

NOTICE OF INTENT

Office of the Governor Office of Financial Institutions

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

On October 20, 2022, the Office of Financial Institutions (“OFI”) adopted an emergency rule, pursuant to R.S. 49:962A(1)(a). OFI’s Declaration of Emergency prevented imminent peril to the public health, safety, or welfare in implementation of licensure and registration to engage in virtual currency business activities in the State of Louisiana, as provided by the Virtual Currency Businesses Act (“VCBA”), R.S. 6:1381, et seq., enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, without interruption, limitation or restriction of exchange and transfer of virtual currency during the initial application and renewal application processes. OFI is concurrently proceeding with adoption of this identical rule, pursuant to R.S. 49:961A and 962A(5).

This proposed rule amends and reenacts LAC 10:I.1901, 1905, 1913, 1915, 1917, 1923, and 1927; and repeals LAC 10:I.1903, 1907, 1909, 1919, 1921 and 1925, in accordance with provisions of the Administrative Procedure Act, R.S. 49:950, et seq. This proposed rule is intended to provide clear and concise guidance for implementation and enforcement of provisions of the VCBA, as required by R.S. 6:1394. The proposed amendment of LAC 10:I.1901 addresses industry concerns expressed to OFI. LAC 10:I.1903, 1917 and 1919 are consolidated into the surviving §1917; and LAC 10:I.1907, 1909, 1921 and 1925 are repealed in the interest of streamlining the initial application and renewal processes. LAC 10:I.1931 is amended in consistency with the amendment of §1901.

In considering industry concerns, OFI determined that it would be in the best interest of the industry and persons in Louisiana seeking to engage in the exchange and transfer of virtual currency to revisit the Rule. After further review, OFI determined that it is in the best interest of both the industry and persons wishing to exchange and transfer virtual currency to repeal LAC 10:1.1907, 1909, 1921 and 1925 in the interest of streamlining the initial application and renewal process.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§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:

* * *

Control—means and also includes, but is not limited to the following:

- a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
- b. ~~the power to~~ directly or indirectly vote, ~~directly or indirectly~~, at least 25 percent of outstanding voting shares or voting interests of any:
 - i. ~~applicant, licensee, or registrant; or person in control of a licensee, including persons acting in concert in such instances;~~
 - ii. applicant’s, licensee’s or registrant’s responsible individual or responsible individuals, including persons acting in concert;
- c. ~~the power to~~ directly or indirectly elect, appoint or remove any applicant’s, licensee’s or registrant’s responsible individual or a majority of key responsible individuals, of a licensee including persons acting in concert;
- d. ~~the power to exercise directly or indirectly a controlling influence over management or policies of participate in a licensee’s or registrant’s day-to-day decisions or operations, including persons acting in concert person in control of a licensee; and~~
- e. any other set of facts ~~and or~~ circumstances, as determined by the commissioner in his discretion, that may constitute control.

* * *

Unfair or Deceptive Act or Practice—~~failure to provide any disclosure or disclosures required by Subsection 1931(C) of this rule described in this rule is shall be~~ an unfair or deceptive act or practice ~~for purposes of taking enforcement action against 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—~~means and includes, but is not limited to, a practice or conduct by a person licensed or registered to engage in virtual currency business activity or activities in Louisiana which creates the likelihood of material loss, insolvency, dissipation of the licensee’s or registrant’s assets, materially prejudices the interests of its customers, and any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute an 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), LR 48:

§1903. **Implementation Repealed**

~~A. In order to carry out the purposes of the VCBA, the commissioner may:~~

~~1. Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing records or related information obtained under the VCBA;~~

~~2. Use, hire, contract, or employ analytical systems, methods, or software in examinations or investigations pursuant to the VCBA;~~

~~3. Consider, accept, and rely upon licensing, examination, or investigative reports prepared by other government agencies or officials, within or outside the State of Louisiana;~~

