished, and for the corresponding period of the preceding fiscal year. In connection with such summary, whenever necessary, reflect information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the prospectus.

a. If any part of the proceeds of the offering is to be applied to the purchase of any business, furnish with respect to such business, the earnings statements required in Paragraph L.4.

5. Dividends. The registrant must state its policy or intended policy concerning dividends in this Section.

6. Price Range of Common Shares. Specify the exchange, if any, or market on which the price of the common shares has been quoted, and give the price range for those shares over the last three years. Furthermore, give the quarterly price range from the end of the last calendar year to the current date.

7. Description of Business

a. Briefly describe the business done and intended to be done by the registrant and its significant subsidiaries and the general development of such business during the past five years. If the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, indicate, insofar as practicable, the relative importance of each product or service or class of similar products or services which contributed 15 percent or more to the gross volume of business done during the last fiscal year.

b. In describing developments, information shall be given as to matters such as the following: The nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other materially important reorganization, readjustments or succession of the registrant or any of its significant subsidiaries; the acquisition of any material amount of assets otherwise than in the ordinary course of business; any materially important changes in the types of products produced or services rendered by the registrant and its significant subsidiaries; and any materially important changes in the mode of conducting the business, such as fundamental changes in the methods of distribution.

c. Also, include in the description of business of the registrant, if applicable any awards received by the registrant, any backlog of orders if materially significant, a description of customers if the loss of any particular customer or groups of customers may materially affect the business of the registrant, and statements on any of the following items: employee relations, foreign sales, patents, government contracts, company growth, recent developments, seasonal trends, and trade names.

d. Indicate briefly, to the extent material, the general competitive conditions in the industry in which the registrant and its significant subsidiaries are engaged or intend to engage, and the position of the enterprise in the industry. If several products or services are involved, separate consideration should be given to the principal products or services or classes of products or services.

8. Description of Property

a. State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its significant subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

b. The description should be limited to information essential to an investor's appraisal of the securities being registered. In the case of a manufacturing enterprise, for example, the answer should be limited to such over-all statements as will reasonably inform investors as to the suitability, adequacy and productive capacity of the facilities used in the enterprise. In the case of an extra active enterprise, appropriate information should be given as to production and reserves. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds, are not required and should not be given.

9. Regulations. Describe any regulations and/or discretionary controls set upon the registrant by any governmental body or any industry-wide, self-regulatory body which in any manner will materially affect the business of the registrant.

10. Management

a. Directors and Executive Officers. List the names and addresses of all directors and officers of the registrant and all persons chosen to become directors or officers. Indicate all positions and offices with the registrant held by each person named, and the principal occupations during the past five years of each officer and each person chosen to become an officer. State the amount and type of securities of this registrant held by each person named as of a specified date within 30 days of the dating of the registration statement and the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe. If any person chosen to become a director or officer has not consented to act as such, so state.

b. Remuneration

i. Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year to the following persons for services in all capacities.

(a). Each director, and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded \$30,000 (\$12,000 if intrastate offering only) naming each such person.

(b). All directors and officers of the registrant as a group without naming them.

(A) Name of Individual or Identity of Group	(B) Capacities in which Remuneration Was Received	(C) Aggregate Direct Remuneration
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ii. This item applies to any person who was a director or officer of the registrant at any time during the fiscal year. However, remuneration is not to be included for any portion of the period during which any such person was not a director or officer of the registrant.

(a). To the extent that such remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state such percentage without estimating the amount of such profits to be paid.

(b). State separately the total amount set aside or accrued during the periods pursuant to all pension, retirement or other offered compensation plans for the benefit of directors or officers.

iii. Furnish the following information, in substantially the tabular form indicated below, as to all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly by the registrant or any of its subsidiaries to each director or officer named.

(A) Name of Individual	(B) Amounts Set Aside or Accrued during Registrant's Last Fiscal Year	(C) Estimated Annual Benefits Upon Retirement
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iv. Describe briefly all remuneration payments proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to each director or officer of the registrant as a group, without naming them.

11. Options to Purchase Securities. Furnish the following information as to options to purchase securities from the registrant or any of its subsidiaries, which are outstanding as of a specified date within 30 days prior to the date of filing, or which are to be created in connection with the offering.

a. Describe the options, stating the material provisions including the consideration received or to be received by the grantor thereof and the market value of the securities called for on a granting date.

- b. State:
 - i. the title and amount of the securities called for by such options;
 - ii. the purchase prices of the securities called for and the expiration dates of such options; and
 - iii. the market value of the securities called for by such options as of the latest practicable date.
- c.i. State the amount of any such options held or to be held by each of the following persons:
 - (a). any director or officer of the registrant;
 - (b). any security holder named in Paragraph L.11;
 - (c). any person considered to be a promoter of the company;
 - (d). any person on whose behalf any part of the offering;
 - (e). any underwriter or recipient of a finder's fee;
 - (f). any person who holds or will hold 10 percent or more in the aggregate of any such options.
- ii. The term *options* as used in this item includes all options, warrants and other rights other than those issued to security holders as such on a pro rata basis.

12. Principal Holders of Equity Securities. Furnish the following information as of a specified date within 90 days prior to the date of filing in substantially the tabular form indicated.

a. As to the voting securities of the registrant owned of record or beneficially by each person who owns of record, or is known by the registrant to own beneficially more than 10 percent of any class of such securities. Show in column (3) whether the securities are owned both of record and beneficially of record only, or beneficially only, and show in columns (4) and (5) the respective amounts and percentages owned in each such manner:

(1) Name and Address	(2) Title of Class	(3) Type of Ownership	(4) Amount Owned	(5) Percent of Class
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b. As to each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned directly or indirectly by all directors and officers of the registrant, as a group, without naming them:

Title of Class	Amount Beneficially Owned	Percent of Class
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13. Interest of Management and Others in Certain Transactions

a. Describe briefly and, where practicable, state the approximate amount of any material interest, direct or indirect, of any of the persons specified below in any material transaction during the last three years, or any material proposed transaction, to which the registrant or any of its subsidiaries was or is to be a party:

- i. any director or officer of the registrant;
- ii. any security holder as described in Paragraph L.11;
- iii. any person on whose behalf any part of the offering is to be made in a nonregistrant distribution;
- iv. any person (other than the registrant or its subsidiaries) with whom any of the foregoing persons had a material relationship.

b. State the dates of, the parties to, and the general effect of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years.

14. Escrow Provisions. If the officers, directors, promoters or insiders have stock which is subject to escrow pursuant to any state or federal statute or regulation, make a complete disclosure of the number of shares escrowed, name of persons escrowing said stock, when escrowed and the terms and conditions of said escrow.

15. Sales Otherwise than for Cash. If any of the securities being registered are to be offered otherwise than for cash, state briefly the general purpose of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne.

16. Selling Security Holders. With respect to the registrant and any significant subsidiary of the registrant, state the year in which it was organized, its form of organization (such as "a corporation," "an unincorporated association" or other appropriate statement), the name of the state or other jurisdiction under the laws of which it was organized and the address of its principal executive offices.

17. Description of Securities Being Registered

a. If capital stock is being registered, state the title of the class and outline briefly the following: dividend rights or preferences; voting rights; liquidation rights; pre-emptive rights; conversion rights; redemption provisions; sinking fund provisions, and liability to further assessment.

b. State if any new class of securities is to be created by this offering, and describe any limitation or qualification of the rights of the securities being offered by the rights of any other class of securities.

c. Describe any long-term debt being registered, stating the title of the issue and outline such of the following provisions as are relevant:

- i. interest; maturity; conversion; redemption; amortization; sinking fund or retirement;
- ii. any restrictions on the declaration of dividends or maintenance of any ratio of assets;
- iii. any restrictions on the issuance of any additional securities; and

iv. names of trustee, its material relationships with registrant or affiliates; the percentage of class of securities required for trustee to take action, and what indemnification trustee may require before proceeding to enforce lien.

d. If securities other than capital stock or debt securities are being registered, outline briefly the rights evidenced thereby.

e. Describe also any other material provisions, presenting all the above in language that is non-technical and easily understandable.

18. Undertaking to Report Annually to Stockholders. A statement should be made that: the company's fiscal year ends on date. A financial report prepared and certified by an independent certified public accountant or independent public accountant will be sent to all stockholders each year after the close of the fiscal year. The first report will be sent to the stockholders before date, and annually thereafter. This report will include a balance sheet and profit and loss statement for the preceding fiscal year. This requirement is applicable where securities are being registered for offering on behalf of the registrant.

19. Plan of Distribution

a. If the securities being registered are to be offered through underwriters, give the name of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the registrant and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

b. State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts, options, warrants, or other consideration to be received by any dealer in connection with the sale of the securities.

c. Outline briefly the plan of distribution for any securities being registered which are offered other than through underwriters.

20. Pending Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

21. Legal Matters and Statements Made on the Basis of Named Experts

a. State the name and address of counsel passing upon the legality of the securities being offered.

b. State the name and address of the independent public accountant or independent certified public accountant who has certified the financial statements of the registrant included in the registration statement.

c. If an engineer, appraiser or other expert whose profession gives authority to statements made by him is named in the prospectus as having prepared a report which is

used in connection with the registration statement, the name and address of such person should be stated and the statements in the prospectus which are made in reliance upon his opinion as an expert should be identified clearly.

22. Additional Information. The registrant shall furnish the name of the governing body from which additional information not contained in the prospectus, concerning the registrant, may be obtained. A statement such as the following may be written into the prospectus.

"This prospectus does not contain all the information set forth in the registration statement which the company has filed with the Commissioner of Securities of the State of Louisiana, New Orleans, Louisiana, (or the Securities and Exchange Commission, Washington, D.C. where applicable). For further information with respect to the Company and the Securities offered hereby, reference is made to the registration statement, including the exhibits thereto and the financial statements, notes and schedules filed as a part thereof. The registration statement may be inspected without charge at the Office of the Commissioner of Securities, 315 Louisiana State Office Building, New Orleans, LA 70112, (or Securities and Exchange Commission, Washington, D.C. 20549, where applicable) and copies of all or any part thereof may be obtained upon payment of the applicable charges."

23. Opinion of Certified Public Accountant. Reproduce here the statement of the independent public accountant in certification of the financial statements and notes thereunder.

a. The accountant's certificate shall be dated, signed manually, and shall identify without detailed enumeration the financial statements covered by the certificate.

b.i. Representations as to the Audit. The accountant's certificate:

(a). shall state whether the audit was made in accordance with generally accepted auditing standards; and

(b). shall designate any auditing procedures generally recognized as normal, or deemed necessary by the accountant under the circumstances of the particular case, which procedures have been omitted, and the reasons for their omission.

ii. Nothing in this Subsection shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by Clause iii below.

iii. Opinions to be Expressed. The accountant's certificate shall state clearly:

(a). the opinion of the accountant in respect of the financial statements covered by the certificate and the accounting principles and practices reflected therein;

(b). the opinion of the accountant as to any material changes in accountant principles or practices, or adjustments of the accounts; and

(c). the nature of, and the opinion of the accountant as to, any material differences between the accounting principles and practices reflected in the financial statements and those reflected in the accounts after the entry of adjustments for the period under review.

iv. Exceptions. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

24. Financial Statements

a. Furnish a balance sheet of the registrant as of a date within four months prior to the filing of the registration statement.

b. Furnish in comparative columnar form a profit and loss statement and analysis of surplus for each of the last three fiscal years of the registrant (or for the life of the registrant and its immediate predecessors, if less) preceding the date of the balance sheet furnished and for any period subsequent to the latest of such fiscal years and the date of the balance sheet.

c. If any part of the proceeds of the offering is to be applied to the purchase of any business furnish, with respect to such business, the financial statements required in Paragraph L.24.

d. In accordance with the Louisiana Revised Statute of 1950, as amended, Section 51:706(C)(13), all financial statements of the registrant must be prepared by an independent certified public accountant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:706.

HISTORICAL NOTE: Adopted by the Commissioner of Securities, November 9, 1971.

Chapter 12. Dishonest or Unethical Practices

§1201. General

A. Any dealer, salesman, investment adviser, or investment adviser representative who engages in one or more of the following practices set out in Section 1203 or Section 1205 shall be deemed to have engaged in dishonest or unethical practices as provided by R.S. 51:704(A)(10), and such conduct may constitute grounds for suspension or revocation of registration or such other action authorized by statute. This Rule is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed to be dishonest or unethical

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704(A)(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

§1203. Dealers and Salesmen

A. *Dealers and Salesmen*—includes the following actions:

1. engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any customer or in the payment upon request of free credit balances reflecting completed transactions of any customer;

2. inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;

3. recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs and other relevant information known by the dealer;

4. executing a transaction on behalf of a customer without authorization to do so;

5. exercising discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders;

6. executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

7. failing to segregate customers’ free securities or securities held in safekeeping;

8. hypothecating a customer’s securities without having a lien thereon unless the dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

9. entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

10. failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus;

11. charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;

12. offering to buy from or sell to a person a security at a stated price unless the dealer or salesman is prepared to purchase or sell the security at such price and under the conditions that are stated at the time of the offer to buy or sell;

13. representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless the dealer or salesman knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the dealer, or by a person for whom the dealer is acting, or by a person with whom the dealer is associated in the distribution, or by a

person controlled by, controlling or under common control with the dealer;

14. effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

a. effecting a transaction in a security which involves no change in the beneficial ownership thereof;

b. entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. Nothing in this subsection prohibits a dealer from entering bona fide agency cross transactions for its customers;

c. effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

15. guaranteeing a customer against loss in a securities account of the customer or in a securities transaction effected with or for the customer;

16. publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the dealer or salesman believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

17. using an advertising or sales presentation in such a fashion as to be deceptive or misleading;

18. failing to disclose that the dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security. If the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

19. failing to make a bona fide public offering of all of the securities allotted to a dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

20. failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

21. failing to comply with an applicable provision of the Rules of Fair Practice of the Financial Industry

Regulatory Authority or an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission;

22. engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer without proper authority to do so;

23. effecting securities transactions not recorded on the regular books or records of the dealer, unless the transactions are authorized in writing by the dealer prior to execution of the transaction;

24. establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

25. sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer;

26. dividing or otherwise splitting a salesman's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as a salesman for the same dealer, or for a dealer under direct or indirect common control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704(A)(10).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

§1205. Investment Advisers and Investment Adviser Representatives

A.1. Investment Advisers and Investment Adviser Representatives—includes the following actions:

a. recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative;

b. exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

c. inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

d. placing an order to purchase or sell a security for the account of a client without authority to do so;

e. placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

f. borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

g. loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or an employee of the investment adviser; misrepresenting the nature of the advisory services being offered; or misrepresenting fees to be charged for the service; or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice;

j. charging a client an unreasonable advisory fee in light of the type of service to be provided; the experience and expertise of the investment adviser; or the sophistication or bargaining power of the client; or without notice to the client, dividing or otherwise splitting the advisory fee or other compensation derived from the advisory services;

k. failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:

i. compensation arrangements connected with advisory services to clients which are in addition to compensation from the clients for the services;

ii. charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, the investment adviser representative or an employee of the investment adviser;

l. guaranteeing a client that a specific result will be achieved, gain or no loss, with advice which will be rendered;

m. publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21);

n. disclosing the identity, affairs or investments of a client unless required by law to do so, or unless consented to by the client;

o. entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

p. failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-4a) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;

q. entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-5) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-3);

r. to indicate, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the LSL or any other language which may lead a client to believe that legal rights have been restricted or waived;

s. engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-6(4) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940;

t. engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the provisions of the LSL or any rule, regulation or order issued thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure or deceptive practices shall be deemed an unethical practice.

2. This Section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under section 712 of the LSL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704(A)(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3170 (December 2012).

Chapter 13. Investment Adviser Registration Procedure

§1301. Definitions

Third-Party Solicitor—an investment adviser representative who meets all of the following criteria:

1. investment advisory business consists solely of referring individuals to other investment adviser firm(s);
2. provides no advice to individuals regarding specific investments;
3. fees consist entirely of referral fees received from the investment adviser firms to whom the investment adviser representative makes referrals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007, amended LR 34:2125 (October 2008), LR 42:1088 (July 2016).

§1303. Examination Requirements

A. Any investment adviser firm applying for registration under R.S. 51:703(D), or renewal of any such registration, shall provide the commissioner with proof that each of its investment adviser representatives has met one of the two following examination requirements:

1. successfully passed the uniform investment adviser law examination (series 65 examination) after January 1, 2000; or
2. successfully passed the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination);
3. successfully passed the general securities representative examination (series 7 examination) and uniform registered investment adviser examination (series 65 examination) prior to January 1, 2000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007, amended LR 42:1088 (July 2016).

§1305. Waivers

A. The examination requirement set out in §1303 above, shall not apply to any individual who holds one of the following professional certifications:

1. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) awarded by the CFA Institute;
5. Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; or
6. such other professional certifications as the commissioner may approve upon written request from an applicant for registration. Such request shall include sufficient information regarding the certifying organization and its requirements, as determined by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

§1307. Continuing Education

A. Investment adviser representatives subject to this rule shall complete the continuing education and/or recertification requirements necessary to maintain such examination or professional certification standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007.

§1311. Exemption

A. The requirements of this Chapter shall not apply to third-party solicitors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007, amended LR 34:2126 (October 2008), LR 42:1088 (July 2016).

Chapter 17. Dealer and Investment Adviser Recordkeeping Requirements

§1701. Broker-Dealer Requirements

A. Unless otherwise provided by order of the Securities and Exchange Commission (hereinafter "SEC"), each broker-dealer registered or required to be registered pursuant

to R.S. 51:703(A)(1) shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), and 15c2-11 (17 CFR 240.15c2-11), which are adopted and incorporated herein by reference.

B. To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(I).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 37:1611 (June 2011), effective October 19, 2011, repromulgated LR 37:2149 (July 2011).

§1703. Investment Adviser Requirements

A. Except as provided in Subsection C of this Section, unless otherwise provided by order of the SEC, each investment adviser registered or required to be registered pursuant to R.S. 51:703(A)(2) or notice filed pursuant to R.S. 51:703(D)(2) shall make, maintain and preserve books and records in compliance with SEC rule 204-2 (17 CFR 275.204-2), which is adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

B. To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

C. Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Subsection A of this Section, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(I).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 37:1611 (June 2011), effective October 19, 2011, repromulgated LR 37:2149 (July 2011).

§1705. Cessation of Business

A. Before ceasing to conduct or discontinuing business, each broker-dealer and investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved by this Rule for the remainder of the period specified.

B. Each broker-dealer and investment adviser shall notify the commissioner in writing of the exact address where such books and records will be maintained during such period. The filing with the Central Registration Depository of a Form BD-W by a broker-dealer or a Form

ADV-W by an investment adviser shall satisfy this notice requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(I).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 37:1612 (June 2011), effective October 19, 2011, repromulgated LR 37:2149 (July 2011).

Chapter 19. Supervision of Salesmen and Investment Adviser Representatives

§1901. Supervision of Salesmen and Investment Adviser Representatives

A. Every dealer registered or required to be registered pursuant to R.S. 51:703(A)(1), every investment adviser registered or required to be registered pursuant to R.S. 51:703(A)(2), every investment adviser notice filed pursuant to R.S. 51:703(D)(2), and officers, directors, and partners thereof, shall exercise diligent supervision over all the securities activities of its salesmen and investment adviser representatives.

B. As part of their responsibility under this Rule, every dealer or investment adviser shall establish, maintain, and enforce written supervisory procedures that may be reasonably expected to prevent and detect any violations of the Louisiana Securities Law and rules promulgated thereunder. A copy of these supervisory procedures shall be kept at all times, in each business office. At a minimum, these procedures shall address the following areas:

1. the supervision of every salesman and investment adviser representative by a designated supervisor possessing sufficient training and experience to carry out their assigned supervisory responsibilities;
2. the prior review and written approval by the designated supervisor of the opening of each new customer account;
3. the frequent examination by the designated supervisor of all customer accounts to detect and prevent irregularities or abuses;
4. the prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions;
5. the prior review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account, and the prompt written approval of each discretionary order on behalf of that account; and
6. the prompt review and written approval by the designated supervisor of the handling of all customer complaints.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704(A)(9).

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 37:2149 (July 2011).

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FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
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Part XV. Other Regulated Entities

**Chapter 1. Business and Industrial
Development Corporations**

§101. Declaration of Policy

A. It is the declared policy of the Office of Financial Institutions to provide for the licensing and regulation of Louisiana corporations as business and industrial development corporations authorized by Act 506 of the 1991 Louisiana Legislature, which will aid in the increasing of job opportunities in this state; promote establishment of growth and expansion of business firms in this state; provide a vehicle to offer financing assistance and management assistance to business firms through the small business administration and to more effectively regulate and supervise Louisiana corporations licensed as business and industrial developments corporations to give greater permanence of existence and better assurance of uninterrupted service to business firms in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2386 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:24 (January 1992).

§103. Definitions

A. This Chapter contains definitions which supplement the definitions provided for in the Louisiana Business and Industrial Development Act, R.S. 51:2386 et seq.

Applicant—a Louisiana corporation organized under an incorporating statute which applies to the commissioner for a license.

Application—consist of the necessary forms prescribed by the commissioner, submitted in a completed form to the commissioner with all supporting documents requesting that a license be granted.

Business and Industrial Development Corporation (BIDCO)—a Louisiana corporation organized to help meet the financing assistance and management assistance needs of business firms in the state of Louisiana.

Business Plan—a narrative providing a general description of the proposed business and industrial development corporation which should include at a minimum a description of the BIDCO's organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the BIDCO will operate as a profit or nonprofit corporation.

Commissioner—the Commissioner of the Office of Financial Institutions of the Department of Economic Development.

Incorporating Statute—the Louisiana Business Corporation Law, R.S. 12:1 et seq., or any other provision of law under which a licensee is incorporated.

Institution Affiliated Party—a director, officer, employee, agent, controlling person, and other person participating in the affairs of the BIDCO.

Person—a natural person or legal entity qualified to seek a license as a business and industrial development corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2386 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:24 (January 1992).

§105. General Provisions

A. Application and Contents. The application shall be in such form and contain such information as the commissioner may from time-to-time prescribe. The commissioner may refuse to accept an application for filing until the applicants have submitted all required information. The application will contain a public section and a confidential section. The public portion of the application shall consist of the comments and information submitted by interested parties in favor of or in opposition to such application, the justification for preliminary approval, statement of purpose, description of the business, management and convenience and needs of the community. After the application is completed to the satisfaction of the commissioner, the application may be accepted for filing and for preliminary approval, if so requested.

B. Books and Records

1. A licensee shall make and keep its records in conformity with generally accepted accounting principles.

2. A licensee shall make and keep all of its records at its main office as identified in its application for a license, unless otherwise provided by the Louisiana Business and Industrial Development Corporation Act or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a BIDCO shall be retained for the periods of time set in the regulation promulgated in Volume 9, Number 10 of the *Louisiana Register*, published October 20, 1983, which is incorporated herein by reference.

