



STATE OF LOUISIANA
OFFICE OF FINANCIAL
INSTITUTIONS
BATON ROUGE, LOUISIANA



September 7, 2022

VIA ELECTRONIC TRANSMISSION

Honorable Cameron Henry, Vice Chairman By email: apa.s-com@legis.la.gov
Senate Commerce Committee
Louisiana State Capitol, Sub-basement
Post Office Box 94183
Baton Rouge, LA 70804-9183

Honorable Paula Davis, Chairman By email: apa.h-com@legis.la.gov
House Commerce Committee
Louisiana State Capitol, Ninth Floor
P. O Box 44486
Baton Rouge, LA 70804

Honorable Page Cortez By email: apa.senatepresident@legis.la.gov
President of the Senate
Louisiana State Senate
P. O. Box 94183
Baton Rouge, LA 70804

Honorable Clay Schexnayder By email: apa.housespeaker@legis.la.gov
Speaker of the House
Louisiana House of Representatives
P. O. Box 94062
Baton Rouge, LA 70804-9062

RE: Report to Oversight Committees-Proposed Virtual Currency Rule

Dear Senator Henry, Representative Davis, President Cortez, and Speaker Shexnayder:

In accordance with the provisions of the Louisiana Administrative Procedure Act, LSA-R.S. 49:950 et seq. ("LAPA"), the Office of Financial Institutions ("OFI") is submitting a copy of its response to comments received from Mr. Matt Tremblay, Sr. Manager, State Government Relations, of the Electronic Transactions Association ("ETA") on July 10, 2022. ETA represents some 500 members. Copies of ETA's comments and OFI's response is enclosed for review.

September 7, 2022
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OFI published a notice of intent of proposed rulemaking in Volume 48, Number 06 (June 20, 2022) of the Louisiana Register. The proposed rule seeks to enact LAC 10.1.1901-1925 of the Louisiana Administrative Code, in accordance with the Virtual Currency Businesses Act, (“VCBA”), LSA-R.S. 6:1381 et seq., as enacted by Acts 341 of the 2020 Regular Session of the Louisiana Legislature.

The proposed rule includes provisions regarding licensure, registration, and regulation of persons who are currently, or will be, engaging in virtual currency business activity, or hold themselves out as being able to engage in virtual currency business activity with or on behalf of persons and individuals domiciled or residing in Louisiana. The proposed rule further includes fees representing OFI’s cost of licensure, registration, regulation, and supervision in accordance with the VCBA.

A copy of the notice of intent, as originally published, is enclosed review. OFI received no request for a public hearing for the proposed rule. After review and careful consideration of comments, OFI amended the original notice of intent to better serve all interests. OFI’s amendment does not expand the scope of the VCBA, or affect any additional or different matters or issues that were not addressed in the original notice of intent. A strikethrough version and the rule as amended are also enclosed for review. OFI anticipates final publishing in the October 20, 2022 issue of the Louisiana Register.

If you have any questions, please contact me at (225) 922-2627 or sdameron@ofi.la.gov, Chief Examiner Michelle Jeansonne at (225) 922-2596 or mjeansonne@ofi.la.gov, or Executive Management Advisor Sid Seymour at (225) 925-4675 or sseymour@ofi.la.gov, or General Counsel Susan P. Rouprich at (225) 922-1028 or srouprich@ofi.la.gov.

Sincerely,



Stanley M. Dameron
Commissioner of Financial Institutions

SES:mad

Enclosures

ENCLOSURE 1
NOTICE OF INTENT

NOTICE OF INTENT
Office of the Governor
Office of Financial Institutions

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

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

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

Title 10

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

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§1901. Definitions

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

1. *Acting in Concert*—persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
2. *Commissioner*—the commissioner of the office of financial institutions.
3. *Control*—means and also includes, but is not limited to the following:
 - a.any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
 - b. the power to vote, directly or indirectly, at least 25 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee, including persons acting in concert in such instances;
 - c.the power to elect or appoint a majority of key individuals of a licensee;
 - d. the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and
 - e.any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute control.
4. *Nationwide Multistate Licensing System and Registry (NMLS)*—the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

5. *Net Worth*—The difference between total business assets and total business liabilities, after deducting estimated income taxes on the differences between the estimated current values of business assets and the current amounts of business liabilities and their tax bases.

6. *Tangible Net Worth*—includes all business assets minus liabilities minus intangible assets (goodwill and other intangible assets, such as favorable leasehold rights, trademarks, trade names, internet domain names, and non-compete agreements.)