~~4. Consider, accept, and rely upon audit reports prepared by an independent certified public accountant or other qualified third-party auditor for any person subject to the VCBA and incorporate all, or part of such audit reports, in the department's report of examination or investigation.~~

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. 6:1391, 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), LR 48:

§1905. Application for License or Notice of Registration—Transitional Period

~~A. A person already engaged in virtual currency business activity or activities in Louisiana must either apply for a license in accordance with Section 1385 of the VCBA or file a notice of registration in accordance with Section 1389 of the VCBA and submit a completed application within 90 days of the effective date of this rule. In doing so, such applicant shall be deemed to be in compliance with the licensure requirements of Section 1385 of the VCBA or the registration requirements of Section 1389 of the VCBA until the applicant has been notified by the commissioner that its application has been denied, in which case it shall immediately cease operating in Louisiana and doing business with residents of Louisiana. Any person engaged in virtual currency business activity that fails to submit a completed application for a license or notice of registration within 90 days of the effective date of this regulation shall be deemed to be conducting unlicensed or unregistered virtual currency business activity or activities and shall be subject to any and all civil and criminal penalties provided by applicable laws and regulations, including but not limited to, the provisions of the VCBA. The department shall begin accepting initial applications for licensure and notices of registration through the NMLS on January 1, 2023.~~

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

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

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

~~1. Receives all information required by applicable provisions of the VCBA; and~~

~~2. Completes its investigation pursuant to La. R.S. 6:1385D.~~

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), LR 48:

§1907. Approval of Control Person Repealed

~~A. In applying for a license issued in accordance with the VCBA to engage in virtual currency business in Louisiana, the applicant or licensee shall provide the following information to the commissioner through the NMLS:~~

~~1. The legal name, any former or fictitious name, and the residential and business United States Postal Service address of the applicant's or licensee's proposed executive officers, responsible individuals, and the proposed person or persons who will be in control of the applicant or licensee;~~

~~2. A list of any criminal conviction, deferred prosecution agreement, or pending criminal proceeding in any jurisdiction against the applicant's or licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the applicant or licensee;~~

~~3. A list of any bankruptcy or receivership proceeding in any jurisdiction for the ten years before the application is submitted in which the applicant's or licensee's proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the applicant or licensee was a debtor;~~

~~4. A list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant or licensee, or an executive officer or a responsible individual of the applicant or licensee, or proposed person or persons who will be in control, has been a party for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's or licensee's audited financial statements, reports to equity owners, and similar statements or reports;~~

5.—If a person has control of the applicant or licensee and the person’s equity interests are publicly traded in the United States, a copy of the audited financial statement of the person for the most recent fiscal year or most recent report of the person filed pursuant to 15 U.S.C. 78;

6.—If a person has control of the applicant or licensee and the person’s equity interests are publicly traded outside the United States, a copy of the audited financial statement of the person for the most recent fiscal year of the person or a copy of the most recent documentation similar to that required in Subsection A (5) of this Section filed with the foreign regulator in the domicile of the person;

7.—A set of fingerprints for each executive officer and responsible individual of the applicant or licensee, or proposed person or persons who will be in control, for submission to the federal bureau of investigation and the commissioner for purposes of a national and state criminal background check;

8.—A copy of the certificate, or a detailed summary acceptable to the department, of coverage for each liability, casualty, business interruption, or cyber security insurance policy maintained by the applicant or licensee for itself, an executive officer, a responsible individual, or the applicant’s or licensee’s users;

9.—If available, for each executive officer and responsible individual of the applicant or licensee, for the five years before any application is submitted, the employment history of the individual; and

10. If available, for each executive officer and responsible individual of the applicant or licensee or proposed person or persons who will be in control, for the five years before any application is submitted, a history of any investigation of the individual or person, or legal proceeding to which the individual or person was a party.

B. For purposes of this Section, “control”, “executive officer”, and “responsible individual” shall be defined by R.S. 6:1382 and Section 1901 of this Rule.