C. Commencement of Business. For purposes of this regulation, an applicant shall be deemed to commence business at the time when, the commissioner having issued such applicant a license, the applicant opens for the purpose of transacting business as a BIDCO pursuant to the Louisiana Business and Industrial Development Corporation Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2386 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:24 (January 1992).

§107. Reports

A. The board of directors for each BIDCO licensed by the commissioner shall annually make a report of examination of the financial condition of the BIDCO and its subsidiaries. They may make said examination by employing an independent certified public accountant, their respective accounting firms, or by the use of an in-house auditor and clerical staff. All such audits of a BIDCO must meet the minimum standards promulgated by the Commissioner of Financial Institutions. To meet the minimum auditing standards, the board of directors shall employ the methods of auditing described in the regulation promulgated by the Office of Financial Institutions in Volume 16, Number 1 of the *Louisiana Register* dated January 20, 1990, which is incorporated herein by reference. This report of examination shall be submitted to the commissioner no later than April 30 of the calendar year following the period for which the report was prepared.

B. Election of Directors. Not more than 30 days after the election of any person as the director of a licensee, such licensee and such director shall file with the commissioner a report containing the following information:

1. name, address and occupation of the new director;
2. title of any office which the director previously held with the licensee and title of any office (other than the office of director) which the director currently holds with the licensee;
3. date of election of the director;
4. manner of election of the director (that is, whether by the board or by the shareholders);
5. in case a director is not an incumbent director or executive officer of the licensee, the licensee shall provide:
 - a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the newly elected director;
 - b. not more than 10 days after the appointment of any person as the chief executive officer of a licensee and not more than 30 days after the appointment of any person as any other executive officer of a licensee, such licensee and such executive officer shall file with the commissioner a report containing the following information:

- i. name and address of the executive officer;
- ii. title of the office to which the executive officer was appointed;
- iii. a summary of the duties of the office to which the executive officer was appointed;
- iv. date of appointment of the executive officer;
- v. title of any office which the executive officer previously held with the licensee and title of any office (other than the office to which the executive officer was appointed) which the executive officer currently holds with the licensee;
- vi. in case the executive officer was not, immediately before the appointment, an executive officer of the licensee, licensee shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2386 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:25 (January 1992).

§109. Licensing Procedures, Instructions and Guidelines

A. The application shall contain the following specific information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
5. a federal tax identification number;
6. phone number, address and zip code;
7. a copy of any bylaws executed by the board of directors;
8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;
9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for a license as a BIDCO, and to sign said application;
10. financial statements for all incorporators and initial directors;
11. the justification for preliminary approval, if so requested in the application;

12. description of the BIDCO's business plan, in a narrative form, which shall include, at a minimum, the following:

- a. a description of the BIDCO's statement of purpose and organization;
- b. types of lending and financing it intends to offer and to whom;
- c. whether it intends to provide management assistance, and if so, to what extent and to whom;
- d. will the BIDCO be a profit or nonprofit corporation;
- e. proforma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;
- f. a proposed net worth structure as required by R.S. 51:2392(B)(2);

13. a list of all of the directors, officers and controlling persons;

14. biographical information concerning the proposed directors, officers and controlling persons, including personal information, résumé of each person's education, their employment record and prior associations or position with other BIDCO's and in what capacity in or out of Louisiana;

15. other pertinent information required by the commissioner.

B. Denial of License. The commissioner in his sole discretion may deny an application for a license as a Business and Industrial Development Corporation for the following non-exclusive reasons:

1. the applicant is not qualified as a BIDCO concern under R.S. 12:1 et seq.;
2. the applicant is in the process of having its charter revoked or is in litigation or in some other process affecting its further solvency or its status as a chartered organization;
3. the board of management of the applicant does not possess, in the judgment of the commissioner, sufficient competence to manage properly and prudently any funds which may be provided to it by a state-funded assistance program;
4. the applicant has not demonstrated that it is fully conversant with the legislative intent of Act 506 of the 1991 regular session, "The Louisiana Business and Industrial Development Corporation Act" and with these regulations developed pursuant to it, and that it is not fully committed to carry out the letter and spirit of said law and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2386 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:25 (January 1992).

§111. Small Business Administration

A. If an applicant desires to participate in a program of the Small Business Administration, (SBA), or the commissioner determines that an application indicates that an applicant's participation in such program will comprise a significant portion of the applicant's business plan, the commissioner may grant conditional licensure to the applicant as a BIDCO subject to conditions determined by the commissioner, pending the submission by the applicant of evidence, deemed sufficient by the commissioner, of approval granted by the SBA, within 90 days of the issuance of the commissioner's conditional licensure.

B. When a BIDCO contemplates having at least one-half of its investments in qualified Small Business Administration loans, that shall constitute a significant portion of its business plan for purposes of this regulation.

C. If the commissioner determines that sufficient evidence of SBA approval has not been provided to him within the time frame described in Subsection A. hereinabove, the commissioner's conditional licensure shall be void, and the applicant shall have no right to any judicial, administrative, or other relief. The applicant may request new licensure subject to conditions pursuant to Subsection A. at least 10 business days prior to the expiration of an existing conditional license without filing a new application pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and R.S. 51:2389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:26 (January 1992), amended by the Office of the Governor, Office of Financial Institutions, LR 44:1009 (June 2018).

Chapter 3. Capital Companies Tax Credit Program

§301. Description of Program

A. These rules implement the Capital Companies (CAPCOs) Tax Credit Program pursuant to R.S. 51:1921 et seq. and R.S. 22:1068(E). This program was created by Act 642 of the 1983 Legislature, amended by Act 891 in 1984, Acts 695 and 915 in 1986, Act 496 in 1989, Acts 279 and 724 of 1993, and Act 21 of 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997).

§303. Definitions Provided by Rule

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate and/or Affiliated Company—

a. solely for purposes of the transfer or sale of income or premium tax credits pursuant to R.S. 51:1924(F), R.S. 22:1068(E)(4), and LAC 10:XV.305.B, *affiliate* is defined as follows:

i. any person that controls, is controlled by or under common control with another person (including any person that would become an affiliate as a result of a business combination); or

ii. members, partners, or shareholders and any family members thereof, of a legal entity that invests in a CAPCO;

b. for all other purposes, the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a qualified Louisiana business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a qualified Louisiana business;

c. for purposes of R.S. 22:1068(E)(2)(c), a *group of affiliates* shall mean a person and not less than all affiliates of such person;

d. the test relating to being under common control with will not apply to investments closed prior to the effective date of this rule or to any qualified Louisiana business in which the investing certified Louisiana capital company has invested in prior to the effective date of this rule;

e. Clause ii of this Section shall not include as an affiliate those legal entities that are controlled by either an angel or institutional investor.

*Angel Investor in a Qualified Louisiana Business—*for purposes of excluding certain companies from being an affiliate of a qualified Louisiana business, an *angel investor* shall be defined as any investor that has provided early state funds to a business unless such investor is, the founder, or a family member of the founder, of the qualified Louisiana business.

*Application—*a completed application as determined by the commissioner.

Associate of a CAPCO—

a. any of the following:

i. a person serving a CAPCO, or an entity that directly or indirectly controls a CAPCO, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in

comparison with the other people employed with the employee), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), accountant, or general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the CAPCO;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §303.A. *Associate of a CAPCO*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §303.A. *Associate of a CAPCO*.a.i, ii or iii;

v. a person that invests in the CAPCO and has received an income tax credit or premium tax reduction under the CAPCO Program;

vi. an affiliate of any person described in §303.A. *Associate of a CAPCO*.a.v; or

vii.(a). a person that, within six months before or at any time after the date that a CAPCO invests in the person, is controlled by a CAPCO or any of its affiliates. A CAPCO's primary purpose is to provide venture capital to qualified Louisiana businesses in need of capital; not to invest in subsidiaries of the CAPCO or its affiliates, or companies that a CAPCO or its affiliates intend to control. Such investments will result in an associate determination and will not be considered "qualified investments" in assessing a CAPCO's compliance with its continuing certification requirements;

(b). Section 303.A. *Associate of a CAPCO*.a.vii.(a) does not apply to an investment made by a CAPCO in a qualified Louisiana business if, within six months before or at any time after the date of the investment, the qualified Louisiana business is not controlled by the CAPCO or its affiliates. However, even though a CAPCO may not intend to control a business in which it invests, it may obtain control over the qualified Louisiana business after its initial investment. If control is acquired after the initial investment as a result of the following circumstances, such control will not create an associate relationship under §303.A. *Associate of a CAPCO*.a.vii.(a):

(i). persons controlled by the CAPCO as a means of protecting the CAPCO's investment or resulting from a material breach of any financing agreement; or

(ii). instances involving transitory or short-term control of a person by a CAPCO (or an affiliate of the CAPCO) solely to remedy actions by the person that may cause the CAPCO's investment in such person to fail to be treated as a qualified investment, on the good faith belief that such operation of the person is necessary to ensure that

the investment in the person will be treated as a qualified investment;

b. for the purposes of this definition, if any associate relationship described in §303.A. *Associate of a CAPCO*.a.i-vi exists between a person and the CAPCO at any time within six months before or at any time after the date that the CAPCO makes its initial investment in such person, that associate relationship is considered to exist on the date of the financing.

BIDCO—a Business and Industrial Development Corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

Business—for the purposes of determining if a qualified Louisiana business operates primarily in Louisiana or performs substantially all of its production in Louisiana means an entity, together with all of that entity's affiliates that would directly or indirectly receive an economic benefit from a financing by a CAPCO. For purposes of this definition, an affiliate of the entity includes any entity which will become an affiliate of the entity as a result of a financing from a CAPCO.

CAPCO—a Certified Louisiana Capital Company certified pursuant to the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

Capitalization—for purposes of initial certification, pursuant to R.S. 51:1925(B):

a. *Generally Accepted Accounting Principles (GAAP) Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. *Less*: the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the CAPCO: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within five years from redemption or repurchase	20 percent
Within four years from redemption or repurchase	40 percent
Within three years from redemption or repurchase	60 percent
Within two years from redemption or repurchase	80 percent
Within one year from redemption or repurchase	100 percent

c. notwithstanding the foregoing, there will be no reduction for a withdrawal within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit or premium tax reduction.

Capitalize a Business—for purposes of LAC 10:XV.303. *Investment*.b.i.(d)—the investment of cash in a business in exchange for common stock, or an equivalent ownership interest. Additionally, this shall include subordinated debt only if:

a. it is used to refinance senior debt thereby allowing a qualified Louisiana business to expand; or

b. the CAPCO agrees to subordinate such debt to any current or future senior indebtedness owed by the business, provided that, in the case of future indebtedness, the senior indebtedness is incurred by the portfolio company within three months of the date the CAPCO made the subordinated debt investment.

Certified Louisiana Capital Company Group—any two or more CAPCOs which share common management or is under common control, whether such management or control is accomplished directly or indirectly.

Change of Control—for purposes of LAC 10:XV.319.A shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding shares of the CAPCO or 50 percent or more of the combined voting power of the CAPCO; provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the CAPCO or the date of the CAPCO's last notification under LAC 10:XV.319.A for whom the Office of Financial Institutions has received a current Biographical Affidavit and conducted a current background check shall be disregarded; or

b. individuals who constitute the voting power of the board of directors, board of managers or other governing board of the CAPCO as of the later of the CAPCO's certification date or the date of the CAPCO's last notification under LAC 10:XV.319.A cease to comprise more than 50 percent of the voting power of such board of directors, board of managers, or other board; or

c. a change in the general partner or manager of the CAPCO or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the CAPCO that was the party to the merger or consolidation transaction.

Commissioner—the Commissioner of the Office of Financial Institutions.

Control—

a. solely for purposes of determining whether a qualified Louisiana business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a CAPCO, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is used with respect to a specified person or legal entity;

b. for all other purposes, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

Date Certified, Newly Certified or Designated as a Certified Louisiana Capital Company—the date that the commissioner notifies a CAPCO of its certification.

Date on Which an Investment Pool Transaction Closes—date that a CAPCO designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all legal documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the CAPCO receives a cash investment of certified capital that is available for investment in qualified Louisiana businesses.

Equity Features—includes [pursuant to R.S. 51:1923(4) and (5)] the following.

a. *Royalty Rights*—rights to receive a percent of gross or net revenues, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests*—rights to receive a percent of operating or net profits, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership*—options on the stock of the qualified Louisiana business. The qualified Louisiana business may repurchase a warrant (a "call") or the qualified Louisiana business may be required to repurchase a warrant (a "put") at some fixed amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Rights*—conversion options of debt, to convert all or a portion of the debt to the qualified Louisiana business's stock, then to participate in the sale of the stock of the qualified Louisiana business.

e. *Equity Rights*—the receipt or creation of a significant equity interest in a qualified Louisiana business.

f. And such other conceptually similar rights and elements as the OFI may approve.

Family Member—spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

Financing Assistance Provided in Cash and The Investment of Cash—a transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; loan collection expenses or legal fees incurred by a CAPCO in protecting its collateral interest in an investment.

Headquartered in Louisiana—at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. In analyzing whether the business has a substantial portion of its assets located in Louisiana, Subparagraph a of the definition of *Operates Primarily in Louisiana* shall be utilized in making the determination. The application of this definition shall only be made to investments made from pools of capital certified in 2002 or thereafter.

Institutional Investor—shall include venture capital companies, investment companies, mutual funds, brokerage companies, insurance companies, pension funds, investment banks, Small Business Investment Companies licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958, CAPCOs, BIDCOs, and any other corporation, limited liability company, or partnership with total assets in excess of \$5,000,000 formed for the purpose of making investment in multiple businesses. Examples:

a. a company founded by an individual seeks additional capital to continue product development. A high net worth individual or an *institutional investor* reviews the investment and elects to provide capital. Following this investment, the company is able to develop its product to a certain stage. Now, the company is in need of a larger investment to bring the product to market and a certified Louisiana capital company desires to invest. Under this scenario, neither the net worth nor the net income of the angel or *institutional investor* or any companies *controlled* by the angel or *institutional investor* would be combined with the qualified Louisiana business in determining if the limits founds in R.S. 51:1923(13)(a) would be exceeded;

b. a high net worth individual controls one or more companies that are not considered qualified Louisiana businesses. This high net worth individual founds another company and provides the capital for startup and product development and now seeks funding by a certified Louisiana capital company. Under this scenario, the founder of the company seeking *investment* would not be considered an angel or *institutional investor*.

Investment—

a. for purposes of earning tax credits or reductions under R.S. 51:1923(1) and (2), R.S. 51:1924(A) and (B), or R.S. 22:1068(E), means a transaction that, in substance and in form, is the investment of cash in exchange for:

i. common stock, preferred stock, or an equivalent ownership interest in a CAPCO; or

ii. a loan receivable or note receivable from a CAPCO which has a stated final maturity date of not less than five years from the origination date of the loan or note;

iii. notwithstanding the above, an *investment* shall also include debt instruments which are obligations of the investing insurance company to a certified Louisiana capital company. Such debt instruments shall be converted into cash at a rate of not less than 10 percent per year from the date of the *investment*;

iv. however, at all times, in order to perfect the tax credits earned as a result of an investment described in Subparagraphs a-c of this Paragraph, the CAPCO shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

(a). available to be invested in qualified investments in qualified Louisiana businesses;

(b). invested in qualified *investments* made subsequent to the *investment* date of the *investment* pool; or

(c). a combination of §303.A.*Investment*.a.iv.(a) and (b);

b.i. an *Investment* furthers economic development within Louisiana. If the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the qualified Louisiana business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 50 percent of the proceeds derived from the investment are used by the qualified Louisiana business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a buyout of a company;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business.

However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the CAPCO shall request in writing and the commissioner shall issue a written response to the CAPCO that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a CAPCO in interim construction financing shall not be considered to further economic development within Louisiana, unless the same CAPCO also provides the debt funding that refinances the interim funding upon completion and the permanent financing is determined to further economic development within Louisiana;

iii. for purposes of Subclause b.i.(e) of this definition, an *investment* by a CAPCO to refinance interim debt of a qualified Louisiana business will be considered to further economic development within Louisiana if the commitment to fund the *investment* by the CAPCO occurs before the funding of the interim debt.

Louisiana Employees—

a. full-time and part-time employees and officers, converted to a full-time equivalent basis, that perform services in Louisiana for a qualified Louisiana business in exchange for salaries, wages and/or other compensation, which is included in Louisiana withholding tax returns filed by the qualified Louisiana business;

b. the term *Louisiana employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a qualified Louisiana business on a contract basis; or

ii. employees of any business that perform services (contractor) for a qualified Louisiana business.

For example: a contractor may enter into an agreement to perform services for a qualified Louisiana business. The contractor's employees that perform services under that agreement would not be Louisiana employees under this definition.

Net Income—net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth—net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office—the Office of Financial Institutions (OFI).

Operates Primarily in Louisiana—a business *operates primarily in Louisiana* if, at the time of the initial *investment*, the business is in good standing with the Louisiana Secretary of State, if applicable, and meets one or more of the following:

- a. the business has more than 50 percent of its total assets located in Louisiana;
- b. more than 50 percent of the business' net income is allocable or apportionable to Louisiana in accordance with Louisiana income tax law, but disregarding whether the business is taxable or tax-exempt for Louisiana income tax purposes;
- c. more than 50 percent of the total salaries, wages and/or other compensation of the business are paid to Louisiana employees; or
- d. the CAPCO has, prior to investing in the business, received a written opinion from the commissioner that, based upon relevant facts and circumstances, the business has demonstrated it operates primarily in Louisiana and will continue to operate primarily in Louisiana for at least one year from the date of any financing by a CAPCO. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

NOTE: For *investments* made utilizing certified capital raised during 2002 or 2003, Subparagraph c is superseded by R.S. 51:1923(13)(a)(i) which requires that at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. Therefore, in addition to meeting this new 80 percent test, in order for the business to be deemed to operate primarily in Louisiana, one or more of Subparagraphs a, b or d must be met.

Participation between CAPCOs—are loans or other investments in which one or more CAPCOs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a CAPCO may only include its participation (ownership interest) as a qualified investment.

Performs Substantially All of Its Production in Louisiana—a business performs substantially all of its production in Louisiana if:

- a. the business derives more than 50 percent of its gross receipts from the sale of manufactured, produced or processed goods; and
- b. more than 50 percent of the total value added to the business' finished product is added within Louisiana.

NOTE: For *investments* made utilizing certified capital raised during 2002 or 2003, R.S. 51:1923(13)(a)(i) adds a new requirement that at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. Therefore, in addition to meeting this new 80 percent test, in order for the business to be deemed to perform substantially all of its production in Louisiana, this new 80 percent test must be met in addition to Subparagraphs a and b.

Permissible Investments—for purposes of R.S. 51:1926(B), cash deposited with a federally-insured financial institution; certificates of deposit in federally-insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under Subclause a.(iv)(a) of the definition of *Investment* in LAC 10:XV.303 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the CAPCO within 10 days following demand by the CAPCO in connection with funding a qualified investment. This limitation on the maturity of an investment shall only apply to *investments* made subsequent to the date of this rule.

Person—a natural person or juridical entity. If used with respect to acquiring control of or controlling a specified person, *person* includes a combination of two or more persons acting in concert.

Primary Business Activity of a CAPCO—the investment of a CAPCO's certified capital primarily in qualified investments in qualified Louisiana businesses. Primary business activity is demonstrated by having at all times, a minimum of 50 percent of total certified capital of each investment pool, which has been collected in cash, available for investment in or having been invested as qualified investments in qualified Louisiana businesses.

Sophisticated Investor—any of the following:

- a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;
- b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital under Management—for purposes of investment limits, pursuant to R.S. 51:1926(B):

a. *GAAP Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchanged for cash and is available for investment in qualified *investments*; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs;

b. Plus: Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments;

c. Less: The following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the CAPCO:

i. the GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within five years from redemption or repurchase	20 percent
Within four years from redemption or repurchase	40 percent
Within three years from redemption or repurchase	60 percent
Within two years from redemption or repurchase	80 percent
Within one year from redemption or repurchase	100 percent

d. the portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:1926(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997), LR 25:1216 (July 1999), amended by the Office of the Governor, Office of Financial Institutions, LR 29:343 (March 2003), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:33 (January 2004).

§305. Income and Premium Tax Credits

A. In order to be eligible for any income or premium tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a CAPCO voluntarily decertifies and preserves all income and premium tax credits, if debentures, notes or any other quasi-equity/debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income or premium tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Insurance or the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:1927 and R.S. 51:1928. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

B. Income or premium tax credits may be sold or transferred, subject to the following conditions.

1. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirors. Furthermore, even though a transfer or sale of credits, known as an election under this Section, may involve several entities, only one election may be made during any calendar year. Therefore, an investor in a CAPCO may only transfer or sell credits once during a calendar year and the entity that purchases the credit may not transfer credits obtained during the year of purchase. In any subsequent calendar year, the purchaser of the credits may make one election per year, if needed.

2. Companies and/or individuals shall submit to the Department of Insurance or the Department of Revenue and Taxation in writing, a notification of any transfer or sale of income or premium tax credits within 30 days of the transfer or sale of such credits. The notification shall include the original investor's income or premium tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If an insurance company transfers premium tax credits between affiliates or sophisticated investors, the notification submitted to the Department of Insurance shall be provided on forms prescribed by the Department of Insurance.

4. If income tax credits are transferred between affiliates or sophisticated investors (acquirors), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the

following information for each corporation or individual involved:

- a. name of transferor and each acquiror;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquiror; and
- c. credits taken by the transferor and each acquiror under R.S. 51:1924(A) and (B).

5. Failure to comply with this rule will jeopardize the income or premium tax credit transferred.

6. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:1924(A) and (E) or R.S. 22:1068(E)(3), respectively. Any income or premium tax credits transferred or sold pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), which credits are subject to recapture pursuant to R.S. 51:1927(C), 51:1928(A) or R.S. 22:1068(E)(4), shall be the liability of the taxpayer that actually claimed the credit.

C.1. The total income tax credits granted pursuant to R.S. 51:1924.A in any calendar year shall not result in an additional reduction of total income tax revenues of greater than \$2,000,000 per year.

2. During any calendar year in which this Subsection will limit the amount of certified capital for which income tax credits are allowed, certified capital for which income tax credits are allowed will be allocated among Louisiana certified capital companies. Requests for allocation shall be prepared for filing not later than December 1 on a form prescribed by the commissioner which form shall include an affidavit by the investor pursuant to which such investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified Louisiana capital company subject only to receipt of allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before December first of any calendar year shall be deemed to have been filed on December first of such year. Requests for allocation shall be allocated as followed.

a. When aggregate requests for allocation by certified Louisiana capital company groups do not exceed \$5,714,285.71, all requests for allocation shall be approved by the department.

b. When aggregate requests for allocation exceed \$5,714,285.71, each certified Louisiana capital company group shall be entitled to receive an allocation to be calculated by dividing \$5,714,285.71 by the number of certified Louisiana capital company groups requesting an allocation. In the event that this allocation results in one or more certified Louisiana capital company groups receiving an allocation in excess of the amount which was requested, the excess shall be reallocated to the remaining certified Louisiana capital company groups on an equal basis until the entirety of the allocation has been fully distributed.

3. No certified Louisiana capital company certified after December first of any year shall be entitled to receive an allocation pursuant to Subparagraph b of this Subsection for the same calendar year in which it was certified.

4. Annually within 10 days of December 1, the commissioner shall review all requests for allocation of income tax credits and notify the certified Louisiana capital companies of the amount of certified capital for which income tax credits are allowed to the investors in such company. During this 10 day period, each CAPCO or CAPCO group may allow for the substitution of one investor for another investor when the initial investor is unable or unwilling to complete the proposed investment.

5. In the event a certified Louisiana capital company or group does not receive an investment of certified capital equaling the amount of the allocation made pursuant to Subparagraph C.2.b of this Subsection within 10 days of its receipt of notice of such allocation it shall notify OFI within three days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1924, 1927, 1928 and 1929, and R.S. 22:1068(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 16:762 (September 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1132 (September 1997), LR 25:1216 (July 1999), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:35 (January 2004).

§307. Application Fees; Other Fees

A. An advance notification of intent to seek certification shall be filed by a company or entity, the applicant, prior to filing an application. An advance notification fee of \$100 shall be submitted with the advance notification form.

B. An application fee of \$5,000 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

C. The office reserves the right to return the advance notification or application to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications and applications which have been accepted will not be refundable.

D. The commissioner shall conduct an annual review of each CAPCO to determine the company's compliance with the rules and statutes. Examiner time shall be billed at a rate not less than \$50 per hour, per examiner, or \$500 per review, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925, 1927 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§309. Application Process

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:1921 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

B. The form for applying to become a CAPCO may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filings shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Said application and all submissions of additional information reported to the office, shall be forwarded via United States mail or private or commercial interstate carrier, properly addressed and postmarked and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the commissioner. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a CAPCO and/or the department may be subject to civil and criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§311. Conditions of Certification

A. All CAPCOs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a certified Louisiana capital company and shall certify and acknowledge that the act statement is true and correct.

1. The CAPCO has an initial capitalization of not less than \$200,000. If any capitalization is repurchased or contemplated to be repurchased by the CAPCO within five years after certification, the CAPCO will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Furthermore, any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits or premium tax reductions.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the CAPCO will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification. If the commissioner does not object to the notification within 30 days of the receipt, the notification shall be deemed approved.

3. The board of directors will not elect new or replace existing board members or declare dividends without prior written consent of the office for the first two years of business.

4. The CAPCO will immediately notify the office when its total certified capital under management is not sufficient to enable the CAPCO to operate as a viable going concern.

5. The CAPCO will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The CAPCO will comply with the CAPCO Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The CAPCO will adopt OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant to the commissioner.

B.1. If a CAPCO contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the CAPCO shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in

investor solicitations must be submitted to the office at least 30 days prior to investor solicitation.

2. If a CAPCO seeks to certify capital pursuant to §303.A.*Investment.a.ii*, the CAPCO shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow this office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended, LR 23:1134 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§313. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:1926, decertification of an investment pool under R.S. 51:1927 and voluntary decertification of an investment pool under R.S. 51:1928.

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator:

a. no qualified investment may be counted more than once;

b. the date the investment of cash is made determines whether the one-year date is achieved. For multiple fundings, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.

3. If a CAPCO invests a portion of its total certified capital in a majority-owned BIDCO, the qualified investments made by the majority-owned BIDCO shall be added to the numerator under §313.A.1.a and b.

4. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification

(collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a CAPCO's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a CAPCO may allocate its qualified investments to all open investment pools, provided such allocations are reasonable.

C.1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of Subparagraph A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

a. a sale that is executed in connection with a sale of control of a qualified Louisiana business; or

b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the CAPCO may deliver to the office a letter of credit in form and substance, and issued by a financial institution, acceptable to the office. The letter of credit:

a. shall be payable to the office as beneficiary;

b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with Paragraph C.1 above;

c. shall provide that the letter of credit is forfeitable in full if the CAPCO fails to comply with the requirements of Paragraph C.1 above; and

d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to Paragraph C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of Subparagraph A.1.a above which have not yet been held by the CAPCO a minimum of one year.

3. If the CAPCO provides a letter of credit in accordance with Paragraph C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the CAPCO as the sole remedy for the failure of the CAPCO to comply with the requirements of Paragraph C.1 above; otherwise, the failure to comply with Paragraph C.1 above shall be considered a violation of R.S. 51:1926(H)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1929 and 1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154

(February 1994), LR 23:1134 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§315. Information Required from Qualified Louisiana Businesses

A. Prior to making an investment in a business, a CAPCO shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the CAPCO in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business, for example: a board resolution;

2. a binding waiver of rights and consent agreement sufficient to allow the CAPCO, upon request to the business, full access to all information and documentation of the business which is in any way related to the investment of the CAPCO in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow acquisition by the CAPCO of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of proceeds, and that the business will provide to the CAPCO, documentation of the use of proceeds; and

5. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1927, 1928 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended, LR 23:1350 (September 1997).

§317. CAPCO Report and Record Requirements

A. Reporting Requirements. Pursuant to R.S. 51:1926(F)(2), CAPCOs are required to submit to the commissioner reports of selected information for each qualified investment made in the previous calendar year. Senate Concurrent Resolution Number 40 of the 1996 Regular Session also requires that the department determine the economic development impact of the CAPCO Program on the state. In order to provide such a report to the Senate, economic information for each company in which a CAPCO has invested shall be obtained and reported to the commissioner by each CAPCO. Such reports shall be submitted on forms provided or approved by OFI.

B. Record Requirements. In order for the commissioner to properly review and analyze a CAPCO's compliance with this rule and all relevant statutes, each CAPCO shall obtain from each business in which the CAPCO has invested, and

maintain in its possession for review, any and all records deemed necessary by the commissioner.

C.1. Except as provided in this Paragraph 2 of this Subsection C, no information contained in the report of examination may be disclosed to investors or shareholders.

2. The report of examination is the property of the Office of Financial Institutions and is furnished to the CAPCO for use by management and the board of directors/managers of the CAPCO and its parent entities. Therefore, the release of any information contained in the report of examination is considered a violation of R.S. 51:1934.

D. All CAPCOS shall prepare quarterly financial statements which shall include a balance sheet, an income statement, and a statement of cash flows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1135 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:37 (January 2004).

§319. Change of Control

A. In the event of a change of control of a certified Louisiana capital company, at least 30 days prior to the effective date, the CAPCO shall provide written notification to the commissioner of the proposed transaction. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner;

2. a copy of the proposed business plan of the new owners covering a three year period;

3. a discussion of the previous experience the proposed owner has in the field of venture capital;

4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the CAPCO;

6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and the Office of

the Governor, Office of Financial Institutions, LR 30:37 (January 2004).

§320. Investment in Approved Funds

A. Any certified Louisiana capital company that has capital certified pursuant to R.S. 51:1924 for the calendar years 1999 or 2000, and which qualifies for credits pursuant to R.S. 22:1068(E) shall invest an amount, as determined by the secretary, into the following investments:

1. 50 percent of the amount determined by the secretary shall be invested in one or more capital management funds as approved by the secretary whose primary investment objectives include pre-seed, seed, and early stage business ventures, and whose investment in any such business and its affiliates is limited to \$1 million or less. Investments made by such funds must give special emphasis to the Targeted Technology Clusters identified in Vision 2020—Master Plan For Economic Development as adopted by the Louisiana Economic Development Council; and

2. 50 percent of the amount determined by the secretary shall be invested in any certified Louisiana capital company whose primary investment objectives include investing in the following three categories:

- a. certified disadvantaged businesses;
- b. business ventures operating in economically distressed areas; or
- c. Louisiana businesses and affiliates in an amount not exceeding \$1 million.

B. The amount to be invested by each certified Louisiana capital company pursuant to Subsection A shall be determined annually by the secretary beginning January 1, 2000. Such amount shall not exceed 10 percent of all capital certified by such certified Louisiana capital company in the previous calendar year that are eligible for credits pursuant to R.S. 22:1068(E). The amount to be invested pursuant to Subsection A shall be invested within 120 days from the end of the calendar year in which the capital is certified or 120 days from the date the secretary determines the amount to be invested, whichever is later. If certified capital is paid in pursuant to a debt instrument in accordance with the provisions of R.S. 22:1068(E)(1)(a) and LAC 10:XV.303.*Investment.a.iii*, the investment required to be made by this Section may be made at the rate of 10 percent of actual cash received each year.

C. The capital management fund referred to in Paragraph A.1 shall be managed by a qualified individual or individuals or entity that is managed by a qualified individual or individuals and governed by a board consisting of one representative from each certified Louisiana capital company that has invested in the management fund as required by this Section and the secretary or his designee, who shall act in an advisory capacity only, with the right to attend meetings but with no voting privileges. The governing board of the capital management fund will develop policies for the administration and operation of the capital management fund. Certified Louisiana capital companies

investing in such capital management fund, shall share in the profits and losses of such fund in accordance with the documents providing for the creation and organization of the fund. The fund shall submit reports to the secretary, semi-annually within 30 days of June 30 and December 31. The report shall include information on all investments made by the fund and a copy of the most recent financial statements of the fund and shall be submitted on a form provided by the secretary.

D. Any entities receiving funds pursuant to Paragraphs A.1 or A.2 shall comply with all requirements of R.S. 51:1921 et seq. (Chapter 26 of Title 51 of the Louisiana Revised Statutes) and with this Chapter with respect to such funds received as if those funds were certified capital as defined in R.S. 51:1923(1) with the exception that:

1. such funds shall earn no additional tax credits;
2. for purposes of R.S. 51:1926(A)(1), 50 percent must be invested in qualified investments and for purposes of R.S. 51:1926(A)(2), 80 percent must be invested in qualified investments; and
3. 100 percent of such funds shall be invested in qualified investments within eight years.

E. Amounts invested pursuant to Paragraph A.2 shall be invested directly into a certified Louisiana capital company. Investments directly into a business shall not qualify as an investment pursuant to Paragraph A.2.

F. With respect to capital raised and certified pursuant to R.S. 22:1068(E) during the calendar year 1999 only, if a certified Louisiana capital company demonstrates to the secretary that investments made from 1999 certified capital were made or committed prior to December 1, 2000, were made with the understanding that they would qualify under R.S. 51:1935 and were made in accordance with the terms of a previous agreement entered into by the secretary, such investments will be deemed to qualify pursuant to this Section.

G. If a certified Louisiana capital company which is required to invest funds by this Section is also a certified Louisiana capital company described in Paragraph A.2 above, it shall not be required to reinvest part of its certified capital into another certified Louisiana capital company pursuant to the requirements of Paragraph A.2; however, it must still make the investment required by Paragraph A.2.

H. Any certified Louisiana capital company may request a determination from the secretary that it is a certified Louisiana capital company described in Paragraph A.2. A request for a determination shall be addressed to the secretary and shall include a copy of the certified Louisiana capital company's:

1. articles of organization;
2. by-laws;
3. investment policy; and
4. any disclosure statement distributed to prospective investors. If any of those documents have been amended from its original form, a copy of both the original and amended documents must be provided. The secretary may

request any additional information that he deems necessary to make a determination.

I. Failure to comply with this Section shall result in the following consequences.

1. In the event any certified Louisiana capital company subject to the provisions of Subsection A, fails to comply with the requirements of this Section, the certified Louisiana capital company shall be subject to involuntary decertification of its capital in an amount equal to the amount of funds required to be invested pursuant to this Section. Such involuntary decertification shall result in the disallowance and recapture of any tax credits related to such capital.

2. If any entity that receives funds pursuant to Paragraphs A.1 or A.2 fails to comply with the provisions of this Section regarding the investment of such funds, the secretary shall have the authority to specifically direct how such funds shall be invested, including the authority to name a specific business and amount for an investment. If the entity fails to comply with such directive, the entity shall remit such funds to the secretary for investment. The entity shall retain ownership of any funds and investments made with such funds.

J. For purposes of this Section only, the following terms shall have the meaning provided in this Subsection:

Business Ventures Operating in Economically Distressed Areas—a business whose principal place of business is located in a Census Block Group designated by the Department of Economic Development as an Enterprise Zone pursuant to R.S. 51:1784(A) and (B) and not considering any designation pursuant R.S. 51:1785(B).

Certified Disadvantaged Businesses—shall include any business which has received certification as such from any federal, state or local government agency or has been certified as a small and emerging business by the division of small and emerging business development in the Department of Economic Development.

Early Stage Business Venture—shall include and enterprise that has high growth potential, minimal revenues or minimal profits.

Pre-Seed—shall include an enterprise that conducts research and development to demonstrate proof of concept, files for initial patents and plans the enterprise for at least the two rounds of financing subsequent to initial investment in the enterprise.

Seed—shall include an enterprise that is completing its initial product research and development, building a prototype, completing market research, hiring the initial management team members and formulating a strategy to achieve very high growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1935.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 27:675 (May 2001), amended LR 28:989 (May 2002), amended by the

Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:37 (January 2004).

§321. Severability

A. If any Section, term, or provision of any of the foregoing rules, LAC 10:XV.301-320, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1136 (September 1997).

§323. Fees and Assessments

A. Pursuant to the authority granted under R.S. 51:1929(5), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the certified Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

1. Request for certification of capital pursuant to R.S. 51:1924. Each certified Louisiana capital company seeking an allocation of certified capital shall submit a non-refundable fee with the request for allocation filed on October 1 and December 1 of each year.

Requested Amount	Fee
Less than \$250,000	\$1,000
\$250,000 < \$3,000,000	\$2,500
\$3,000,000 or greater	\$5,000

2. Annual assessment of each certified Louisiana capital company at a floating rate to be assessed no later than May 15 of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.303, as of the previous December 31 audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the certified Louisiana capital companies program by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the certified Louisiana capital companies program shall be added to the next variable assessment or billed on a pro rata basis.

Fee	Variable

3. Late Fee. For each calendar day that an assessment is late pursuant to the requirements of §323.B.2, a late fee shall be assessed.

Fee	\$100 per day

B. Administration

1. The failure to submit a fee with the request for allocation as required in §323.A.1 shall result in the denial of an allocation of certified capital.

2. The assessment described in §323.A.2 shall be considered late if not received by this office on or before May 31 of each calendar year. If this office receives an assessment after May 31, it shall not be deemed late if it was postmarked on or before May 31.

3. If audited financial statements are not submitted to this office by April 30, unaudited financial statements shall be submitted no later than May 1. These unaudited financial statements shall then be used to determine the assessment amount provided for in §323.A.2. Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31.

4. If neither an audited nor unaudited financial statement has been received by this office by May 1, beginning on June 1, the late fee described in §323.A.3 shall be assessed until the assessment has been paid.

5. If any of the dates described in parts 2 and 3 above, except the April 30 and the December 31 due date for audited financial statements, occurs on an official state holiday or a Saturday or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

6. The assessment for each certified Louisiana capital company group, as defined in R.S. 51:1923(11), and described in §323.A.2 shall be based on the following formula.

a. The numerator will be the total certified capital under management for the group as of the previous December 31.

b. The denominator will be the total certified capital under management for all certified Louisiana capital companies as of the previous December 31.

C. Severability

1. 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 application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions LR 28:2349 (November 2002).

§325. Notes Receivable

A. The provisions of R.S. 22:1068(E)(1)(b) will be satisfied with respect to a note receivable issued by a certified Louisiana capital company or its investment pool to an investing insurance company if:

1. the note receivable has a stated final maturity date of not less than five years from the date on which the

certified Louisiana capital company or its investment pool issues the note receivable; and

2. either:

a. the note receivable is repaid in a manner which results in the note receivable being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the note receivable; or

b. the duration of the note receivable is no shorter than the duration of a hypothetical note that:

i. is issued on the same date as the note issued by the certified Louisiana capital company or its investment pool;

ii. has the same maturity date as the note issued by the certified Louisiana capital company or its investment pool;

iii. has a price and yield the same as that of the note issued by the certified Louisiana capital company or its investment pool, calculated in the same manner (i.e., with respect to compounding, 360 vs. 365 day per year calculations, etc.); and

iv. is fully amortized by equal daily payments, which amounts are calculated as follows:

(a). the aggregate of all amounts scheduled to be paid or otherwise credited to the holder of the note receivable issued by the certified Louisiana capital company or its investment pool for the entire term of the note receivable divided by;

(b). the total number of days scheduled to elapse from the date on which the certified Louisiana capital company or its investment pool issues its note receivable through and including the stated maturity date thereof, calculated on a 365 or 360 day year, consistent with the calculation of interest on the note receivable.

B. For purposes of this Section, a note receivable's "duration" shall mean the weighted-average time to receipt of the present value of the amounts used to repay or otherwise satisfy the note receivable obligation. For purposes of this Section, a note receivable's duration shall be calculated in a manner that is typical in the industry for publicly-traded debt instruments.

C. Each certified Louisiana capital company or its investment pool that issues notes to insurance companies other than those described in Subparagraph A.2.a of this Section shall submit to the Office of Financial Institutions, in writing, the duration for each such note issued by it (or one representative note, if all notes are similar except for the face amount) and the duration for the note described in Subparagraph A.2.b of this Section. Each calculation shall show:

1. all information required to make the duration calculation; and

2. all interim worksheets and formulae used in the duration calculation, reasonably sufficient to allow the Office of Financial Institutions to duplicate the calculation. A copy of the actual spreadsheet model used by the certified

Louisiana capital company or its investment pool for its duration calculation in a Microsoft Excel software format shall satisfy the requirements of the preceding sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 29:2312 (November 2003).

§327. Louisiana-Based Economic Development Infrastructure Projects

A. An applicant seeking this designation for an intended investment shall provide to the secretary the following information along with the request for this designation:

1. a description of the project;
2. a description of all sources and uses of financing for the project;
3. a description of the proposed investment;
4. an analysis of how the investment in the project furthers economic development within Louisiana;
5. a calculation of the percentage of the certified Louisiana capital company's total certified capital and total certified capital under management which will be invested in the project;
6. an analysis of whether the entity in which the certified Louisiana capital company proposes to invest is a qualified Louisiana business;
7. an analysis of whether the proposed investment meets the criteria set forth in §303.A.*Investment*. b;
8. a statement as to whether the business in which the certified Louisiana capital company proposes to invest, intends to acquire any real estate for resale or whether any real estate in which the certified Louisiana capital company proposes to invest is intended to be resold;
9. the charter documents for the entity that owns the Louisiana-based economic development infrastructure project and each intervening entity through which the certified Louisiana capital company owns its interest in the Louisiana-based economic development infrastructure project; and
10. copies of all management, maintenance, operations and other agreements which the certified Louisiana capital company contemplates being executed with respect to the Louisiana-based economic development infrastructure project, or if no such agreements have yet been prepared, a description of all contemplated arrangements.

B. A Louisiana-based economic development infrastructure project shall be designated by the secretary for purposes of qualifying the investment under R.S. 1923(12)(c) if it meets the criteria set forth in each of Paragraphs 1 through 5 of this Subsection B, or if it meets other criteria determined by the secretary from time to time.

1. The information shall demonstrate that 100 percent of the funds invested by the certified Louisiana capital company shall be used directly or indirectly:

a. for the acquisition, construction, modification, refurbishment or remodeling of physical facilities, other immovable property improvements or movable property which becomes affixed to or a component part of immovable property, in each case, located in Louisiana; or

b. as attendant expenses related to the investments, including without limitation, closing expenses, capital expenditure reserves, working capital, and reasonable fees and expenses relating to the management and operation of the facilities.

2. The facilities must accomplish at least two of the following, as determined by the secretary, or shall accomplish such other objectives as the secretary may determine from time to time:

a. provide below-market rental environments for "disadvantaged businesses" as defined in R.S. 51:1923(7);

b. provide attractive rental environment for the attraction of out-of-state companies in the targeted clusters identified in the state's Vision 2020 Plan to locate headquarters or operations in Louisiana;

c. provide below-market rental environments for qualified Louisiana startup businesses as defined in R.S. 51:1923(14);

d. provide attractive rental environments for qualified Louisiana technology-based businesses as defined in R.S. 51:1923(15); or

e. provide below market cost services.

3. The investment by the certified Louisiana capital company in the Louisiana-based economic development infrastructure project shall be made either to acquire an equity interest in an entity that directly or indirectly owns or acquires an interest in a Louisiana-based economic development infrastructure project, to provide debt financing to an entity that owns or acquires an interest in the Louisiana-based economic development infrastructure project, or to provide a combination of these investment mechanisms.

4. The secretary shall review and approve of the percentage of the certified Louisiana capital company's certified capital and total certified capital under management that is invested in the proposed project or project entity, at his or her discretion.

5. The secretary may adopt additional criteria for his or her approval of Louisiana-based economic development infrastructure projects.

C. An investment approved by the secretary which is made by a certified Louisiana capital company in a Louisiana-based economic development infrastructure project or an entity that directly or indirectly owns an interest in a Louisiana-based economic development infrastructure project in accordance with this rule shall be

deemed to "further economic development within Louisiana" for purposes of R.S. 51:1923(12).

D. Following the secretary's designation of an investment by a certified Louisiana capital company as a qualified investment in a Louisiana-based economic development infrastructure project, the secretary shall issue a letter to the certified Louisiana capital company applicant confirming the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 29:2011 (October 2003).

§331. Qualified Technology Funds

A. An applicant seeking designation as a qualified technology fund shall provide to the secretary the following information along with the request for this designation:

1. the charter documents for the entity that will constitute the qualified technology fund;
2. copies of any management agreements to which the qualified technology fund contemplates being a party, and a description of any contemplated comparable arrangement;
3. a reasonably detailed description of how the qualified technology fund meets and will continue to meet the criteria of R.S. 51:1923(16);
4. a copy of the qualified technology fund's investment policy;
5. evidence in form and substance acceptable to the secretary by which the qualified technology fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana technology-based businesses, as required by R.S. 51:1923(16)(b);
6. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees that the commissioner shall regulate the investment of the certified capital received by the qualified technology fund as required by R.S. 51:1923(16)(d);
7. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees to provide:
 - a. to the secretary by August 1 of each year the information required to be included in the secretary's report described in R.S. 51:1927.2, with respect to the operations and investments of the qualified technology fund, to the extent that such information is relevant to the qualified technology fund; and
 - b. to the commissioner the information required by R.S. 51:1926(F), by the dates set forth therein, to the extent that such information is relevant to the qualified technology fund; and

8. such additional information as may be requested by the secretary with regard to the qualified technology fund or its ownership, management or operations.