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, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), LR 48:

§1909. Approval of Change of Control Repealed

A. Not less than sixty calendar days before any proposed change of control of an existing license issued in accordance with the VCBA, the licensee shall provide the following information to the commissioner through the NMLS:

1.—Written notice of any proposed change or changes of control of the licensee;

2.—The legal name, any former or fictitious name, and the residential and business United States Postal Service address of any proposed executive officers, responsible individuals, and the proposed person or persons who will be in control of the licensee;

3.—A list of any criminal conviction, deferred prosecution agreement, or pending criminal proceeding in any jurisdiction against the licensee’s proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the licensee;

4.—A list of any bankruptcy or receivership proceeding in any jurisdiction for the ten years before the application is submitted in which the licensee’s proposed executive officers, responsible individuals, and proposed person or persons who will be in control of the licensee was a debtor;

5.—A list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant or licensee, or an executive officer or a responsible individual of the licensee, has been a party for the five years before the application is submitted, determined to be material in accordance with generally accepted accounting principles and to the extent the licensee would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant’s or licensee’s audited financial statements, reports to equity owners, and similar statements or reports;

6.—If a person has control of the licensee and the person’s equity interests are publicly traded in the United States, a copy of the audited financial statement of the person for the most recent fiscal year or most recent report of the person filed pursuant to 15 U.S.C. 78;

7.—If a person has control of the licensee and the person’s equity interests are publicly traded outside the United States, a copy of the audited financial statement of the person for the most recent fiscal year of the person or a copy of the most recent documentation similar to that required in Subsection A (6) of this Section filed with the foreign regulator in the domicile of the person;

8.—A set of fingerprints for each executive officer and responsible individual of the licensee, or proposed person or persons who will be in control, for submission to the federal bureau of investigation and the commissioner for purposes of a national and state criminal background check;

9.—A copy of the certificate, or a detailed summary acceptable to the department, of coverage for each liability, casualty, business interruption, or cyber security insurance policy maintained by the licensee for itself, an executive officer, a responsible individual, or the licensee’s users;

10. If available, for each executive officer and responsible individual of the applicant or licensee, for the five years before any application is submitted, the employment history of the individual; and

11. If available, for each executive officer and responsible individual of the applicant or licensee or proposed person or persons who will be in control, for the five years before any application is submitted, a history of any investigation of the individual or person, or legal proceeding to which the individual or person was a party.

B. Not less than thirty calendar days prior to the date on which any proposed change or changes of control persons will take place, the licensee shall provide written notice of the proposed change or changes to the commissioner.

~~C. For purposes of this Section, “control”, “executive officer”, and “responsible individual” shall be defined by R.S. 6:1382 and Section 1901 of this Rule.~~

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, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), LR 48:

§1911. Reserved.

§1913. Renewal of License or Notice of Registration

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

~~C. If a renewal application is submitted timely 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 until the renewal application is either approved or denied by the commissioner. Nothing in this Paragraph shall preclude the commissioner from implementing any administrative or enforcement action or actions authorized by the VCBA or this rule for violations of the VCBA, this rule, or for any material misrepresentation that may have occurred prior to the renewal date of any license or notice of registration.~~

~~D.(1). If the commissioner has not received the renewal fee and late fee before the first day of March after expiration of any license or notice of registration required by this Section, the license or notice of registration to engage in virtual currency business in Louisiana shall lapse without hearing or notification, and the license or notice of registration shall not be reinstated. However, the person whose license or notice of registration has lapsed may apply for a new license or notice of registration, in accordance with applicable provisions of the VCBA, including but not limited to R.S. 6:1385, et seq., and 6:1389, et seq. 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 48:2561 (October 2022), LR 48:

§1917. Examination

A. The commissioner may:

~~1. conduct on-site examination or investigation, participate in a joint or concurrent examination or investigation with another state or federal agency or agencies, or examine or investigate of the books, records, and accounts used in the business of every a licensee or registrant.~~

~~2. accept and rely upon consider results of an inspection conducted by a comparable official in any examination report or investigative report of any other state or federal agency or agencies in which the books, records, and accounts used in a licensee’s or registrant’s virtual currency business are located.~~