B. A qualified technology fund shall be designated by the secretary for purposes of qualifying an investment in the qualified technology fund under R.S. 51:1923(12)(d) if the applicant meets the criteria set forth in each of Paragraphs 1 through 4 of this Subsection B, or if it meets such additional or other criteria determined by the secretary from time to time.

1. The applicant has delivered to the secretary all of the information required by Subsection A of this Section.

2. The information delivered to the secretary pursuant to this Section demonstrates that the qualified technology fund meets the criteria under R.S. 51:1923(16).

3. The information delivered by the applicant shall demonstrate reasonable prospects for the qualified technology fund to invest the following percentages of each of the qualified technology fund's investment pools within the following time periods:

a. on or before the second anniversary of the investment date of the investment pool, 50 percent of the investment pool invested in qualified Louisiana-based technology businesses; and

b. on or before the third anniversary of the investment date of the investment pool, 100 percent of the investment pool invested in qualified Louisiana-based technology businesses.

4. The charter and/or management documents with respect to the applicant shall provide that:

a. the non-certified capital company representatives involved with the management of the applicant have the authority to appoint a majority of the members (including the chairman) of each of:

i. the board of directors, board of managers or other similar governing authority of the applicant and any entity responsible for the direction of the applicant's investment decisions; and

ii. any committee of the board of managers, board of directors or other similar governing authority of the applicant with the authority to approve investment decisions and any such committee of any entity responsible for the direction of the applicant's investment decisions; provided that the certified Louisiana capital companies investing in the qualified technology fund may retain a right to representation on any such boards or committees and a right to veto, by majority vote of those certified capital companies present and voting at any meeting for such purpose, investment decisions of such boards or committees;

b. the qualified technology fund shall have management representation from at least one of the Louisiana research parks identified in R.S. 51:1923(16)(a) or any other technology park certified by the secretary;

c. each member of any board, committee or other governing authority of the applicant or any entity responsible for applicant's investment decisions shall disclose in writing all conflicts of interest with respect to any prospective investment by the applicant (except for conflicts of interest existing solely because of a prior investment by the qualified technology fund or any investment pool or subsidiary thereof) and no such member may vote on any such matter; provided that, the fact that a business is located at or is being assisted or incubated by a Louisiana research park or other technology park shall not in and of itself constitute a conflict of interest for a representative of the park serving on the board of director or any committee of the qualified technology fund with respect to matters relating to that business; and

d. the applicant may not invest in any qualified Louisiana-based technology business in which a certified Louisiana capital company that is a participant in the qualified technology fund has previously invested except for a follow-on investment by the qualified technology fund to the extent that the certified Louisiana capital company's first investment in the qualified Louisiana-based technology business was closed contemporaneously with or after a previous investment by the qualified technology fund, and further provided that the investment by the qualified technology fund does not serve to directly or indirectly repay or refund all or a portion of the certified Louisiana capital company's previous investment.

C. Qualified technology funds which are approved by the secretary pursuant to this Section shall be subject to the following additional provisions.

1. The information provided by a qualified technology fund to the office or the department shall be subject to R.S. 51:1926(D) and 51:1934.

2. A qualified technology fund shall not make any investment in any qualified Louisiana-based technology business if either:

a. the business is involved in any of the lines of business identified in R.S. 51:1926A(3); or

b. if after making the investment the total investment outstanding in such business and its affiliates would exceed the greater of:

i. 25 percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

ii. \$500,000.

3. No initial investment by the qualified technology fund in a qualified Louisiana-based technology business, when aggregated with all other investments by the qualified technology fund in such business which are made within the 12 month period following the date of the initial investment, will exceed the greater of:

a. 15 percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

b. \$300,000.

4. Before any investment is made by a qualified technology fund, the qualified technology fund shall obtain an affidavit from the qualified Louisiana-based technology business in the form required by R.S. 51:1926(G).

5.a. All distributions made by a qualified technology fund to a certified Louisiana capital company which has invested in the qualified technology fund shall constitute certified capital which is subject to the requirements of R.S. 51:1928(C).

b. A qualified technology fund shall not make any payment or distribution to any CAPCO or affiliate of a certified Louisiana capital company which has invested in it that is not covered by Subparagraph C.5.a of this Section unless approved in advance by the secretary.

6.a. An investment by a certified capital company in a qualified technology fund that is approved by the secretary in accordance with this Section shall be deemed to "further economic development within Louisiana" for purposes of R.S. 51:1923(12); provided that each investment by a qualified technology fund in qualified Louisiana technology-based businesses must:

i. "further economic development within Louisiana" as provided by rule with respect to qualified Louisiana businesses; and

ii. consist of the investment of cash and result in the acquisition of either:

(a). non-callable equity in a qualified Louisiana technology-based business; or

(b). a note issued by a qualified Louisiana technology-based business with a stated final maturity date of not less than three years; provided that the aggregate of all investments by the qualified technology fund in debt instruments with a stated maturity of less than five years may not exceed 25 percent of the total certified capital invested by certified capital companies in the qualified technology fund.

b. The qualified technology fund need not be a Louisiana business and industrial development corporation to provide financing assistance to qualified Louisiana technology-based businesses.

7. The aggregate management fees charged by a certified Louisiana capital company and a qualified technology fund with respect to funds invested by the certified Louisiana capital company in the qualified technology fund shall not exceed the amount permitted by R.S. 51:1928(C)(3).

8. The qualified technology fund shall submit to the commissioner, on or before April 30, annual audited financial statements which include the opinion of an independent certified public accountant.

9. The commissioner shall conduct an annual review of the qualified technology fund and its various investment pools similar to the annual review of certified capital companies pursuant to R.S. 51:1927(A).

D. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall constitute an investment and a qualified investment for purposes of R.S. 51:1926(A)(1) and (2) on the date that the certified Louisiana capital company makes the investment in the qualified technology fund or in an investment pool sponsored and administered by the technology fund if the investment by the certified Louisiana capital company is in cash and is either in the form of equity which is not subject to redemption prior to the third anniversary of the date of investment or debt which has a stated final maturity date of not less than three years from the origination of the debt investment in the qualified technology fund.

E. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall not constitute a qualified investment for purposes of R.S. 51:1927(C)(1), (2) and (3) and R.S. 51:1928(B)(3) until the qualified technology fund has invested an amount equal to 100 percent of the investment pool which includes the investment by the certified Louisiana capital company. If as of the third anniversary of the investment date of the investment pool which includes a certified Louisiana capital company's investment in a qualified technology fund the qualified technology fund has failed to invest 100 percent of the investment pool in qualified Louisiana-based technology businesses in accordance with R.S. 51:1923(16) and this Section, the certified Louisiana capital company may demand repayment or redemption of its pro rata share of the uninvested portion and:

1. the invested portion with respect to such certified Louisiana capital company shall be considered to have been invested in qualified investments for purposes of R.S. 51:1927.1(C)(1), (2) and (3) and R.S. 51:1928(B)(3); and

2. the uninvested portion returned to the certified Louisiana capital company shall thereafter only be deemed to have been invested in a qualified investment for purposes of R.S. 51:1927.1(C)(1), (2) and (3) and R.S. 51:1928(B)(3) when such funds are invested in qualified investments in qualified Louisiana-based technology businesses; and

3. the repayment or redemption shall not adversely affect the status of such funds as having been invested in a qualified investment for purposes of R.S. 51:1926(A)(1) and (2).

F. For purposes of this Section, the term *investment pool* means not less than all of the cash invested by certified Louisiana capital companies in a qualified technology fund on the same day.

G. A qualified technology fund may organize separate entities to separate the investments which comprise its different investment pools so long as each such separate entity is organized and managed in a manner materially the same as approved by the secretary pursuant to this Section. Each separate entity shall be subject to regulation as a "qualified technology fund" but need not be separately approved as such by the secretary.

H. The secretary shall respond to an application to become a qualified technology fund within 30 days of receipt of the information required by Subsection A of this Section.

I. To become certified as a "technology park" that is permitted to be involved in the management of a qualified technology fund pursuant to R.S. 51:1923(16)(a) [in addition to the entities specifically enumerated in R.S. 51:1923(16)(a)], an applicant shall submit to the secretary:

1. the charter documents for the applicant;
2. a detailed description of the management and operations of the applicant;
3. a statement showing all owners, operators, managers, beneficiaries or other interest holders of the applicant who benefit financially (directly or indirectly) from the operations of the applicant;
4. a list of qualified Louisiana-based technology businesses that have been assisted by the services provided by the applicant and a list of references from those entities, with contact information;
5. a copy of the applicant's mission statement, goals, purposes or other similar statements;
6. the audited financial statements of the applicant from the prior fiscal year with an opinion of independent certified public accountants;
7. information from which the secretary can determine whether the applicant meets the criteria of a Louisiana research park, as defined in R.S. 51:1923(11); and
8. such additional information as may be requested by the secretary with regard to the applicant.

J. The secretary shall approve an applicant as a "technology park" for purposes of participating in the management of a qualified technology fund if the applicant meets the following criteria or such additional or other criteria determined by the secretary from time to time:

1. the applicant is a Louisiana research park, as defined in R.S. 51:1923(11); and
2. in the secretary's reasonable opinion, the information delivered by the applicant to the secretary demonstrates that the applicant has a history and a mission materially contributing to the economic development of the state of Louisiana by providing assistance to qualified Louisiana-based technology businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929 and 1935.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, and the Office of the Governor, Office of Financial Institutions, Office of the Commissioner, LR 30:1616 (August 2004).

Chapter 5. Debt Collection Agencies

Subchapter A. Defunct Collection Agencies

§501. Reserved.

Subchapter B. Examinations

§505. Parameters

A. Section 3576.2 of the Collection Agency Regulation Act, ("CARA"), R.S. 9:3576.1 et seq., empowers the Commissioner of Financial Institutions ("Commissioner") to regulate the licensing, operations, and practices of collection agencies and debt collectors to protect the welfare of the citizens of the state of Louisiana. R.S. 9:3576.5.D authorizes the commissioner to examine the books, records, and accounts of all persons regulated by CARA. The commissioner possesses the power to clarify, by rule, the parameters of the examinations performed by the Office of Financial Institutions. Those parameters include the examination of any and all of the records required to determine compliance with the CARA. Licensees are to maintain records in compliance with rules promulgated by the commissioner. The commissioner is further authorized to establish policies and procedures for the examination of in-state and out-of-state collection agencies and debt collectors; such policies and procedures may be modified from time to time to assure compliance with CARA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3576.4 and Senate Concurrent Resolution 65 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:484 (March 2002).

§507. Reserved.

Subchapter C. Nonsufficient Funds

§509. Collection of Nonsufficient Funds Fees

A. Purpose. In connection with the recovery of sums represented by returned checks for their clients, certain debt collection agencies are collecting service fees in excess of those allowed by law. The Commissioner of the Office of Financial Institutions is statutorily mandated to implement the provisions of the Collection Agency Regulation Act, (CARA), R.S. 9:3516.1, et seq., as amended, to regulate the licensing, operations, and practices of collection agencies and debt collectors to protect the welfare of the citizens of Louisiana. This rule is being promulgated to clarify the amount of fees and charges which may be collected by debt collection agencies for debts involving checks returned for nonsufficient funds.

B. Definitions. The definitions for the terms utilized in this rule are the same as those provided for in the definitions section of the CARA, and specifically R.S. 9:3576.3.

C. Collection by a Debt Collection Agency. In a debt collection agency's collection of claims represented by

checks returned to its clients for nonsufficient funds, the debt collection agency may collect only those fees and charges allowed by Louisiana law, including but not limited to R.S. 9:2782.

D. Action. The commissioner may order a debt collection agency to return any fees and charges in excess of those allowed by Louisiana law. Failure to comply with this rule or the commissioner's order shall constitute a violation of the CARA and may subject the debt collection agency to administrative and/or enforcement action by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3576.4

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 26:990 (May 2000), repromulgated LR 28:1172 (June 2002).

Chapter 7. Pawn Brokers (Reserved)

Chapter 9. Bond for Deed Escrow Agents

§901. Definitions

Bond for Deed—a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller, after payment of a stipulated sum, agrees to deliver title to the buyer.

Buyer—a prospective transferee of title to real property which is the subject of the bond for deed transaction.

Commissioner—the Commissioner of the Office of Financial Institutions.

Escrow Agent—a person designated by the parties to a bond for deed transaction who distributes payments made by the buyer to the seller, or on behalf of the seller, to any person in accordance with a written bond for deed escrow agent agreement.

Person—any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or other group of individuals, however organized.

Principal Shareholder—a person owning in excess of 10 percent of the total outstanding shares of a corporation, a limited liability company or other legal or commercial entity.

Real Property—immovable property located in Louisiana.

Seller—a prospective transferor of title to real property which is the subject of the bond for deed transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:187 (March 1996).

§903. License Requirement, Ownership Change, Location Change, Name Change, Ceasing to do Business

A. No person, other than a financial institution or other person subject to the general supervision or regulation of the commissioner pursuant to Title 6 or Title 9 of the Louisiana Revised Statutes of 1950, as amended, shall engage in business as a bond for deed escrow agent, unless such person has first obtained a license in conformity with this rule. Licenses are only required for those persons who wish to act as escrow agent, pursuant to written agreement, for the transfer of real property located within the boundaries of the state of Louisiana. The license must be prominently displayed at each location where business as a bond for deed escrow agent is conducted.

B. A license issued in accordance with this rule shall be nontransferable. A licensee shall give 30 days prior written notification to the Office of Financial Institutions of any change in ownership of 25 percent or more of its outstanding voting securities or equity ownership. A change in ownership of more than 50 percent shall require the acquiring person to apply for a new license in accordance with the provisions of §905 before ownership transfer occurs.

C. No licensee shall change its name or the location of any office without prior written notification to the commissioner. Written notification should be submitted 30 days prior to the anticipated date of change.

D. No licensee shall cease doing business without providing 30 days prior written notification to the commissioner and shall also provide therewith evidence of full compliance with all applicable laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:187 (March 1996).

§905. Application for License and Renewal, Forms, Contents, Fees

A. Applications for licensure shall be in such form and contain such information as the commissioner may from time to time prescribe. Application forms may be obtained from the Office of Financial Institutions. The application shall contain a public section and a confidential section as determined by the commissioner.

1. The original of the application accompanied by a nonrefundable license fee of \$150 shall be submitted by U.S. mail or private mail courier in completed form to the commissioner. Any other method of delivery shall cause the application to be returned.

2. Upon receipt of the application the commissioner, or his designee, shall conduct an investigation. Additional information not included in the application, which is necessary to determine qualification for licensing, may be requested from the applicant. Failure to provide the information requested on a timely basis may necessitate the return of the application to the applicant or may necessitate

denial of the application by the commissioner. Processing of an application will not be completed until the satisfactory conclusion of such required investigation.

B. Each applicant shall possess and maintain a net worth of \$25,000. Further, the financial condition, business experience and background of the applicant shall be such as to reasonably warrant the commissioner's belief that the applicant's business shall be conducted honestly, carefully and efficiently. The commissioner shall investigate and consider the qualifications of each sole proprietor, partner, director, officer, principal shareholder or member of an applicant in determining whether the applicant qualifies for licensure.

C. Effective January 1, 1995, and on or before March 15 of each year, each licensee shall file an application for renewal and shall pay to the Office of Financial Institutions a nonrefundable license renewal fee of \$100. If the renewal application and fee are mailed after March 15, but on or before April 15, an additional late penalty equal to 50 percent of the renewal fee shall be paid as a prerequisite for renewal of an existing license. Failure to mail an application for renewal with its accompanying fee on or before April 15 shall result in expiration of the existing license.

D. The application for renewal shall be in such form and require such information as prescribed from time to time by the commissioner. The licensee may be required to submit with the renewal application an annual report disclosing all business activities with regard to servicing escrow agent agreements conducted during the previous year. With any renewal application, the licensee shall also provide annual financial statements sufficient to determine each licensee's financial condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:187 (March 1996).

§907. Escrow Deposit Account

A. No person shall engage in business as a bond for deed escrow agent without first providing evidence to the commissioner that an escrow deposit account has been established for the sole purpose of receiving the proceeds of monthly payments paid to the licensee by a buyer. The escrow deposit account shall be established with a federally-insured depository institution or branch thereof. The licensee shall give the commissioner written authority to examine the escrow deposit account and if said account is located in an institution domiciled outside of the state of Louisiana, the licensee shall pay any reasonable and necessary expenses, in addition to the examination fee permitted by §911 of this rule, incurred by the commissioner or his designated representatives to conduct such an examination. The licensee shall hold all proceeds of monthly payments in trust from the moment of their receipt. The licensee shall timely account for or deliver to any person any personal property obtained by the escrow agent as required by a written bond for deed escrow agent agreement such as money, funds, deposits, checks, drafts or other property of any value which has come

into his hands and which is not his property, or which he is not by law entitled to retain. The licensee shall not commingle the proceeds in the escrow account with his own property or funds. If the licensee commingles any proceeds received from a buyer with his own property or funds controlled by licensee, all commingled proceeds and other property shall be considered held in trust by licensee in an amount equal to the amount of the proceeds owed any person by a buyer, which is to be paid on behalf of a seller.

B. When a licensee ceases to do business as a bond for deed escrow agent for any reason, the licensee shall immediately supply the commissioner with a written list of all parties that are represented by the licensee under all bond for deed escrow agent agreements. The licensee shall also supply the commissioner with a written list of all persons to whom he/she is required to make payments on behalf of any parties to bond for deed escrow agreement. Said lists shall be certified by the escrow agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:188 (March 1996).

§909. Irrevocable Letter of Credit, Surety Bond, Other Security

A. No person shall engage in business as a bond for deed escrow agent without having first issued, in favor of the Office of Financial Institutions, an irrevocable letter of credit in an amount to be determined by the commissioner, but in no event less than \$10,000, which letter of credit shall be issued by a federally insured financial institution. Each applicant shall enter into an Irrevocable Letter of Credit Agreement, an Escrow and Regulatory Agreement and Power of Attorney with the Office of Financial Institutions on forms supplied by the commissioner before being issued a license to commence business.

B. In lieu of such irrevocable letter of credit as required in Subsection A above, each applicant may post and maintain a surety bond issued by a bonding company or insurance company, either of which must be authorized to do business in Louisiana, in the amount of \$10,000, to cover the first year of operation as a licensed bond for deed escrow agent. The bond shall be in a form acceptable to the commissioner and shall run to the Office of Financial Institutions for the benefit and use of the Office of Financial Institutions, parties to the bond for deed agreement or any persons with a right to the payments made on behalf of any parties to a bond for deed escrow agreement for any liability incurred as a result of the failure of the licensee to perform under a bond for deed escrow agent agreement. Persons who have claims against the licensee or its agents may bring suit directly on the bond. The Louisiana attorney general may bring suit on the bond on behalf of claimants either in one action or successive actions.

C. In lieu of such an irrevocable letter of credit, corporate surety bond, or any portion of such instruments required by this Section, the licensee may deposit in escrow

with any federally-insured depository institution, or branch thereof, located in Louisiana, the substitution of cash in an amount not less than that required by the irrevocable letter of credit or corporate surety bond, or any portion thereof to be determined by the commissioner. A deposit of cash shall be made in an interest bearing account which must be pledged to the commissioner. The licensee shall be entitled to receive all interest and dividends on the deposit placed in escrow.

D. The amount of the irrevocable letter of credit, surety bond or cash escrow deposit after the first year of operation may be determined by the commissioner based upon the following nonexclusive factors:

1. the highest level of bond for deed transaction activity performed by the licensee during any one month in the preceding calendar year;
2. the risk to the general public, if any, commensurate with the continuance of the existing surety bond amount established during the preceding period;
3. in no event shall the total amount of security be less than \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:188 (March 1996).

§911. Record Keeping and Retention, Examination

A. A bond for deed escrow agent required to be licensed under this Chapter shall maintain in his/her office such books, records and accounts as are reasonably necessary to allow the commissioner to determine whether such bond for deed escrow agent is complying with the provisions of this rule and with the provisions of all escrow servicing agreements entered into by him/her. Such books, records and accounts shall be maintained separate and apart from any other business in which the bond for deed escrow agent is involved and shall be kept at the licensed location unless otherwise permitted in writing by the commissioner. Further, each licensed bond for deed escrow agent shall maintain a record of all bond for deed transactions and escrow agent agreements effected by him/her for a period of three years following the expiration or termination of such escrow agent agreement. Each bond for deed escrow agent licensed by this office shall also maintain a file containing the original and/or copies of all complaints filed by sellers, buyers or other third parties affected by bond for deed transactions or escrow agent agreements entered into by the licensee.

B. The commissioner, or his designee, may visit and examine each licensee in accordance with a schedule consonant with the use, to the fullest extent possible, of the resources of the Office of Financial Institutions, in accordance with good examination practice, to determine compliance with this rule, to investigate complaints or for other good cause shown. If records are moved outside of the boundaries of Louisiana, the bond for deed escrow agent, at the commissioner's option, shall make such records available to the commissioner at a location within this state convenient

to the commissioner or shall pay the reasonable and necessary expenses for the commissioner or his representatives to examine such records at the place where they are maintained.

C. The commissioner shall assess an examination and/or visitation fee of \$50 per hour per examiner. If this fee is not paid within 30 days after its assessment, the licensee examined shall be subject to an administrative penalty of not more than \$50 for each day the fee is late. The penalty, together with the amount due, plus attorney fees and court cost, may be recovered by the commissioner in a civil action brought in any court of competent jurisdiction.

D. The commissioner shall have the authority to examine the books, records and accounts of any former licensee as they pertain to bond for deed escrow activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:189 (March 1996).

§913. Significant Developments

A. Each licensee must report any significant developments immediately to the commissioner, including but not limited to:

1. the filing of any bankruptcy petitions by the licensee;
2. the indictment or conviction of a felony by any sole proprietor, partner, director, officer, principal shareholder, member or agent of licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:189 (March 1996).

§915. Suspension or Revocation of License

A. After the licensee has been given notice and an opportunity to be heard, the commissioner may suspend or revoke the license of a bond for deed escrow agent in accordance with R.S. 6:121.1, 6:122 and/or any other relevant provision of law, whenever it has been established that the licensee has:

1. violated any provisions of the law or regulations applicable hereto, or committed any act which would constitute grounds for the refusal of a new license;
2. knowingly provided or caused to be made to the commissioner any false or fraudulent misrepresentation of material fact, or suppressed or withheld from the commissioner any information which, if submitted, would have rendered the licensee ineligible to be licensed under this Chapter;
3. refused to permit examination by the commissioner of the licensee's books, records or affairs, or has refused or failed, within a reasonable time, to furnish information or to make a report that may be required by the commissioner under the provisions of any applicable law or regulation;

4. violated the reporting requirements set out in §913; or
5. failed to pay all fees and/or assessments as may be imposed by the Office of Financial Institutions.

B. In the event the commissioner suspends the license of an escrow agent, the licensee may continue to service any existing escrow agent agreements entered into prior to the date of suspension but may not enter into new escrow agent agreements subsequent to the date of suspension.

C. In the event the commissioner revokes the license of an escrow agent, or if the license expires for failure to renew, the escrow agent may not enter into any new escrow agent agreements subsequent to the date of revocation or expiration and must further comply with one of the following conditions:

1. the licensee must sell all existing escrow agent agreements entered into prior to the date of revocation of the license to a duly licensed escrow agent; or
2. if the licensee is unable to sell the escrow agent agreement to another duly licensed escrow agent, then each escrow agent agreement entered into by licensee must be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:414(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:412 (April 1994), amended LR 22:189 (March 1996).

§917. Enforcement Powers of the Commissioner

A. In addition to the enforcement powers specifically conferred upon the commissioner by other laws, the commissioner shall have such regulatory, investigative, and enforcement authority conferred upon him, through the Office of Financial Institutions, pursuant to all other enforcement provisions of Title 6 and Title 9 of the Revised Statutes of 1950 which may be applicable to persons licensed hereunder.

AUTHORITY NOTE: Promulgated in accordance with Act 932 of 1993.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:415 (April 1994).

Chapter 11. Money Transmitters

§1101. Examinations and Visitations

A. Each individual, partnership, association, or corporation that is licensed to sell checks or money orders in Louisiana shall pay the following fees and charges to the Office of Financial Institutions for examinations and visitations by the Office of Financial Institutions, whether conducted solely by the Office of Financial Institutions or jointly with the regulator of such activity in other jurisdictions and whether conducted in Louisiana or at the licensee's offices outside Louisiana:

1. \$50 per hour for each examiner who participates in the examination or visitation;

2. the actual cost of subsistence, lodging, and transportation for out-of-state examinations, not to exceed the amounts provided for in Division of Administration travel regulations in force at the time of such examination or visitation.

B. Pursuant to the authority granted under R.S. 6:121; 6:1038.1; and 6:1054, the following fee structure is hereby established to cover necessary costs associated with the administration of the Louisiana Sale of Checks and Money Transmission Act, R.S. 6:1031 et seq.

Description	Fee
Application for a temporary license.	\$300
Application for the change in control of a licensee.	\$200

C. The fees, charges, and expenses shall be paid by the examined licensee within 30 days after the Office of Financial Institutions mails its bill. Failure to pay within the allowed time shall be a basis for initiating proceedings to suspend the license, or the imposition of a penalty assessment of \$50 for each day the fees, charges, and expenses remain unpaid, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18:144 (February 1992), amended by the Office of the Governor, Office of Financial Institutions, LR 35:1236 (July 2009).

Chapter 13. Repossession Agents

§1301. Definitions

A. The following terms as used in this Chapter shall have the following meaning.

Apprentice—a trainee who works under the direct supervision of a repossession agent.

Approved Association—the National Finance Adjusters, Inc., Allied Finance Adjusters Conference, Inc., Time Adjusters Conference, Inc., the American Recovery Association, Inc., or a Louisiana association of duly licensed repossession agents recognized as a viable association by the commissioner, and who meet any additional qualifications for licensure established by the commissioner.

Change of Control—for purposes of §1305.B means:

a. a change in beneficial ownership of 50 percent or more of the repossession agency's outstanding shares of stock or 50 percent or more of the combined voting power of the repossession agency; provided that any transfer to a person or entity who was a shareholder as of the later of the date the repossession agency was originally licensed or the date of the repossession agency's last approved change of control shall be disregarded;

b. a change in individuals who constitute the voting power of the board of directors, or other governing board of the repossession agency as of the later of the date the repossession agency was originally licensed or the date of the repossession agency's last approved change of control

cease to comprise more than 50 percent of the voting power of such board of directors, board of managers, or other board; or

c. a change in the general partner or manager of the repossession agency or a change of control with respect to such general partner or manager; or

d. any merger or consolidation if a change of control has occurred based upon the surviving entity being considered to be a continuation of the repossession agency that was the party to the merger or consolidation transaction.

Collateral—a motor vehicle including any motor driven car, van, or truck required to be registered which is used, or is designated to be used, for the transporting of passengers or goods for public, private, commercial, or for hire purposes; but does not include those vehicles which are commonly known as motor homes, mobile homes, trailers, semi-trailers, boat trailers, or motorcycles.

Combustibles—any substances or articles that are capable of undergoing combustion or catching fire, or that are flammable, if retained.

Commissioner—the Commissioner of Financial Institutions.

Control—solely for purposes of determining whether a repossession agency controls, is controlled by, or is under common control with another person means:

a. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

b. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a repossession agency, when such control is used with respect to a specified person or legal entity;

c. for all other purposes, control means the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a repossession agency by contract or otherwise.

Dangerous Drugs—any controlled substances as defined in The Uniform Controlled Dangerous Substances Law, R.S. 40:961, et seq.

Deadly Weapon—any instrument or weapon of the kind commonly known as a blackjack, slingshot, bill, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm; any knife having a blade longer than 5 inches; any razor with an unguarded blade; and any metal pipe or bar used or intended to be used as a club.

Individual—a natural person.

Office—the Office of Financial Institutions.

Person—a natural person, corporation, partnership, trust, association, joint venture pool, syndicate, unincorporated organization, limited liability company, or any other form of entity not specifically listed herein.

Personal Effects—movable property not covered by a security agreement, which is contained in or on collateral at the time it is repossessed.

Qualifying Agent—the responsible officer or executive employee of a repossession agency designated as qualifying agent and who meets the requirements of a repossession agent.

Repossession Agency—any person who through a designated repossession agent engages in business or accepts employment to locate or recover collateral registered under the provisions of the Louisiana Vehicle Certificate of Title Law, R.S. 32:701 et seq., which has been sold under a security agreement or used as security in a loan transaction, including any secured party which utilizes its employees to repossess collateral.

Repossession Agent—an individual who physically obtains possession of collateral for a secured party and engages in business or accepts employment to locate or recover collateral registered under the provisions of the Louisiana Vehicle Certificate of Title Law, R.S. 32:701 et seq., which has been sold under a security agreement or used as security in a loan transaction, including a secured party's employee who repossess collateral pursuant to the Additional Default Remedies, Act R.S. 6:965, et seq.

Repossessor—the repossession agency, qualifying agent, or repossession agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2810 (December 2004).

§1303. Licensing Requirements and Qualifications

A. No person shall engage in business as a repossession agency, qualifying agent or repossession agent in this state without first filing an application, paying a non-refundable application fee, and obtaining a license from the commissioner. Every application for a license shall contain such information as the commissioner may require when determining if the applicant meets the qualifications and requirements for a license. Each license expires December 31 and shall be renewed annually by the licensee.

B. Repossession Agency

1. No license shall be issued unless the commissioner, upon investigation, finds that the financial responsibility, character, and fitness of the applicant's qualifying agent/manager, owners, partners if the applicant is a partnership, members if the applicant is a limited liability company, officers and directors if the applicant is a corporation, and the applicant if a sole proprietorship are such as to warrant a belief that the business shall be conducted honestly and fairly within the purposes of this Chapter and each such person shall meet the following requirements:

a. be 18 years of age or older and a citizen of the United States or a resident alien holding proper documentation to work in the United States;

b. be of good character and fitness; and

c. not been convicted of a felony in the previous 10 years, regardless that the conviction was expunged, set aside, or received a first offense pardon. The only felony conviction which shall not be considered for purposes of this Chapter is one which received a governor's pardon or president's pardon. The commissioner may require fingerprint cards be submitted with the application.

2. A repossession agency, or its qualifying agent, shall have and maintain a surety bond covering all of its agents and employees of not less than \$1,000,000 issued by an insurer licensed to conduct business in the state of Louisiana by the Louisiana Department of Insurance or a client protection bond approved by the commissioner which has been issued by an association.

3. A repossession agency must have commercial general liability insurance covering personal injury and property damage with per occurrence, general aggregate and comprehensive aggregate limits of \$1,000,000; garage liability insurance covering any motor vehicle per accident limits of \$1,000,000; and garage keepers legal insurance with limits of \$300,000 direct primary coverage. The Office of Financial Institutions shall be named as the certificate holder and as an additional insured on all required insurance policies.

4. A repossession agency shall designate an individual as its qualifying agent who shall be licensed by the commissioner as a qualifying agent.

5. No license shall be issued in any name other than its legal name. No license shall be issued in any name which may be confused with or which is similar to any federal, state, parish, or municipal governmental function or agency, or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant, or in any name which is the same as or so similar to that of any existing repossession agency as would tend to deceive the public, or in any name which would otherwise tend to be deceptive or misleading.

6. Failure to respond to any request by the office for additional information or documentation within 45 days of the request will result in the application being withdrawn from consideration and will require the filing of a new application and payment of an additional licensing fee.

C. Qualifying Agent

1. To obtain a license as a qualifying agent the applicant shall meet the following requirements:

a. be 18 years of age or older and a citizen of the United States or a resident alien holding proper documentation to work in the United States;

b. be of good character and fitness;

c. not have been convicted of a felony in the previous 10 years, notwithstanding that the conviction was expunged, set aside, or received a first offense pardon. The only felony conviction which shall not be considered for purposes of this Chapter is one which received a governor's pardon or presidential pardon. The commissioner may require fingerprint cards be submitted with the application;

d. be a member of an approved association;

e. have three years experience as a repossession agent within the previous five years; and

f. have received a designation as a certified recovery specialist from a recognized national certification program.

2. The qualifying agent shall be designated by the repossession agency. No licensing fee will be assessed for a qualifying agent.

3. The commissioner shall issue to each qualifying agent, an identification card which shall include at a minimum his name, the name of the repossession agency with which he is employed, an identification number assigned by the commissioner, and his driver's license number.

4. Failure to respond to any request by the office for additional information or documentation within 45 days of the request will result in the application being withdrawn from consideration and will require the filing of a new application and payment of additional licensing fee.

D. Repossession Agent

1. To obtain a license as a repossession agent the applicant shall meet the following requirements:

a. be 18 years of age or older and a citizen of the United States or a resident alien holding proper documentation to work in the United States;

b. be of good character and fitness;

c. not have been convicted of a felony in the previous 10 years, notwithstanding that the conviction was expunged, set aside, or received a first offense pardon. The only felony conviction which shall not be considered for purposes of this Chapter is one which received a governor's pardon or president's pardon. The commissioner may require fingerprint cards be submitted with the application;

d. have two years experience as a repossession agent or apprentice within the previous three years; and

e. have received a designation as a certified recovery specialist from a recognized national certification program.

2. The commissioner shall issue to each repossession agent an identification card which shall include at a minimum his name, the name of the repossession agency with which he is employed, an identification number assigned by the commissioner, and his driver's license number.

3. Failure to respond to any request by the office for additional information or documentation within 45 days of the request will result in the application being withdrawn from consideration and will require the filing of a new application and payment of additional licensing fee.

E. Apprentice

1. A licensed repossession agency may apply for the licensing of a previously unlicensed individual as an apprentice by providing to the commissioner a letter of intent to sponsor and accept responsibility for the apprentice applicant.

2. Upon receipt of a letter of intent to sponsor, an application completed by the apprentice, and the non-refundable fee, the commissioner shall issue a letter of approval, provided the apprentice applicant satisfies the qualification requirements of §1303.D.1.a, b and c.

3. No repossession agency shall sponsor more than one apprentice for every two licensed repossession agents at any one time. At the discretion of the sponsor, the apprentice may physically obtain possession of collateral for a secured party, without the direct supervision and presence of a licensed repossession agent, if the apprentice has completed a minimum of 250 hours of qualifying experience under the direction and supervision of the sponsor and satisfies the qualification requirements of §1303.(D)(1)(a), (b), (c), and (e).

F. Previous Experience as a Repossession Agent

1. A year's experience shall consist of not less than 1,000 hours of actual compensated work performed by the applicant with a repossession agency preceding the filing of an application.

2. An applicant shall substantiate the claimed hours of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, subject to independent verification by the commissioner as he may determine. In the event of inability of an applicant to supply the written certifications from the employer in whole or in part, applicants may offer other written certifications from persons other than employers substantiating employment for consideration by the commissioner.

G. Continuing Education

1. Each qualifying agent, repossession agent, and apprentice shall complete a minimum of eight hours of collateral recovery education prior to license renewal.

2. Each qualifying agent and repossession agent shall submit with his renewal application documentation which provides name and address of the education provider, name of the course, date and number of hours attended.

3. The commissioner may determine if a continuing education course is not acceptable and require an additional continuing education course be taken within a specified period of time.

4. A continuing education course approved or offered by an approved association is deemed acceptable.

H. Request for a Hearing. Upon written request, an applicant may seek a hearing on the question of his qualification for a license if the commissioner has notified the applicant in writing that his application has been denied. A request for a hearing may not be made more than 30 days after the applicant has received the written notification that the application was denied and stating the commissioner's findings in support of the denial of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2811 (December 2004), amended by House Concurrent Resolution No. 3 of the 2014 Regular Legislative Session, LR 40:1225 (June 2014).

§1305. Renewal Application; Change of Control; Change of Location; Change of Name

A. Annually by November 1 each repossession agency, qualifying agent, repossession agent, and apprentice shall file a renewal application and with the exception of the qualifying agent pay a non-refundable renewal fee.

1. An annual renewal application received by the commissioner postmarked after December 1 shall be accompanied by a late filing fee, in addition to the annual renewal fee.

2. If the annual renewal application and renewal fee are not received postmarked by December 31, the license shall lapse without a hearing or notification, and the license shall not be reinstated; however, the person whose license has lapsed may apply for a new license. No new license shall be issued upon the filing of a new application by any person against whom any penalty or late fee has been imposed unless and until such penalty or late fee previously accrued under this Section has been paid, and the commissioner has determined that the applicant has the requisite qualifications for a license.

B. No license shall be sold or otherwise transferred.

1. No person shall acquire or control a repossession agency license through the acquisition or control of 50 percent or greater ownership interest in a repossession agency without first filing a change of control application for approval by the commissioner and paying a non-refundable change of control fee. The change of control application shall be in a form prescribed by the commissioner. The commissioner shall consider the same factors and the applicant shall meet the same requirements as were required for the initial license application.

2. A repossession agency shall notify the commissioner of any anticipated change in any individual with power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, member or manager. The commissioner shall have the authority to remove any person who does not meet the requirements of §1303.B.1.

3. A repossession agency, in the event of an anticipated change of control, shall at least 60 days prior to the anticipated effective date file with the commissioner a change of control application, along with any legal documents which transfer ownership or control. Unless additional information is required, the commissioner shall review the application and information submitted and shall issue either an approval or denial of the change of control within 60 days of the receipt of the application.

4. Upon written request, a change of control applicant may seek a hearing on the question of his qualification for a license if the commissioner has notified the applicant in writing that his application has been denied.

5. A request for a hearing may not be made more than 30 days after the applicant has received the written notification that the application for change of control was denied and stating the commissioner's findings in support of the denial of the application, or more than 60 days after filing of the complete application when no approval has been granted.

6. Any person who acquires controlling interest in a repossession agency license without first filing an application and obtaining the commissioner's approval shall be deemed to be operating without proper authority under this Chapter.

C. A repossession agency shall make application to the commissioner and pay a fee prior to a change of its qualifying agent. However, if the qualifying agent leaves without notice, the repossession agency will have three business days to make application and pay the fee.

D. A repossession agency shall give the commissioner 30-day prior written notice of any name change or location change and pay a non-refundable fee.

E. A repossession agency shall notify the commissioner in writing within 30 days after ceasing to do business in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2813 (December 2004).

§1307. Fees

A. All fees are non-refundable.

1. License Application Fee

a. Repossession Agency (which includes qualifying agent)—\$1500

b. Repossession Agent—\$400

c. Apprentice—\$400

2. License Renewal Application Fee and Late Payment Penalty

a. Repossession Agency (which includes qualifying agent)—\$1,000; Late Fee—\$500

- b. Repossession Agent—\$300; Late Fee—\$150
 - c. Apprentice—\$300; Late Fee—\$150
3. Repossession Agency Change of Control Application Fee
 - a. \$1,000
 - b. Penalty for Late Notice—\$500
 4. Change of Designated Qualifying Agent
 - a. \$500
 - b. Penalty for Late Notice—\$250
 5. Change of Location; Change of Name
 - a. \$300
 - b. Penalty for Late Notice—\$150
 6. Replacement Identification Card
 - a. \$500
 - b. Penalty to Repossession Agent for Failure to Return Identification Card When Employment Ceases for Any Reason—\$1,000
 7. Examination Fee
 - a. \$50 per hour, per examiner
 - b. Penalty for Failure to Pay Examination Fee within 30 days of Billing—\$500

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2813 (December 2004).

§1309. Conduct of Business

A. Repossession Agency

1. A repossession agency shall at all times be responsible for those actions of its employees, including its manager, performed in violation of state law and this Chapter when acting within the course and scope of his or her employment.

2. A repossession agency shall maintain a file or record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated. The file and records, together with usual payroll records, shall be available for inspection by the commissioner or his designee, and copies thereof, and information pertaining thereto or contained therein, shall be submitted to the commissioner upon request.

3. A repossession agency shall publicly display the repossession agency's license and qualifying agent's license at its place of business.

4. A repossession agency shall give written notice within five business days following the termination of a repossession agent or apprentice and reasons for the termination.

B. A repossession agent shall notify the appropriate law enforcement agency immediately after collateral repossession and shall provide to the law enforcement agency a description of the collateral, vehicle license plate number, vehicle identification number, name of debtor, name of secured party, and address at which the repossession is occurring.

C. A repossession agent shall at all times, during the repossession of collateral, carry his identification card issued by the commissioner, along with his pictured driver's license. He shall also have documentation from the secured party authorizing repossession of the collateral and a copy of the repossession notice sent by the secured party to the debtor.

D. A repossession agent may make multiple attempts to repossess collateral without the necessity of an additional notice from the secured party to the debtor which is required in R.S. 6:966(A)(2).

E. No charge shall be made for services incurred in connection with the recovery, transportation, and storage of collateral, including repair work, except under terms agreed to in writing by the responsible party at the time of the repossession authorization or specifically agreed upon at a subsequent time.

F. Within seven days after a violent act has occurred involving a repossession agency or any officer, partner, qualifying agent, repossession agent, apprentice or any other repossession agency employee, while acting within the course and scope of his or her employment, which results in a police report or bodily harm or bodily injury, the repossession agency, qualifying agent, repossession agent, or apprentice or any other repossession agency employee, shall mail or deliver to the commissioner a notice concerning the incident upon a form provided by the commissioner. A copy of the notice shall be provided to the secured creditor.

G. Every advertisement by a repossession agency, soliciting or advertising business, shall contain the repossession agency's name, address, and license number as they appear in the records of the office.

H. A repossession agent can contract with a licensed tow truck operator, who is not a licensed repossession agent, to assist with repossessions under the direction and in the presence of a licensed repossession agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2814 (December 2004).

§1311. Personal Effects

A. If personal effects not covered by a security agreement, are contained in or on collateral at the time it is recovered, the effects shall be removed from the collateral subject to the security interest, a complete and accurate inventory shall be made, and the personal effects shall be stored in a labeled container by the repossession agency at a location agreed to by the repossession agency and the secured party.

B. The inventory shall be in writing, shall state the date and time that it was made, shall include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering the personal effects and an itemization of all personal effect storage charges that shall be made by the repossession agency and shall be signed by the repossession agency employee who performs the inventory.

C. The following items of personal effects are items determined to present a danger or health hazard when recovered by the repossession agency and shall be disposed of in the following manner:

1. deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency;

2. combustibles shall be inventoried and noted as "disposed of, dangerous combustible," and the item shall be disposed of in a reasonable, safe, and legal manner; and

3. food and other health hazard items shall be inventoried and noted as "disposed of, health hazard," and disposed of in a reasonable, safe, and legal manner.

D. Any personal effects unclaimed after 30 days reverts to the secured lender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2814 (December 2004).

§1313. Examination and Record Keeping

A. The commissioner shall have the power to examine all books, records, and accounts of all persons regulated under this Chapter.

B. Each repossession agency required to be licensed under this Chapter shall maintain in its offices such books, records, and accounts of its repossession activities as the commissioner may prescribe by policy as required to determine whether such repossession agency is complying with the provisions of this Chapter and the rules, regulations, and policies promulgated under the provisions of the Additional Default Remedies Act, R.S. 6:965, et seq.

C. Such books, records, and accounts shall be maintained separate and apart from any other business which the agency is involved. If the repossession agency's books, records, and accounts are located outside the state, the agency, at the commissioner's option, shall make them available to the commissioner at a location within the state convenient to the commissioner, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2815 (December 2004).

§1315. Prohibitions

A. A repossession agent shall not:

1. use a name other than that which is on its license;
2. contract with a secured party for self-help repossession who is not authorized by the Additional Default Remedies Act to use the provisions of that Act;
3. allow an unlicensed person to repossess collateral; or
4. allow an apprentice to repossess collateral without on-site supervision of a repossession agent, except as provided in LAC 10:XV.1303(E)(3);
5. use a tow truck unless such vehicle is compliant with the applicable provisions and rules of the Louisiana Towing and Storage Act (R.S. 32:1771 et seq. and LAC 55:1901 et seq.).

B. A repossession agent and apprentice under his supervision shall not:

1. repossess collateral as agent for anyone other than the repossession agency with which he is employed and licensed;
2. identify himself with a name or repossession agency other than the one with which he is licensed;
3. carry a dangerous weapon on his person or in his vehicle when repossessing collateral;
4. repossess collateral while under the influence of alcohol or a dangerous drug;
5. wear any clothing, badge, insignia, or any other item usually identified with law enforcement officers;
6. remove any personal effects from a repossessed automobile for personal use; or
7. fail to return his identification card to the commissioner within 10 days from ceasing employment with the repossession agency with which he is licensed.

C. A repossession agent and apprentice under his supervision shall not breach the peace which includes, but is not limited to:

1. unauthorized entry by a reposessor into a closed dwelling, whether locked or unlocked;
2. oral protest by a debtor to the reposessor against repossession prior to the reposessor seizing control of the collateral shall constitute a breach of the peace by the reposessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2815 (December 2004), amended by House Concurrent Resolution No. 3 of the 2014 Regular Legislative Session, LR 40:1226 (June 2014).

§1317. Powers of the Commissioner

A. The commissioner shall have the power to issue subpoenas to any person for the purpose of discovering violations in this Chapter and to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry, administer oaths, and examine under oath any person in connection with the repossession activities of a repossession agency, qualifying agent, repossession agent, or apprentice. Service of any notice, order, or subpoena may be made by personal service or certified mail.