~~B. The commissioner is not precluded from conducting an examination or investigation under applicable provisions of the VCBA, including but not limited to R.S. 6:1391, by:~~

~~1. participating in a joint examination or investigation;~~

~~2. participating in a concurrent examination or investigation; or~~

~~3. accepting results of an examination or investigation report conducted by any state or federal agency or agencies.~~

~~3. enter into agreements or relationships with other government officials or state and federal regulatory agencies.~~

~~4. consider licensing or examination reports conducted and 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 48:2561 (October 2022), LR 48:

§1919. Network Examination Repealed

~~A. To efficiently and effectively enforce the VCBA and to minimize regulatory burden, the commissioner may participate in multistate examination and investigation processes for licensees that hold licenses in this state and other states. As a participant in any multistate examinations or investigations, the commissioner may, to the extent permitted by law:~~

~~1. cooperate, coordinate, and share information with other state and federal regulators;~~

~~2. enter into written cooperation, coordination, or information-sharing contracts or agreements or relationships with organizations made up of other government officials or state and/or federal governmental agencies; and regulatory agencies.~~

~~3. cooperate, coordinate, and share information with organizations made up of other state and/or federal governmental agencies, provided that the organizations agree in writing to maintain confidentiality and security of shared information.~~

~~B. Nothing in this Section constitutes a waiver of the commissioner's authority to:~~

~~1. conduct any examination or investigation authorized by law;~~

~~2. otherwise take any independent action authorized by:~~

~~a. law;~~

~~b. any rule promulgated in accordance with the Louisiana Administrative Procedure Act (LAPA); or~~

~~c. any order issued under the VCBA to enforce compliance with applicable state or federal law.~~

~~C. The following shall not constitute a waiver of any examination fee provided by the VCBA and/or any rule or rules promulgated in accordance with LAPA:~~

~~1. The commissioner's participation in any joint examination or investigation; or~~

~~2. The commissioner's acceptance of an examination or investigative reports conducted and prepared by other state or federal agency or 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 48:2561 (October 2022), LR 48:

§1921. Renewal/Quarterly Reports Repealed

~~A. In order to meet the reporting requirements of section 1388 of the VCBA, and provide the department with sufficient information as it relates to enforcement pursuant to section 1393 of the VCBA, each licensee shall submit to the NMLS reports of condition which shall be in such form and frequency and contain such information as the NMLS may require.~~

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; and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), LR 48:

§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, as determined by policy by the commissioner, 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 48:2561 (October 2022), LR 48:

§1925. Policies and Procedures Repealed

~~A. Licensees engaging in virtual currency business activity in Louisiana will be expected to adopt and implement appropriate policies and procedures as part of the required books, records, and accounts, as determined by policy by the commissioner, pursuant to R.S. 6:1391 and R.S. 6:1393.~~

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 48:2561 (October 2022), LR 48:

§1931. Miscellaneous Provisions

A. - B. ...

C. Required Disclosures—Licensees engaging in virtual currency business activity in Louisiana shall are to provide to a person who uses the licensee's products or services proper disclosures, as determined by the commissioner by policy, pursuant to R.S. 6:1393 to persons wishing to transfer or exchange virtual currency through the licensee or registrant. The commissioner shall also determine, by policy, the time and form required for such disclosures. Disclosures required by this section must are to be made separately from any other information provided by the licensee to a such persons in a clear and conspicuous manner. A licensee may propose, for the commissioner's approval, alternate disclosures as deemed more appropriate for its virtual currency business activity with, or on behalf of, persons in Louisiana.

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 48:2561 (October 2022), 48:

Family Impact Statement

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

Small Business Analysis

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

Poverty Impact Statement

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

Provider Impact Statement

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

Public Comments

Interested persons may offer public comment through 5 p.m. CST on December 10, 2022, to Susan Rouprich, General Counsel, Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Stanley M. Dameron
Commissioner