B. The commissioner shall have the power to issue cease and desist orders to protect the public's welfare.

C. After notice and opportunity to be heard as provided in the Administrative Procedure Act, the commissioner may revoke the license of a repossession agency, qualifying agent, or repossession agent that:

1. violates, in substance or in form, any of the provisions of this Chapter or any rule, regulation, or policy promulgated, or any order, including a cease and desist order, issued pursuant to the Additional Default Remedies Act;

2. has knowingly provided or caused to be provided to the commissioner any false or fraudulent misrepresentation of material fact or any false or fraudulent financial statement, or has suppressed or withheld from the commissioner any information which if submitted by him would have resulted in denial of the license application;

3. refuses to permit an examination by the commissioner of his books and affairs or has refused or failed within a reasonable time, as determined by the commissioner, to furnish any information or make any report that may be required by the commissioner under the provisions of this Chapter;

4. fails to maintain records as required by the commissioner after being given written notice and 30 days within which to correct the failure. The commissioner may grant, on good cause shown, up to two 30-day extensions within which to correct the recordkeeping violations;

5. continues in office or employment any individual with power to direct the management or policies of a person regulated by the Chapter, including but not limited to any officer, director, or manager, if such individual is convicted of, pleads guilty to, or enters a plea of nolo contendere of any felony under any state or federal law;

6. violates any provision of a regulatory or prohibitory statute and has been found to have violated such statute by the governmental agency responsible for determining such violations;

7. knowingly engages in any transaction, practice, or course of business which perpetrates a fraud upon any person in connection with any collateral repossession;

8. fails to pay any fee or assessment imposed by this Chapter or by any rule, regulation, or policy promulgated in accordance with the Additional Default Remedies Act; or

9. fails, after notice and without lawful excuse, to obey any order or subpoena issued by the commissioner.

D. The commissioner may report egregious violations to the attorney general or to the district attorney of the appropriate parish, who may institute the proper proceedings to enjoin the violation and enforce the penalties provided for by this Chapter.

E. The commissioner may make public any administrative action instituted against a repossession agency, repossession agent, or apprentice for a violation of this Chapter or R.S. 6:965 et seq., including cease and desist orders, civil money penalty assessment, license suspension, revocation or application denial.

F. The commissioner may issue advisory opinions and interpretations regarding this Chapter, and such advisory opinions and interpretations shall not be considered rules requiring compliance with the rulemaking process of the Louisiana Administrative Procedure Act. The commissioner and the employees of the Office of Financial Institutions shall have no liability to any person with respect to an advisory opinion or interpretation issued in connection with this Chapter.

G. All grounds for suspension or revocation listed in this Chapter are violations of the Additional Default Remedies Act and may serve as the basis for any other enforcement action provided to the commissioner by said Act.

H. The commissioner may enter into cooperative and reciprocal agreements with the regulatory authorities of the federal government or of any state for the periodic examination of persons engaging in the business of collateral repossession and may accept reports of examination and other records from such authorities in lieu of conducting his own examinations. The commissioner may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his responsibilities under this Chapter and assure compliance with the laws of this state.

I. In addition to any other authority conferred upon the commissioner by this Chapter or the Additional Default Remedies Act, the commissioner may impose a penalty not exceeding \$1,000 per violation, per day which the violation continues, upon any person who he has determined to have violated this Chapter or any law in connection with self-help repossession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2815 (December 2004).

§1319. Notification or Service

A. Whenever a person becomes licensed by the commissioner, pursuant to this Chapter, such person shall

provide a physical address to the commissioner that may be used as a basis for service or notification of any order or other issuance or communication by the commissioner to such person. Whenever such person changes his physical address, he shall notify the commissioner at least 30 days prior to the change. Notification or service of any order, notice, or other issuance or communication by the commissioner by certified mail to the address most recently provided to him by the person shall satisfy all requisites of service required for any registration, administrative enforcement, or other action, undertaken by him pursuant to the Louisiana Administrative Procedure Act or otherwise, in connection with such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2816 (December 2004).

§1321. Severability

A. 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 application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:966.1(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 30:2816 (December 2004).

Chapter 15. Licensure

§1501. Definitions

Licensee—a person licensed by the commissioner under the provisions of the:

1. Louisiana Check Cashers Act-R.S. 6:1001 et seq.;
2. Louisiana Sale of Checks and Money Transmission Act-R.S. 6:1031 et seq.;
3. Louisiana Consumer Credit Law-R.S. 9:3510 et seq.;
4. Louisiana Credit Repair Services Organizations Act-R.S. 9:3573.1 et seq.;
5. Louisiana Collection Agency Regulation Act-R.S. 9:3576.1 et seq.;
6. Louisiana Deferred Presentment and Small Loan Act-R.S. 9:3578.1 et seq.; and
7. Louisiana Pawnshop Act-R.S. 37:1781 et seq.

Loan—a loan means an advance of funds to a Louisiana consumer for personal, family, or household purposes. A loan as defined herein shall not include a loan contracted for under the provisions of the Louisiana Residential Mortgage Lending Act or a mortgage loan which is preempted by federal law.

Loan Broker—a person who, for compensation or the expectation of compensation regardless of its source, obtains

or offers to obtain a loan from a third party wherever domiciled, if the broker is operating in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

§1503. Licensure of Loan Brokers

A. No person having an office in Louisiana shall broker a loan in Louisiana unless exempt by statute, without first being licensed and complying with the provisions of the Louisiana Loan Brokers Act.

B. Any licensee who performs loan brokerage activity or who enters into a loan brokerage agreement in Louisiana without first being licensed and complying with the provisions of the LLBA may be subject to having any other Louisiana license issued by the commissioner which they hold suspended or revoked by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

§1505. Prohibition

A. A person licensed or exempt from licensure as a loan broker, is prohibited from brokering a loan to a Louisiana consumer which does not comply with the LCCL or LDPSLA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

§1507. Civil Money Penalties

A. Any person or licensee who is found to be in violation of this regulation may be subject to any and all of the administrative and enforcement proceedings provided by R.S. 9:3554.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

§1509. Administrative Procedure

A. The Louisiana Administrative Procedure Act, R.S. 49:950 et seq., shall govern all proceedings instituted under the coverage of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1) and 9:3554(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 28:307 (February 2002).

Chapter 17. Louisiana Community Development Financial Institution Program

§1701. Description of Program

A. These rules implement the Louisiana Community Development Financial Institution (LCDFI) Program pursuant to R.S. 51:3081 et seq. This program was created by Act 491 of the 2005 Louisiana Legislature to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of Louisiana entrepreneurial businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:837 (May 2006).

§1702. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate and/or Affiliated Company—

- a. the term *affiliate* is defined as follows:
 - i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;
 - ii. when used with respect to a Louisiana entrepreneurial business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled* by, or is under common control with, a Louisiana entrepreneurial business;

Applicant—a Louisiana corporation organized under an incorporating statute which applies to the commissioner for certification as a LCDFI.

Application—a completed application as determined by the commissioner.

Associate of a LCDFI—

- a. any of the following:
 - i. a person serving a LCDFI, or an entity that directly or indirectly controls a LCDFI, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other employees), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of

a member-managed limited liability company), external accountant, or outside general/special counsel;

- ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the LCDFI;

- iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §1702. *Associate of a LCDFI*.a.i or ii;

- iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §1702. *Associate of a LCDFI*.a.i, ii or iii;

- v. a person that invests in the LCDFI and has received an income tax credit reduction under the LCDFI Act;

- vi. an affiliate of any person described in §1702. *Associate of a LCDFI*.a.v; or

- vii.(a). a person that, within six months before or at any time after the date that a LCDFI invests in the person, is controlled by a LCDFI or any of its affiliates;

- (b). however, even though a LCDFI may not intend to control a business in which it invests, it may obtain short-term (less than one year) control over the Louisiana entrepreneurial business after its initial investment if such control is acquired as a means of protecting the LCDFI's investment resulting from a material breach of any financing agreement. Such control will not create an associate relationship under §1702. *Associate of a LCDFI*.a.vii.(a);

- b. for the purposes of this definition, if any associate relationship described in §1702. *Associate of a LCDFI*.a.i-vi exists between a person and the LCDFI at any time within six months before or at any time after the date that the LCDFI makes its initial investment in such person, that associate relationship is considered to exist on the date of the investment.

Business Plan—a written narrative providing a general description of the proposed Louisiana community development financial institution ("LCDFI") which should include, at a minimum, a description of the LCDFI's organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the LCDFI will operate as a profit or nonprofit corporation.

Capitalization—for purposes of initial certification, pursuant to R.S. 51:3086(B):

- a. *Generally Accepted Accounting Principles (GAAP) Capital—*common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve;

contingency or other capital reserves and minority interests; less all organization costs;

b. *LESS*—the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the LCDFI: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal of capital within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit reduction.

Change of Control—for purposes of R.S. 51:3087(F) shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding voting shares of the LCDFI; or

b. individuals who constitute the voting power of the board of directors, board of managers or other governing board of the LCDFI as of the later of the LCDFI's certification date or the date of the LCDFI's last notification under R.S. 51:3087(F) cease to comprise more than 50 percent of the voting power of such board of directors, board of managers, or other board; or

c. a change in the general partner or manager of the LCDFI or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the LCDFI that was the party to the merger or consolidation transaction.

Control—

a. solely for purposes of determining whether a Louisiana entrepreneurial business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a LCDFI, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal

entity, when such control is exercised with respect to a specified person or legal entity;

b. for all other purposes, *control*—

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

Date on Which an Investment Pool Transaction Closes—date that a LCDFI designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all required documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the LCDFI receives a cash investment of certified capital that is available for investment in Louisiana entrepreneurial businesses.

Employees—

a. full-time and part-time employees and officers, converted to a full-time equivalent basis;

b. the term *employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a Louisiana entrepreneurial business on a contract basis; or

ii. employees of any business that perform services (contractor) for a Louisiana entrepreneurial business.

For example: a contractor may enter into an agreement to perform services for a Louisiana entrepreneurial business. The contractor's employees that perform services under that agreement would not be employees under this definition.

Equity Features—includes [pursuant to R.S. 51:3084(5)(b)] the following.

a. *Royalty Right*—rights to receive a percent of gross or net revenues, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests*—rights to receive a percent of operating or net profits, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership*—options on the stock of the Louisiana entrepreneurial business. The Louisiana entrepreneurial business may repurchase a warrant (a "call") or the Louisiana entrepreneurial business may be required to sell a warrant (a "put") at some stated amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right*—conversion options of debt, to convert all or a portion of the debt to the corporate stock of the Louisiana entrepreneurial business, then to participate in the sale of the stock of the Louisiana entrepreneurial business.

e. *Equity Rights*—the receipt or creation of a significant equity interest in a Louisiana entrepreneurial business.

f. And such other conceptually similar rights and elements as the OFI may approve.

Financing Assistance Provided in Cash and the Investment of Cash—transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; prepaid debt; loan collection expenses or legal fees incurred by a LCDFI in protecting its collateral interest in an investment.

Institution Affiliated Party—a director, officer, employee, agent, controlling person, and other person participating in the affairs of the LCDFI.

Investment—

a. at all times, in order to perfect the tax credits earned as a result of an investment described in R.S. 51:3084(3) and (9), or R.S. 51:3085(A) and (B), the LCDFI shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

i. available to be invested in *qualified investments*;

ii. invested in qualified investments made subsequent to the date on which the investment pool transaction closes; or

iii. a combination of §1702.*Investment.a.i* and ii.

b.i. an *Investment* furthers economic development within Louisiana if the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the Louisiana entrepreneurial business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 90 percent of the proceeds derived from the investment are used by the Louisiana entrepreneurial business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a company buyout;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business. Such future debt financing must be obtained within three months of the *qualified investment* date;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the LCDFI shall request in writing and the commissioner shall issue a written response to the LCDFI that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the LCDFI, and shall be part of the annual review required to be performed by the office and billed according to provisions contained in §1710.A.1. However, upon written notification to the LCDFI, the 30-day review period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a LCDFI in an interim construction project shall not be considered to further economic development within Louisiana unless the same LCDFI also provides the permanent financing.

Net Income—net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth—net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office—the Louisiana Office of Financial Institutions (OFI).

Participation between LCDFIs—are loans or other investments in which one or more LCDFIs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a LCDFI may only include its participation (ownership interest) as a qualified investment.

Permissible Investments—for purposes of R.S. 51:3087(G), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under the definition of *Investment* in LAC 10:XV.1702 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the LCDFI within 10 days following demand by the LCDFI in connection with funding a qualified investment.

Person—a natural person or legal entity qualified to seek certification as a LCDFI.

Sophisticated Investor—any of the following:

- a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;
- b. a corporation with total assets in excess of \$5,000,000;
- c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or
- d. a natural person with an individual taxable income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital under Management for purposes of investment limits, pursuant to R.S. 51:3087(G):

- a. *GAAP Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchangeable for cash and which is available for investment in qualified investments; undivided profits or losses which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. *PLUS—Qualified Non-GAAP Capital*: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. *LESS*—the following, when any GAAP Capital or Qualified Non-GAAP Capital is subject to redemption or repurchase by the LCDFI:

i. the GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

d. the portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:3087(G).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:838 (May 2006).

§1703. Applications

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:3081 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

1. An application fee as prescribed by LAC 10:XV.1712 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

2. This office reserves the right to return the application to the applicant if the fee submitted is incorrect. The application may be resubmitted with the correct fee. The application will not be considered officially received and accepted until the appropriate fee is submitted. Application fees are nonrefundable.

B. The forms for applying to become a LCDFI may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filing shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Applications and all submissions of additional information reported to the office shall be delivered via United States mail, or private or commercial interstate carrier, properly addressed and postmarked, and signed by a duly authorized officer, manager, member or partner and

shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. A previously incomplete application may be resubmitted, either in a partial manner or totally, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a LCDFI and/or the office may be subject to civil and/or criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1704. Certification Instructions and Guidelines

A. The application shall contain the following specific information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
5. a federal tax identification number;
6. phone number, address and zip code;
7. a copy of any bylaws executed by the board of directors;
8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;
9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for certification as a LCDFI, and to sign said application;
10. current (less than one year) financial statements for all incorporators and initial directors;
11. description of the LCDFI's business plan, in a narrative form, which shall include, at a minimum, the following:
 - a. a description of the LCDFI's statement of purpose and organization;
 - b. types of lending and financing it intends to offer and to whom;

c. whether it intends to provide management assistance, and if so, to what extent and to whom;

d. whether the LCDFI will be a profit or nonprofit corporation;

e. pro forma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;

f. a proposed net worth structure as required by R.S. 51:3086(B);

12. a list of all of current directors, officers and controlling persons;

13. biographical information concerning the proposed directors, officers and controlling persons, including personal information, résumé of each person's education, their employment record and prior associations or position with other LCDFI's and in what capacity in or out of Louisiana;

14. form granting the commissioner authority to obtain information from outside sources;

15. evidence that the applicant entity has been certified as a Community Development Financial Institution by the United States Department of the Treasury; and

16. other pertinent information as may be required by the commissioner in his sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1705. Conditions of Certification

A. All LCDFIs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a Louisiana Community Development Financial Institution and shall certify and acknowledge that the statement is true and correct.

1. The LCDFI has an initial capitalization of not less than \$500,000. If any capitalization is repurchased or contemplated to be repurchased by the LCDFI within five years after certification, the LCDFI will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the LCDFI will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification.

3. The board of directors/shareholders will not elect new or replace existing board members or declare dividends without prior written consent of the office during the first two years following certification as a LCDFI.

4. The LCDFI will immediately notify the office in writing when its total certified capital under management is not sufficient to enable the LCDFI to operate as a viable going concern.

5. The LCDFI will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The LCDFI will comply with the LCDFI Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The LCDFI will adopt and follow OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant by the commissioner.

B.1. If a LCDFI contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the LCDFI shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 calendar days prior to investor solicitation.

2. If a LCDFI seeks to certify capital pursuant to R.S. 51:3084(6)(b), the LCDFI shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow the office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 calendar days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1706. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:3087 and decertification of an investment pool under R.S. 51:3088.

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator:

a. no qualified investment may be counted more than once;

b. the date the investment of cash is made determines whether the one-year holding date is achieved. For multiple funding, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.

3. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a LCDFI's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a LCDFI may allocate its qualified investments to all open investment pools, provided such allocations are reasonable as determined by the commissioner.

C.1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of Subparagraph A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

a. a sale that is executed in connection with a sale of control of a Louisiana entrepreneurial business; or

b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the LCDFI may deliver to the office a letter of credit in form and substance, and issued by a federally insured bank. The letter of credit:

a. shall be payable to the office as beneficiary;

b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with Paragraph C.1 above;

c. shall provide that the letter of credit is forfeitable in full if the LCDFI fails to comply with the requirements of Paragraph C.1 above; and

d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to Paragraph C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of Subparagraph A.1.a above which have not yet been held by the LCDFI a minimum of one year.

3. If the LCDFI provides a letter of credit in accordance with Paragraph C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the LCDFI as the sole remedy for the failure of the LCDFI to comply with the requirements of Paragraph C.1 above; otherwise, the failure to comply with Paragraph C.1 above shall be considered a violation of R.S. 51:3087(E)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:842 (May 2006).

§1707. Change of Control

A. In the event of a change of control of a LCDFI, the LCDFI shall provide written notification to the commissioner of the proposed transaction at least 30 days prior to the proposed change of control effective date. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner, provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the LCDFI or the date of the LCDFI's last notification under R.S. 51:3087(F) for whom the Office of Financial Institutions has received a current Biographical and Financial Report and conducted a current background check shall be disregarded;

2. a copy of the proposed business plan of the new owners covering a three year period;

3. a discussion of the previous experience the proposed owner has in the field of venture capital financing;

4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the LCDFI;

6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1708. Information Required from Louisiana Entrepreneurial Businesses

A. Prior to making a qualified investment in a Louisiana entrepreneurial business, a LCDFI shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the LCDFI in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business;

For example: a board resolution or such other appropriate evidence of a grant of necessary authority.

2. a binding waiver of rights and consent agreement sufficient to allow the LCDFI, upon request to the business, full access to all information and documentation of the business which is in any way related to the LCDFI's investment in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow access by the LCDFI of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of the investment proceeds, and that the business will provide to the LCDFI documentation to support the use of proceeds;

5. a statement certifying that the business meets the qualifications of a "Louisiana Entrepreneurial Business" as defined by R.S. 51:2303(5); and

6. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1709. General Provisions

A. Books and Records

1. A LCDFI shall make and keep its records in conformity with Generally Accepted Accounting Principles.

2. A LCDFI shall make and keep all of its records at its main office as identified in its application for certification or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a LCDFI shall be retained for a period of at least three years following decertification of the LCDFI in accordance with R.S. 51:3088.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1710. Directors and Officers

A. Election of Directors or Managers. At least 30 days prior to the election of any person as the director or manager of a LCDFI, such LCDFI and such director or manager shall file with the commissioner a report containing the following information:

1. name, address and occupation of the proposed director or manager;
2. title of any office which the director or manager previously held with the LCDFI;
3. anticipated election date of the director or manager;
4. manner of election of the director or manager (that is, whether by the board or by the shareholders);
5. in case a director or manager is not an incumbent director or executive officer of the LCDFI, the LCDFI shall provide:
 - a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the proposed director or manager.

B. Appointment of Executive Officers. At least 30 days prior to the appointment of any person as an executive officer of a LCDFI, such LCDFI and such executive officer(s) shall file with the commissioner a report containing the following information:

1. name and address of the executive officer;
2. title of the office to which the executive officer will be appointed;
3. a summary of the duties of the office to which the executive officer will be appointed;
4. title of any office which the executive officer previously held with the LCDFI and title of any office (other than the office to which the executive officer was will be appointed) which the executive officer currently holds with the LCDFI;
5. the LCDFI shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

C. Notification. Following approval by the Office, each LCDFI shall provide to the commissioner a written notice stating the effective date of the newly elected/appointed director, manager, or executive officer. Said notice must be received by the Office within 30 days of the stated effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1711. Income Tax Credits

A. Pursuant to R.S. 51:3084(6), an investment for the purposes of earning income tax credits means a transaction that, in substance and in form, is the investment of cash in exchange for either:

1. common stock, preferred stock, or an equivalent ownership interest in a LCDFI; or
2. a loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

B. In order to be eligible for any income tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a LCDFI voluntarily decertifies and preserves all income tax credits, if debentures, notes or any other quasi-equity/ debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:3088. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Chapter.

1. No LCDFI certified after December 1 of any year shall be entitled to receive an allocation pursuant to R.S. 51:3085 for the same calendar year in which it was certified.

2. By December 10, the commissioner shall review all requests for allocation of income tax credits and notify the LCDFI of the amount of certified capital for which income tax credits are allowed to the investors in such institution. During this 10 day review period, no investor substitutions will be allowed.

3. If a LCDFI does not receive an investment of certified capital equaling the amount of the allocation made pursuant to R.S. 51:3085 within 10 days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining LCDFIs on a pro rata basis.

C. Conditions to Sell or Transfer Income Tax Credits

1. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. Furthermore, even though a transfer or sale of credits may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a LCDFI may only transfer or sell

credits once during a calendar quarter and the entity that purchases or acquires the credits may not transfer credits obtained during the calendar quarter of purchase. In any subsequent calendar quarter, the purchaser or acquirer of the credits may make one election per calendar quarter, if needed.

2. Companies and/or individuals shall submit to the Louisiana Department of Revenue and Taxation in writing, a notification of any transfer or sale of income tax credits at least 30 days prior to the transfer or sale of such credits. The notification shall include the original investor's income tax credit balance prior to transfer, the projected remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If income tax credits are transferred between affiliates or sophisticated investors (acquirers), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquirer;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquirer; and
- c. credits taken by the transferor and each acquirer under R.S. 51:3085(A) and (B).

4. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:3085(A) and (C), respectively. Any income tax credits transferred or sold, which credits are subject to recapture pursuant to R.S. 51:3088, shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:844 (May 2006).

§1712. Fees and Assessments

A. Pursuant to the authority granted under R.S. 51:3088(A) and 3089(4), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Community Development Financial Institution Act, R.S. 51:3081 et seq.

1. Fees and Assessments

Description	Fee
a. Application for certification as a LCDFI.	\$2,000
b. Annual assessment fee of each LCDFI at a floating rate to be assessed no later than May 15 of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.1702, as of the previous December 31 audited financial	Variable

Description	Fee
statements. Any amounts collected in excess of actual expenditures related to the administration of the Louisiana community development financial institution act by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the Louisiana community development financial institution act shall be added to the next variable assessment or billed on a pro rata basis.	
c. Late fee for each calendar day that an assessment fee is late pursuant to the requirements of LAC 10:XV.1712.A.1.b.	\$100 per day
d. Fee for request filed on December 1 of each year for certification of capital pursuant to R.S. 51:3085 in order obtain an allocation of certified capital.	\$1,000 Non-refundable
e. Fee for annual review of each LCDFI to determine the company's compliance with statutes and regulations.	\$50 per hour, per examiner, or \$500, whichever is greater.

2. Administration

a. The failure to timely submit a fee with the request for allocation as required in §1712.A.1.d shall result in the denial of an allocation of certified capital.

b. The assessment described in §1712.A.1.b shall be considered timely if received by the office on or before May 31 of each calendar year. If the office receives an assessment after May 31, it shall not be deemed late if it was postmarked on or before May 31.

c. Unless annual audited financial statements are submitted to the office by April 30, annual unaudited financial statements shall be submitted no later than May 1. These unaudited financial statements shall then be used to determine the assessment amount provided for in §1712.A.1.b. Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31.

d. If neither an audited nor unaudited financial statement has been received by this office by May 1, the late fee described in §1712.A.1.c shall be assessed beginning on June 1 until the assessment has been paid in full.

e. If any of the dates prescribed in §1712.A.2.b and §1712.A.2.c with the exception of the April 30 and the December 31 due date for audited financial statements, occurs on an official state holiday, a Saturday, or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

f. The assessment for each Louisiana Community Development Financial Institution, as defined in R.S. 51:3084(9), and described in §1712.A.1.c shall be based on the following formula.

i. The numerator will be the total certified capital under management of the LCDFI as of December 31 of the previous year.

ii. The denominator will be the total certified capital under management for all Louisiana community development financial institutions as of the previous December 31.

3. 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 application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:845 (May 2006).

Chapter 19. Virtual Currency

NOTE: During the process of promulgating LAC 10:XV.1901 through 1937, the Office of Financial Institutions (“OFI”) determined that it was in the best interest of the industry and Louisiana residents wishing to engage in virtual currency to revisit and adjust the rule without unnecessary delay of licensure, registration and engagement in virtual currency business. Amendments submitted by Emergency Rule seek to ensure uninterrupted access to virtual currency, avoid unintended consequences of affording such access during the pendency of the application process and accommodate a high volume of anticipated applications for licensure and notices of registration. Amendments are further intended to respond to concerns regarding a rapidly-evolving industry and afford requested guidance.

§1901. Definitions

A. 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.

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.

Commissioner—the commissioner of the office of financial institutions.

Control—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.

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.

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.

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.)

Unfair or Deceptive Act or Practice—failure to provide any disclosure or disclosures described in this Chapter is an unfair or deceptive act or practice by 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).

Unsafe or Unsound Act or Practice—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. 6:1385, 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 48:2561 (October 2022), amended LR 49:259 (February 2023).

§1905. 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 R.S. 6:1385D.

E. By force of law, no applicant shall have a right of appeal, as provided by 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 Chapter.

B. For purposes of applications for a license or notice of registration submitted pursuant to this Section, no applicant shall be required to submit an application for renewal of any license or notice of registration before November 1, 2023.

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 48:2562 (October 2022), amended LR 49:260 (February 2023).

§1913. 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 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 48:2564 (October 2022), amended LR 49:260 (February 2023).

§1915. 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 48:2564 (October 2022).

§1917. Examination

A. The commissioner may:

1. conduct on-site examination or investigation of the books, records, and accounts used in the business of every a licensee or registrant;

2. 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;

3. enter into agreements or relationships with other government officials or state and federal regulatory agencies;

4. 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 48:2564 (October 2022), amended LR 49:261 (February 2023).

§1923. Records

A. 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 48:2565 (October 2022), amended LR 49:261 (February 2023).

§1927. Consent Agreements

A. 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 48:2565 (October 2022), repromulgated LR 49:261 (February 2023).

§1929. Civil Penalties

A. 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 48:2565 (October 2022), repromulgated LR 49:261 (February 2023).

§1931. 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. Licensees engaging in virtual currency business activity in Louisiana are to provide proper disclosures to persons wishing to transfer or exchange virtual currency through the licensee or registrant. Disclosures are to be made separately from any other information provided by the licensee to such persons 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 48:2565 (October 2022), amended LR 49:261 (February 2023).

§1933. Fees

A. 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
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 48:2565 (October 2022), repromulgated LR 49:262 (February 2023).

§1935. Exceptions

A. 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 48:2566 (October 2022), repromulgated LR 49:262 (February 2023).

§1937. Severability

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not

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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 48:2566 (October 2022), repromulgated LR 49:262 (February 2023).

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Part XVII. Miscellaneous Provisions

Chapter 1. Reserved

Chapter 5. Procedures

§501. Informal Opportunity to Show Compliance

A. Definitions

Commissioner—the Commissioner of the Louisiana Office of Financial Institutions.

Licensee—any person or entity chartered or licensed by the Louisiana Office of Financial Institutions.

Office—the Louisiana Office of Financial Institutions.

B. Prior to the institution of agency proceedings regarding the revocation, suspension, annulment, or withdrawal of a license, when such action must be accomplished pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., the office shall give notice by mail to the licensee, setting forth the facts or conduct which serve(s) as the office's basis for such action. The notice shall advise the licensee that he is being offered an opportunity to participate in an informal meeting with a representative of the office to show compliance with all lawful requirements for retention of the license, in conformity with R.S. 49:961(C).

C. The licensee shall have 15 calendar days from receipt of such notice to request, in writing, an informal meeting. Such informal meeting shall be held not less than 10 days nor more than 30 days following receipt of the licensee's request for the meeting, unless the commissioner determines that an extension is warranted.

D. Notwithstanding any other provision of this rule, if the office finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:1638 (December 1997).

§503. Interested Party Petitions

A. Any interested person may petition the Office of Financial Institutions requesting the adoption, amendment, or repeal of a rule.

B. A petition for adoption, amendment or repeal of a rule shall be plainly and prominently titled and styled as such and shall be manually signed by an individual petitioner, and by any attorney representing the petitioner. The full name, title

or office if any, address, telephone number and email address of all signees of the petition shall be printed or typed under the signature. Signees signing in a representative capacity must be clearly identified.

C. A petition filed in accordance with this Section shall contain the following:

1. the name and number of any license or other certification issued by the commissioner to the petitioner and a statement regarding whether the petitioner is subject to the regulatory jurisdiction of the commissioner and if the petitioner is or may be affected by the laws included within the scope of the commissioner's jurisdiction;

2. in the case of a petition for the adoption of a new rule, set forth a concise statement of the nature, purpose, and intended effect of the rule which petitioner requests be adopted, and the citation to the statutory authority for the commissioner's exercise of or rulemaking authority in the manner and on the subject requested;

3. in the case of a petition for amendment of an existing rule, specify by citation to the *Louisiana Administrative Code* the rule or rules which the petitioner requests be amended, together with a concise statement of the manner in which it is proposed that the rule or rules be amended, the purpose and intended effect of the requested amendment, and citation to the statutory authority for the commissioner's exercise of or rulemaking authority in the manner and on the subject requested;

4. in the case of a petition for repeal of an existing rule, specify by citation to the *Louisiana Administrative Code* the rule or rules which the petitioner requests be repealed, together with a concise statement of the purpose and intended effect of such repeal;

5. provide an estimate of the fiscal and economic impact of the requested adoption, amendment, or repeal of the rule on the revenues and expenses of the Office of Financial Institutions and any other state and local governmental units, on the costs/benefits to directly affected persons, and on the competition and employment in the public and private sectors. If the petitioner has insufficient information or is otherwise unable to provide a reasonable estimate of such impact, the petitioner shall include a statement attesting to the lack of such information;

6. an estimate of any impact on family formation, stability, and autonomy as described in R.S. 49:972;

7. an estimate of any impact on poverty as described in R.S. 49:973;

8. an estimate of any impact on small business as described in R.S. 49:965.5;

9. an estimate of any impact on providers as described in HCR 170 of 2014;

10. all pertinent allegations of facts, circumstances, and reasons supporting the action sought by the petitioner;

11. a statement or prayer expressing the action sought by the petition;

12. any other information deemed necessary by the commissioner, in his discretion, in order that he may properly consider the petition.

D. The commissioner may refuse to accept for filing or defer consideration of any petition for adoption, amendment, or repeal, of a rule, which does not conform to the requirements of this section.

E. After submission of a petition pursuant to this section, the Office of Financial Institutions shall either deny the petition in writing stating the reasons for denial, or shall initiate rulemaking proceedings in accordance with the Louisiana Administrative Procedure Act.

F. Nothing herein shall be construed to require that the commissioner, in granting a petition for the adoption, amendment, or repeal of a rule, adopt or employ the specific form or language requested by the petitioner, provided that the commissioner's action gives effect to the substance and intent of the petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2) 49:953(C)(1), R.S. 6:101, R.S. 36:4.1(C)(1), and R.S. 36:801.1(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions LR 45:247 (February 2019).

Chapter 7. College Campus Credit Card Solicitation

§701. Form for Registration of Intent to Solicit Students

A. Purpose. This Chapter provides the form to be used by a credit card issuer for the registration of its intent to engage in the solicitation of students on college campuses.

B. Definitions. The definitions for the terms utilized in this Chapter are the same as those provided for in the definitions section of the College Campus Credit Card Solicitation Act, R.S. 9:3578.1, specifically R.S. 9:3578.2, and as follows.

Appropriate Official—the president, chancellor, or chief management official of the institution of post-secondary education.

C. Form of Registration. The form of registration shall be a letter directed to the appropriate official of the institution of post-secondary education at which the credit

card issuer intends to engage in the solicitation of students on college campuses. The letter shall contain, at a minimum the following:

1. the name and principal place of business of the credit card issuer;

2. the name, address, and telephone number of the contact person of the credit card issuer, who is responsible for the administration of its credit card solicitation program;

3. the date(s) on which the credit card issuer intends to have representatives on campus. (See R.S. 17:3351.2).

A new letter must be submitted by the credit card issuer upon the occurrence of any material change, including but not limited to a change in the contact person, in the information previously submitted to the institution of post-secondary education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3578.3.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 26:236 (February 2000).

Chapter 9. Records Retention

§901. Non-Depository Records Retention

A. Each non-depository person subject to the supervision of the Office of Financial Institutions shall retain such minimum records which are deemed necessary for the examination and supervision of such persons by this office and for such minimum retention periods as determined by the commissioner and set forth in a "record retention schedule" to be detailed in policy which may be amended from time to time as necessary. This rule does not replace the person's responsibility to create, implement, and maintain its own comprehensive record retention program, consistent with the person's strategic goals and objectives. Such records may be retained in various forms as approved by the commissioner, including but not limited to, hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily accessed and reproduced into hard copies.

B. For purposes of this rule, non-depository persons refers to any individual, corporation, limited liability company, partnership or other entity, other than those considered by the commissioner to be depository institutions, such as banks, savings associations, credit unions and savings banks, or those persons under his jurisdiction pursuant to the Louisiana Securities Law. Non-depository includes, but is not limited to, residential mortgage lenders, brokers, and originators, bond for deed escrow agents, check cashers, licensed lenders, loan brokers, and pawnbrokers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, 6:414, 6:1014, 6:1085, 9:3554, 9:3556.1, 9:3572.7, 9:3574.10, 9:3578.8, and 37:1807.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 27:1512 (September 2001), repromulgated LR 27:1690 (October 2001), amended LR 36:1243 (June 2010).

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC

Part XIX. Uniform Commercial Code

Chapter 1. Secured Transactions

§101. Policy

A. In the state of Louisiana, title 10, chapter 9 was enacted as the Uniform Commercial Code, secured transactions (hereinafter referred to as the UCC). The UCC implemented provisions of article 9 with regard to the notice filing approach under which an abbreviated notice is filed with the appropriate filing officer evidencing that a debtor and a secured party intend to engage in or have engaged in a secured transaction using specified collateral as security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-101 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§103. Place of Filing—When Filing Is Required in Louisiana

A. The proper place to file in order to perfect a security interest is with the clerk of court of any parish.

B. It is only necessary to file in one parish to properly perfect a security interest, notwithstanding the location of the collateral, the location of the debtor, or the fact that the secured collateral may be relocated or situated in various parishes within the state of Louisiana.

C. The secretary of state is not authorized to accept UCC filings. Any filings directed erroneously to the secretary of state will be returned to the secured party with directions as to the proper filing procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-501, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013), amended LR 40:1387 (July 2014).

§105. Formal Requisites of Financing Statement

A. To be effective, a financing statement must:

1. give the debtor's name and mailing address:

a. a financing statement sufficiently shows the name of the debtor if it gives the individual (if the debtor is an individual to whom Louisiana has issued a driver's license that is not expired, the name of the debtor must be shown as indicated on his driver's license), partnership, or corporate name of the debtor (if the debtor is a registered organization such as a corporation or a limited liability company, the name of the debtor must be the registered organization's name on the public organic record with

Louisiana's secretary of state or other jurisdiction of organization) (as applicable); and

b. the trade names of the debtor (providing only the debtor's trade name does not sufficiently provide the name of the debtor), and the names of the partners, members, associates, or other persons comprising the debtor may also be set forth in the financing statement at the option of the secured party;

2. give the name and address of the secured party from which information concerning the security interest may be obtained; and

3. give a statement indicating the types, or describing the items, of collateral:

a. if the collateral is minerals or the like, including oil and gas, or accounts resulting from the sale thereof at the wellhead or minehead, or is a fixture, the financing statement must:

i. show that it covers this type of collateral;

ii. be accompanied by an attachment containing a description of the real estate sufficient if it were contained in a mortgage of the real estate to cause such mortgage to be effective as to third persons if it were properly filed for record under Louisiana law; and

iii. if the debtor does not have an interest of record in the real estate, the financing statement must also show the name of a record owner of the immovable or real right therein. It is not necessary to name all record owners of the immovable or real right;

b. the standard Uniform Commercial Code, financing statement form (Form UCC-1) for Louisiana and has been approved by the secretary of state contains appropriate spaces to indicate whether the filing is fixture or mineral related, and to set forth the name of the record owner if the named debtor does not own the real estate.

B. When a debtor so changes his name or in the case of an organization its name, identity, or corporate structure so that a filed financing statement becomes seriously misleading to third parties, a new Form UCC-1 must be filed within four months after the change to perfect a security interest in collateral acquired by the debtor more than four months after the change. Form UCC-1 may be filed by the secured party without the debtor's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-502, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013), amended LR 40:1387 (July 2014).

§107. Forms to be Used in Filing

A. Under the UCC, the notice to be filed with the filing officer is called a financing statement. The approved Form UCC-1 measures 8 1/2 by 11 inches. All filing officers will accept these standard forms. Failure to use Louisiana's Form UCC-1 renders the filing subject to the nonstandard form penalty.

B. If the space provided on Form UCC-1 is inadequate, the item should be identified and continued on an additional 8 1/2 by 11 inch sheet. The name of the debtor should appear as the first item on the additional sheet.

C. The security agreement entered into by the secured party and the debtor is sufficient as a financing statement if it contains all the information required in a financing statement and is signed by the debtor; however, the nonstandard form penalty will be assessed for the filing of such agreement.

D. A carbon, photographic, facsimile, or other reproduction of a security agreement or financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in the state of Louisiana.

1. Filing officers shall reject any financing statement or security agreement if the copy is illegible.

2. Fax filings of the financing statement will be accepted.

3. Laser printed financing statements prepared by computerized loan documentation service companies will be accepted as standard filings if presented in the same format as Louisiana's Form UCC-1 on 8 1/2 by 11 inch paper.

E. A consignor, lessor, depositor, or bailor of goods has the option of filing a financing statement using the terms consignor, consignee, lessor, lessee, depositor (or bailor), and depositary (or bailee), instead of the terms secured party and debtor. The filer may indicate that the financing statement is filed as a lease, consignment, deposit, or bailment either by indicating the same in the statement describing the types, or items, of the secured collateral or by designating the status of the parties to the transaction in the appropriate debtor and secured party name blocks and in the space designated for signatures, or both.

F. A financing statement may disclose an initial assignment of the security interest by giving the name and address of the assignee. After disclosure of the assignment, the assignee is the secured party of record. Form UCC-1 contains appropriate space to disclose such an initial assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-521, R.S. 10:9-525, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013).

§109. Presentation of Filing

A. All filings required by the UCC shall be made by presenting the appropriate documents and tendering the required fees to any of the 64 filing officers. Filings may be made in person, by mail, or by fax machine pursuant to §107.D herein. Payment of the fees shall be made in any manner acceptable by the filing officer in the parish in which the filing is made.

1. If Form UCC-1 is presented for filing, the form shall be filed with the filing officer.

2. Although a filer is encouraged to utilize Form UCC-1, the filer may submit a copy of the security agreement in lieu of Form UCC-1 and attach the nonstandard filing fee. If the required signatures appear on the nonstandard filing, they need not appear on Form UCC-1.

3. If an acknowledgment copy from the filing officer is desired by persons submitting a facsimile copy of the financing statement, a laser printed financing statement or a copy of the security agreement, the filer must submit an additional copy of the document.

B. The filing officer shall mark each financing statement with a file number, the parish of filing, and the date and time of filing.

C. After the document has been filed, the second copy (acknowledgment copy of Form UCC-1 or the photocopy of the document submitted by the filer) will be returned to the secured party of record. If the acknowledgment copy is to be returned to another party or another address, indicate the same in the appropriate box on Form UCC-1.

D. The filing officer shall transmit the information contained in the financing statement together with the date and time of filing and file number thereof, no later than 4:30 p.m. on the second business day following filing, to the secretary of state for inclusion in the master index. Note that a summary of the collateral described in the financing statement may be included in the information transmitted to the secretary of state. This summary is for informational purposes only and is not a substitute for the description of the collateral contained in the financing statement.

E. The secretary of state shall, within two business days following receipt of such information from the filing officer, send written notice by mail or electronically confirming such receipt and reflecting all information received and included in the master index, to the secured party of record and such other requesting person as designated on the financing statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2790 (October 2013).

§111. Indexing

A. If more than one debtor name is set forth in the financing statement or other statement, all debtors, including any listed trade names, will be entered into the secretary of state's master index. If an attachment is required to complete the debtor name listing, please indicate the same in the additional debtor name block on Form UCC-1 and attach the listing on an 8 1/2 by 11 inch sheet.

B. Debtor names shall be indexed exactly as set forth by the secured party in the debtor name block of Form UCC-1, or in the case of a nonstandard filing, as set forth in the body of the agreement. Please note the following for clarification.

1. If the secured party desires to have the filing officer additionally index a married woman under her maiden name, the secured party must specifically request the same by setting forth the maiden name separately.

2. In the event the debtor's signature exists and varies from the typewritten name set forth in the debtor name block of Form UCC-1 (or in the body of a nonstandard filing) and the secured party desires to have this varied name included in the master index, the secured party must specifically request the same by setting forth the varied name as an additional debtor name on the financing statement.

C. The secretary of state shall maintain a master index of information contained in all financing statements and other statements filed with filing officers and transmitted to the secretary of state. The master index shall list all such statements according to the name of the debtor and shall include all of the information transmitted to the secretary of state by all filing officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2790 (October 2013).

§113. Duration

A. With the exception of transmitting utility filings presented in the format required by §107 herein, a financing statement is effective for a period of five years from the date of filing. Transmitting utility filings properly presented for filing are effective until a termination statement is filed with the filing officer with whom the financing statement was originally filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-526 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§115. Subsequent Filings

A. Filings relating to changes affecting the initial financing statement have been consolidated and incorporated into a single standard form for Louisiana prescribed by the secretary of state called Uniform Commercial Code, amendment form (Form UCC-3). This single composite

form may be used as a continuation statement, a release statement, a statement of partial assignment, a statement of assignment (full assignment), a termination statement, an amendment to a financing statement, or a statement of master assignment or master amendment (affecting 20 or more initial financing statements filed in the same parish).

B. Form UCC-3 measures 8 1/2 by 11 inches. Any filings made on any form other than on the approved Form UCC-3 will be assessed the nonstandard filing fee penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-512, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§117. Procedure for Filing Form UCC-3

A. The procedural rules set forth in §107 and §109 herein governing the use of prescribed forms and presentation of Form UCC-1 filing are incorporated by reference herein and must be followed in the presentation of Form UCC-3 or other statement changing the status of an initial filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§119. Place of Filing Form UCC-3

A. Any subsequent filings affecting an initial UCC financing statement must be filed in the parish in which the initial UCC financing statement was filed.

B. Filings erroneously directed to a parish other than that in which the initial financing statement was filed shall be rejected by the filing officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§121. Preparation of Form UCC-3 Filing

A. Any Form UCC-3 filing changing the initial financing statement must:

1. give the name and address (as applicable), of each debtor as it appears on the initial financing statement or the most recent filing;

2. give the name and mailing address (as applicable), of the secured party of record;

3. give the initial UCC file number (entry number), the date of filing, and the parish in which the initial financing statement was filed; and

4. indicate the type of action requested (Only one type of transaction may be requested on any Form UCC-3.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-516, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§123. Additional Specific Requirements for Filings Changing the Status of an Initial UCC Filing

A. Continuation Statement

1. A filed financing statement is effective for a period of five years. No exception is made for a stated maturity date of less than five years. A security interest ceases to be perfected unless a continuation statement is filed prior to the expiration date of a financing statement. A continuation statement may only be filed by the secured party within the six-month period prior to the expiration date and must state that the initial financing statement is still effective. The timely filing of a continuation statement extends the effectiveness of the initial financing statement for an additional five-year period after the last date for which the initial financing statement is effective. Continuous perfection may be achieved by filing successive continuation statements in this manner.

2. If the initial financing statement lapses due to a failure to timely continue within the six-month period prior to the end of the five-year period of effectiveness, the secured party must file a new financing statement rather than a continuation statement.

3. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and include the required fee for an assignment.

B. Release

1. The secured party of record may release all or a part of any collateral described in a filed financing statement. The statement of release must include a description of the released collateral.

2. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

3. If the secured party wishes to release all of the collateral, a termination statement should be filed.

C. Assignments

1. In addition to the general information required on Form UCC-3, a statement of assignment must set forth the name and address of the assignee.

a. Full Assignment. A full assignment is made when a secured party assigns all rights under the financing statement. Form UCC-3 contains an appropriate box to be checked by the secured party if a full assignment is contemplated.

b. Partial Assignment. A partial assignment is made when a secured party assigns rights to only part of the

collateral described in the financing statement. A description of the assigned collateral must be set forth in the appropriate space on Form UCC-3 or on an attached sheet if more space is required. Form UCC-3 contains an appropriate box to be checked by the secured party if a partial assignment is contemplated.

2. A copy of the assignment agreement is sufficient as a separate statement if it contains all the requirements set forth in §§115-121 and §123.C, but will constitute a nonstandard filing subject to the nonstandard filing fee.

D. Termination

1. Prior to expiration of the five-year effective period, a financing statement may be canceled by filing a termination statement. The termination statement must state that the secured party of record no longer claims a security interest under the financing statement, which must be identified by its initial file number. Form UCC-3 contains an appropriate box to be checked by the secured party when a termination is requested.

2. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

E. Amendment

1.a. An amendment may be used to change or add the following:

- i. name(s) of the debtor or the secured party;
- ii. the address of either the debtor or the secured party; or
- iii. to add collateral.

b. If an amendment adds collateral, a description of the collateral must be included; this filing is effective as to the added collateral only from the filing date of the amendment.

2. The filing of an amendment does not extend the period of effectiveness of a financing statement.

3. When a debtor's name has been deleted by the filing of an amendment changing the name, the original debtor name will continue to be reflected in the secretary of state's master index and therefore will be reflected on a certificate requesting that exact name.

4. An amendment signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record, and include the required fee for an assignment.

F. Master Assignment

1. A secured party of record may assign all of its rights under 20 or more financing statements filed in any one parish by filing Form UCC-3 master assignment in the parish in which the initial financing statements were filed.

2. The secured party shall specifically indicate the type of statement being filed on Form UCC-3 and type the words "master assignment" in the space provided therein.

3. As an exception to §121.A.2 and 4 herein, debtor information (name and address) and the date of filing relating to each initial financing statement being assigned need not be provided. However, the following information shall be set forth on Form UCC-3 master assignment:

- a. the name and address of the secured party of record;
- b. the name and address of the assignee;
- c. the initial file number of each financing statement being assigned. This information shall be provided on 8 1/2 by 11 inch sheets attached to Form UCC-3, headed by the name of the secured party of record; and
- d. the parish of initial filing.

G. Master Amendment

1. A secured party of record may amend its name and mailing address shown in 20 or more financing statements filed in any one parish by filing Form UCC-3 master amendment in the parish in which the initial financing statements were filed.

2. The secured party shall specifically indicate the type of statement being filed on Form UCC-3 and type the words "master amendment" in the space provided therein.

3. As an exception to §123.A.2 and 4 herein, debtor information (name and address) and the date of filing relating to each initial financing statement being amended need not be provided. However, the following information shall be set forth on Form UCC-3 master amendment:

- a. the name and address of the secured party of record;
- b. the new name and address of the secured party, which should be set forth on Form UCC-3;
- c. the initial file number of each financing statement in which the secured party's name and address is being amended. This information shall be provided on 8 1/2 by 11 inch sheets attached to Form UCC-3, headed by the name of the secured party of record; and
- d. the parish of initial filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2791 (October 2013).

§125. Request for Information or Copies

A. Background

1. The secretary of state's master index of information is composed of UCC filing data submitted by the 64 filing officers. The database is a composite of all presently effective financing statements, as well as any statements of assignment, continuation, release, or amendment, and initial

financing statements which have been terminated within the one-year period prior to a request for a certificate. All UCC filings are indexed according to the name of each particular debtor set forth on the financing statement.

2. The secretary of state's master index does not contain information on statutory liens or tax liens, except for statements filed pursuant to R.S. 23:1546 relative to unemployment compensation contributions, and IRS tax liens affecting movable property filed on or after September 1, 1990. In addition, the master index does not contain any information on notices of assignments of accounts receivable, or chattel mortgage or collateral chattel mortgage filing information.

3. Initial UCC documents filed with the parish filing officers remain at the local level in the parish of filing. Any filings which change the status of an initial UCC filing must be made with the filing officer with whom the financing statement was originally filed, and the original will remain on file in that parish. The secretary of state does not receive copies of UCC filings. Therefore, requests for copies of documents must be made in the parish in which the filing was originally made. If filings on a particular debtor have been made in more than one parish, each parish filing officer must be contacted for copies of such filings. If the file numbers cannot be provided by the requesting party, a certificate must be requested from the filing officer.

B. Prescribed forms to be used in requesting information or copies. A standard form for Louisiana prescribed by the secretary of state called information request form (Form UCC-11) shall be used in requesting:

1. copies of filings; and/or

2. the filing officer's certificate showing whether there is listed any presently effective financing statements or other statements naming a particular debtor or secured party. It is recommended that the Form UCC-11 be utilized to facilitate accurate responses, but there is no penalty for failure to use the form.

C. Information Request (Certificate)

1. A separate written request for information (certificate) must be submitted for each debtor name. If information is requested on more than one name, a separate Form UCC-11 must be submitted for each name. A business name, trade name, or D/B/A is considered a separate name. A husband and wife are considered separate debtors.

2. The requesting party must be sure to submit a request for a certificate with the correct spelling of the debtor's name. A deviation or error in the debtor's name may result in a failure to disclose all of the desired information.

3. The UCC certificate issued by the filing officer will contain the following information as reflected in the secretary of state's master index:

a. statements filed under the exact debtor name requested;

b. statements filed under the exact debtor name requested in which no Social Security number or employer identification number was provided in the initial financing statement:

i. note that if the requesting party is unable to provide the debtor's taxpayer identification number, the certificate will reflect all filings under the exact name requested without regard to the various Social Security number or employer identification number designated therein;

ii. if the requesting party desires a certificate which reflects all filings under an exact debtor name without regard to the Social Security number or employer identification number on the financing statement (e.g., whether the number is different, the same, or not disclosed on the financing statement), the requesting party should omit the Social Security number or employer identification number when submitting his request to the filing officer. Note that a certificate run on a common debtor name (e.g., John Smith) without regard to Social Security number or employer identification number may disclose an indefinite number of listings and may result in a substantial fee;

c. statements filed under the exact Social Security number or employer identification number provided, without regard to the spelling of the debtor's name.

4. Upon request, a supplement to the certificate will also be provided by the filing officer which will set forth filings listed under debtor names which may be considered similar to the name requested, so as to assist the requesting party in locating all desired filings. The supplement is not certified by the filing officer and may not represent a complete listing of debtor names which may be considered similar to the name under which the search was made.

D. Information Request (Certificate) on Secured Parties. Form UCC-11 requests for information on secured party names may be submitted to any of the 64 filing officers. The request shall specifically indicate that it pertains to a secured party and contain the Social Security number or employer identification number, as applicable, of the secured party who is the subject of the request. The UCC certificate issued by the filing officer will disclose all financing statements or other statements filed in the UCC master index on or after January 1, 1990, in which the secured party's Social Security number or employer identification number was provided on the initial statement or subsequent filing relating thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519, R.S. 10:9-526, R.S. 36:742, and R.S. 52:52.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2792 (October 2013).

§127. Schedule of Fees for Filing and Information Requests

A. The fees schedule for filing and information requests submitted on Forms UCC-1, UCC-3, and UCC-11 are provided in R.S. 10:9-525.

B. An additional fee of \$2 per filing will be charged on bulk UCC filings submitted electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-525, R.S. 10:9-526, R.S. 36:742, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013), amended LR 40:1387 (July 2014).

Chapter 2. Internal Revenue Service Tax Liens

§201. Place of Filing

A. The proper place to file notices of federal tax liens affecting movable property (corporeal and incorporeal) is with the clerk of court of any parish (the "filing officer").

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, R.S. 36:742, and R.S. 52:52.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013), amended LR 40:1387 (July 2014).

§203. Forms to be used in Filing

A. The document entitled "Notice of Federal Tax Lien under Internal Revenues Laws" utilized nationwide by the IRS shall be accepted by all filing officers in lieu of Form UCC-1. Nonstandard form penalties shall not be applicable to filings presented by the IRS pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-526 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

§205. Filing Fees

A. The uniform filing fee to be collected by each filing officer includes prepayment of the termination fee, as well as, the indexing of all debtor names appearing on the lien submitted by the IRS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-525, R.S. 10:9-526, R.S. 36:742, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013).

Chapter 3. Central Registry

§301. Definitions

Buyer in the Ordinary Course of Business—a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations and is in the business of selling farm products.

Central Registry—the master index maintained by the secretary of state reflecting information contained in all effective financing statements, and statements evidencing assignments, amendments, continuations, and terminations thereof.

Commission Merchant—any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

Creditor—any person who holds a security interest in a farm product.

Crop Year—

1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;
2. for animals, the calendar year in which they are born or acquired; or
3. for poultry or eggs, the calendar year in which they are sold or to be sold.

Cumulative Addendum—a document listing all information transmitted by the filing officers to the central registry as of the date of issuance that was not included on the most recent master list.

Debtor—any person who owns or has an ownership interest in farm products which are subject to a security interest of creditors.

Effective Financing Statement—a written instrument which is an abstract of a security device and which complies with the provisions of R.S. 3:3654(E). An effective financing statement may also contain additional information sufficient to constitute a financing statement or other statement under chapter 9 of title 10 of the *Louisiana Revised Statutes*.

EFS—an effective financing statement.

Encumbrance Certificate—a written document which lists all effective financing statements affecting a person which have been filed with the filing officer and containing the information required by this Chapter to be transmitted to the secretary of state for inclusion in the central registry on the date and at the time the certificate is issued and which complies with the provisions of R.S. 3:3654(F).

Farm Product—any type of crop whether growing or to be grown, and whether harvested or unharvested, or any species of livestock, or any type of agricultural commodity or product raised or cultivated of every type and description, including but not limited to cattle, hogs, sheep, horses, bees, rabbits, or poultry, and oysters, crabs, prawns, shrimp, alligators, turtles, and fish raised, produced, cultivated, harvested, or gathered on any beds of bodies of water, whether owned, leased, or licensed by the debtor, grains, beans, vegetables, grasses, legumes, melons, tobacco, cotton, flowers, shrubberies, plants and fruits, nuts and berries, and other similar products whether of trees or other sources, or if they are a product of such crop or livestock in its unmanufactured state, such as seed, ginned cotton, wool-clip, honey, syrup, meat, milk, eggs, and cut, harvested, or standing timber, or supplies used or produced in farming operations, and if they are in the possession, including civil possession as defined in Civil Code articles 3421 and 3431, of a debtor engaged in planting, producing, raising, cultivating, harvesting, gathering, fattening, grazing, or other farming operations.

Filing—the receipt of an EFS, amendment, assignment, continuation, release, or termination of an EFS by the filing officer stamped with the date and time received and assigned a file number.

Filing Officer—the clerk of court of any parish.

Knows or Knowledge—actual knowledge.

Master List—a document listing all effective financing statements, amendments, assignments, and continuations of effective financing statements which:

1. is organized according to farm products; and
2. is arranged within each such product:

a. in alphabetical order according to the last name of the individual debtors, or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors;

b. in numerical order according to the Social Security number of the individual debtors, or, in the case of debtors doing business other than as individuals, the Social Security number or employer identification number of such debtors;

c. geographically by parish; and

d. by crop year.

Office—the Office of the Secretary of State of the state of Louisiana.

Person—any individual, partnership, corporation, trust or any other business entity.

Portion—portion of the master list distributed to registrants regularly that cover the farm products in which such registrant has indicated an interest.

Registrant—any person, who has made application with the Office of the Secretary of State, has paid the required registration fee, and received written notice that his application has been accepted.

Regular Business Day—any day that the Office of the Secretary of State and filing officers are open for routine business.

Secretary—the *Secretary* of State of the state of Louisiana, or his duly authorized agent.

Secured Party—a creditor with a security interest in farm products.

Security Device—a written instrument that establishes a creditor's security interest in farm products or any pledge or privilege described in R.S. 9:4521, whether or not evidenced by a written instrument.

Security Interest—an interest in or encumbrance upon farm products that secures payment or performance of an obligation.

Selling Agent—a person, other than a commission merchant, who is engaged in the business of negotiating the

sale and purchase of any farm product on behalf of a person engaged in farm operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3652, R.S. 3:3654, R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, Civil Code Articles 3421 and 3431, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2794 (October 2013), amended LR 40:1387 (July 2014).

§303. Administration

A. The central registry will be administered by the secretary of state and operated by the Uniform Commercial Code Division of the office. Any notices, petitions, documents, or other correspondence shall be addressed to the:

Louisiana Secretary of State
Uniform Commercial Code Division
Central Registry
P.O. Box 94125, Baton Rouge, LA 70804-9125

B. Filings and encumbrance certificates will be administered by the filing officers as discussed in §§307, 309, and 317 herein. Addresses and phone numbers for the 64 filing officers are set forth in §325 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3654, R.S. 3:3655, R.S. 3:3656, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013).

§305. Formal Requisites of an Effective Financing Statement (EFS)

A. The EFS must:

1. be an original or reproduced copy thereof; and
2. contain:
 - a. the name and address of the secured party;
 - b. the name and address of each person subjecting the farm product to the security interest:
 - i. in the case of a natural person, the surname (last name or family name) must appear first;
 - ii. in the case of a corporation or other entity not a natural person, the name must appear with the first word or character not an article or punctuation mark;
 - c. the Social Security number or, if other than a natural person, the Social Security number or employer identification number of each such person submitting the farm product(s) to the security interest;
 - d. the crop year unless every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;
 - e. each farm product name and corresponding product code as designated by the secretary of state (see §319 herein);

f. the dollar amount of the security interest;

g. a reasonable description of the property, including each parish code where the farm product is produced or to be produced; and

h. any further details of the farm product subject to the security interest if needed to distinguish it from other such products owned by the same person but not subject to the particular security interest.

B. The top portion of the approved EFS document (Form UCC-1F) also contains space to set forth information required under Louisiana law (R.S. 10:9-101 et seq.) for filing financing statements pursuant to article 9 of the Uniform Commercial Code. Filing parties are encouraged to utilize the EFS for perfection requirements under the UCC, in order to eliminate duplicate filing requirements and to promote filing efficiency.

C. Forms UCC-1F or UCC-3F amendments must provide all information needed for preparation of the master list of farm products, as set forth in §305.A.2 above. In the event the farm product description provided by the secured party contains a discrepancy between the product name and product code, that particular item will be excluded from the master list. Notice of such exclusion shall be provided in the written confirmation sent by the secretary of state in accordance with §307.I herein.

D. The secretary of state shall not be responsible for any effective financing statement (or particular farm product information contained therein) not revealed in the master list or cumulative addendum thereto, or oral or written confirmation of information furnished by the filing officers pursuant to §315 herein, which was not filed in accordance with these regulations and thereby not appearing in the central registry of farm product information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013).

§307. Filing Procedures

A. The proper place to file in order to perfect a security interest in farm products is with the clerk of court of any parish (the "filing officer").

B. Security devices affecting farm products must be accompanied by a properly completed effective financing statement (EFS) or the filing information will not be reflected in the master list or portions thereof, cumulative addenda, or encumbrance certificates issued in accordance with §315 and §317 herein.

C. All effective financing statements must be submitted on Form UCC-1F as prescribed by the secretary.

D. All amendments, releases, assignments, continuations, and terminations of EFS must be submitted on Form UCC-3F, as prescribed by the secretary.

E. If the space provided on Forms UCC-1F or UCC-3F is inadequate, the additional data may be provided on an additional sheet of paper and attached to Forms UCC-1F or UCC-3F at no additional charge to the filing party. It is also permissible to submit the additional data on 8 1/2 by 11 inch sheets of paper which are each identified at the top with the first debtor's name.

F. All effective financing statements, amendments, releases, assignments, or continuations of effective financing statements must be accompanied by the required fee unless approval for billing has been granted by the filing officer.

G. If the person filing an EFS, amendment, release, continuation, or termination furnishes the filing officer a copy thereof, the filing officer shall note upon the copy the file number and date and hour thereof, and send the copy by mail to such person. If the copy is to be returned to another party or another address, indicate the same in the appropriate box on Forms UCC-1F or UCC-3F.

H. The filing officer shall transmit the information contained in the effective financing statement or other statement, together with the date and time of filing and file number thereof, no later than 4:30 p.m. on the second business day following filing, to the secretary of state for inclusion in the central registry.

I. The secretary of state shall, within two business days following receipt of such information from the filing officer, send written notice to the secured party (and such other interested person designated on the form) confirming such receipt and reflecting all information received and included in the central registry.

J. Any questions regarding the filing information reflected in the written notice of acknowledgment from the secretary of state should first be directed to the filing officer who accepted and recorded the filing.

1. Data entry errors will be corrected by the filing officers at no charge to the secured party. The filing officer shall make each correction and transmit the same to the secretary of state for inclusion in the central registry, together with the date and time such correction was made, no later than 4:30 p.m. on the second business day after receiving written request for the correction. Upon such correction, the secretary of state will send written notice to the secured party confirming receipt of the same.

2. Errors committed by the secured party in preparing the financing statement must be corrected by filing an amendment or by filing a new effective financing statement.

K. Any questions regarding receipt of the written notice of acknowledgment from the secretary of state should be directed to the secretary of state's UCC Division at (225) 925-4701.

L. The secretary is not authorized to accept security devices affecting farm products, or the accompanying EFS. Any filings directed erroneously to the secretary shall be returned to the secured party with directions as to the filing procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013), amended LR 40:1388 (July 2014).

§309. Procedures for Filing Amendments, Assignments, Releases, Continuations and Terminations of EFS

A. Any statement of continuation, amendment, release, continuation, termination, or other similar statement pertaining to an effective financing statement shall identify the initial file number and shall be filed with the same filing officer with whom the effective financing statement was originally filed.

B. Any amendment resulting in a material change to a security device shall be filed in writing and accompanied by related EFS (Form UCC-3F) within three months of the amendment.

1. A material change is whatever change would render the master list entry no longer informative as to what is subject to the security interest in question.

2. The requirement to amend arises when the information already made available no longer serves the purpose and other information is necessary to do so.

3. The amendment must be signed by both the secured party and the person subjecting the farm product(s) to the security interest.

C. All assignments of security devices which are accompanied by related EFS shall become effective at time and date of filing with the filing officer.

D. All continuations of security devices which are accompanied by related EFS must be filed with the filing officer within six months before the expiration of the initial five-year period and must be signed by both the secured party and the person subjecting the farm product to the security interest.

E. Each person who filed an effective financing statement with the filing officer shall request cancellation thereof within 10 calendar days after the date the person who has granted or who is affected by the security device requests in writing, cancellation of the security device, provided the effective financing statement and security interest thereunder are then no longer in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§311. Registrations

A. Any person may register with the central registry to receive the master list or a portion thereof. Applications for registration shall consist of two types:

1. initial registrations:

a. an initial registration application may be filed at any time of the year. Within five working days of receipt of a properly completed registration form and required fee, the secretary shall send the applicant written notice of acceptance and the most recent master list and cumulative addendum or portion thereof for which the applicant has indicated an interest. Applicants are not considered registered until they receive written notice of acceptance from the secretary; and

2. renewal registrations:

a. a renewal registration application shall be filed by December 15 of each year. Failure to make application for renewal by December 15 shall result in termination of service by the central registry and loss of registrant status.

B. Registration application forms, as prescribed by the secretary, will be provided by the central registry upon request. The form must be completed in its entirety and submitted with the required fee.

C. The central registry will notify each registrant that a renewal application is due and provide the renewal application to the registrant by October 10 of each year.

D. Failure to register with the secretary subjects buyers, commission merchants, sellers, and others to a risk of additional liability to secured parties. Nonregistrants are encouraged to submit written requests for information to filing officers pursuant to §315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§313. Master List

A. The secretary shall compile all information transmitted by the filing officers to the central registry into a master list. The master list or portions thereof will be distributed to each registrant based on the farm products and parishes for which the registrant has indicated an interest.

B. The master list will be compiled on the first regular business day of each quarter, and distributed within five regular business days. Each master list shall contain all properly submitted filing information transmitted prior to close of business on the last regular business day of the previous quarter. Cumulative addenda shall be compiled on the first and fifteenth day of each month and distributed within three regular business days. The central registry will not distribute cumulative addenda on the first of each month in which there is a distribution of a master list.

C. The office shall allow interested parties to obtain direct access to the computerized information in the central registry. Method of access, terms, costs, and conditions will be stipulated by contract between the office and the interested party. The cost of direct access to the interested party will be limited to the actual cost to the central registry.

D. Registrants shall be deemed to have received any master list or cumulative addendum distributed by the central registry on the fifth day following the date of mailing to the intended recipient or the date of actual delivery, whichever occurs first. The central registry shall maintain accurate records so that such dates can be readily determined.

E. Registrants notifying the central registry of non-receipt will be provided a new list within five regular business days of receipt of the notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2796 (October 2013).

§315. Requests for Information from Non-registrants

A. Upon written request submitted to the filing officers, the filing officers shall furnish oral confirmation to any person of the existence of an EFS filed with a filing officer and transmitted to the central registry. The request shall contain:

1. the name, address, and telephone number (and fax number, if available) of the person making the request; and

2. the name, address, parish of residence, and Social Security number or employer identification number of the person who is the subject of the request.

B. Oral confirmation will be provided no later than the regular business day following the day on which the request is received, at or before the time of day when it was received by the filing officer.

C. If the requesting party cannot be reached at the stated telephone number on the next regular business day, the filing officer shall attempt to reach the party on the following regular business day. If at the end of that time the requesting party has not been reached, the filing officer shall be deemed to have fulfilled his obligation to provide oral confirmation.

D. All written requests and responses will be recorded and will be kept on file by each filing officer receiving such requests.

E. All oral confirmations will be followed by written confirmation in the form of an encumbrance certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§317. Encumbrance Certificates

A. Encumbrance certificates may be requested from any filing officer. The request must be in writing. Each request shall be subject to the following provisions.

1. The request shall contain the name and address of the person making the request.

2. The request shall contain the complete name, address, and parish of residence of the person who is the subject to the request.

3. The request may contain the nickname, initials, or other appellation by which the person who is the subject of the request is sometimes or commonly known.

4. The request shall contain the Social Security number or employer identification number of the person who is the subject of the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3654, R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§319. Farm Products List and Codes

A. Louisiana shall be deemed to be a state that has established a central registry as to all farm products produced in Louisiana. Notwithstanding the foregoing, only those farm products which have been assigned a collateral product code and approved by the secretary as falling within the definition of a *farm product* pursuant to the Food Security Act of 1985 and regulations issued thereunder shall be deemed acceptable for inclusion in the master list or portions thereof.

B. Persons desiring the most current listing of all approved farm products which have been assigned a corresponding collateral code should contact the secretary at (225) 925-4701.

C. In the event a secured party has taken a security interest in a farm product not specifically assigned a product code by the secretary, the following steps must be taken before the filing may be properly submitted to the filing officer for indexing and inclusion in the master list.

1. Contact the UCC Division/Central Registry at (225) 925-4701 to submit a request for a new farm product name and corresponding collateral product code to be assigned.

2. Generic categories of farm products, such as fish or greens are impermissible under the Food Security Act of

1985. Requests for approval of categories deemed generic will be disallowed by the secretary and shall not be accepted for inclusion in the master list.

3. Farm products deemed acceptable by the secretary shall be added to the list of published farm products and assigned a corresponding collateral code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2797 (October 2013).

§321. Schedules of Fees for Filing and Encumbrance Certificates

A. In accordance with R.S. 3:3657, the fees shall be assessed by the filing officers for filing, recording and canceling effective financing statements for Forms UCC-1F and UCC-3F.

B. Registration (initial and renewal) for the master list of farm product encumbrances shall be assessed each calendar year at a flat rate of \$250. All transmissions shall be done electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 3:3657, R.S. 10:9-526, R.S. 36:742, R.S. 49:222(A), and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2798 (October 2013).

§323. Filing Officers

A. The names and addresses of the 64 filing officers for the state of Louisiana can be obtained from the Department of State, Commercial Division, Office of Uniform Commercial Code/Central Registry at (225) 925-4701.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2798 (October 2013).