7. *Unfair or Deceptive Act or Practice*—failure to provide any disclosure or disclosures required by Subsection 1931(C) of this rule shall be an unfair or deceptive act or practice for purposes of taking enforcement action against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3) (b).

8. *Unsafe or Unsound Act or Practice*—means 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.

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 47:

§1903. Implementation

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 47:

§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.

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 47:

§1907. Approval of Control Person

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 47:

§1909. Approval of Change of Control

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 47:

§1911. Reserved.

§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 November 1, 2023, all applications for renewal for 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, the license or notice of registration shall remain in force and effect 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. 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.

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

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

§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 47:

§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 the books, records, and accounts used in the business of every licensee or registrant.

2. Accept and rely upon an examination report or investigative report of any other state or federal agency or agencies.

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.

C. A joint report or concurrent report accepted by the commissioner under this Section may be accepted as an official report of the commissioner for purposes of the VCBA and 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, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

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

§1919. Network Examination

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 with organizations made up of other state and/or federal governmental agencies; and

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 report conducted and prepared by other state or federal agency or agencies.

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 47:

§1921. Renewal/Quarterly Reports

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 47:

§1923. Records

Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such records 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 47:

§1925. Policies and Procedures

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 47:

§1927. Consent Agreements

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

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

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

§1929. Civil Penalties

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

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

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

§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. Required Disclosures – Licensees engaging in virtual currency business activity in Louisiana shall 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. The commissioner shall also determine, by policy, the time and form required for such disclosures. Disclosures required by this section must be made separately from any other information provided by the licensee to a person and 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 47:

§1933. Fees

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

Description	Fee
1. Initial Application Fee (\$2,500) and Investigation/Review Fee (\$2,500)	\$5,000
2. License Renewal Fee (\$2,000) and Investigation/Review Fee (\$2,000)	\$4,000/\$1,500 late fee
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. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

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

§1935. Exceptions

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

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

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

§1937. Severability

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

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

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

Family Impact Statement

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

Small Business Analysis

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

Poverty Impact Statement

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

Provider Impact Statement

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

Public Comments

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



Stanley M. Dameron
Commissioner

ENCLOSURE 2
STRIKETHROUGH
NOTICE OF INTENT

STRIKETHROUGH VERSION

Office of the Governor Office of Financial Institutions

Virtual Currency Business Activity (LAC 10:I.1901-193725)

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§1901. Definitions

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

1. *Acting in Concert*—persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
2. *Commissioner*—the commissioner of the office of financial institutions.
3. *Control*—means and also includes, but is not limited to the following:
 - a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
 - b. ~~the power to vote, directly or indirectly; vote~~ at least 25 percent of outstanding voting shares or voting interests of any licensee or person in control of a licensee, including persons acting in concert in such instances;
 - 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. ~~the power to directly or indirectly elect, or 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; participate in a licensee’s or registrant’s day-to-day decisions or operations, including persons acting in concert controlling influence over the management or policies of a licensee or 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 evidence or constitute control.
4. *Nationwide Multistate Licensing System and Registry (NMLS)*—the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
5. *Net Worth*—The difference between total business assets and total business liabilities, after deducting estimated income taxes on the differences between the estimated current values of business assets and the current amounts of business liabilities and their tax bases.
6. *Tangible Net Worth*—includes all business assets minus liabilities minus intangible assets (goodwill and other intangible assets, such as favorable leasehold rights, trademarks, trade names, internet domain names, and non-compete agreements.)
7. *Unfair or Deceptive Act or Practice*—failure to provide any disclosure or disclosures ~~required by Subsection 1931(C) of this rule~~ shall be an unfair or deceptive act or practice for purposes of taking enforcement action against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3) (b).

8. ~~Unsafe or Unsound Act or Practice—means 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 or any applicant, licensee or registrant to meet its withdrawal requests; violation of the applicant’s, licensee’s or registrant’s articles of incorporation; or violation of any law or any regulation governing the applicant, licensee or registrant.

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

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

§1903. Implementation

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 47:

§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 47:

§19075. Approval of Control Person Reserved

~~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 47:~~

§19097. Approval of Change of Control

~~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 47:~~

~~§1911. Reserved.~~

§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 November~~ July 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~~ 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 La. R.S. 6:1384.~~

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

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

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

§191509. Net Worth/Tangible Net Worth

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

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

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

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

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

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

§19171. Examination

A. The commissioner may:

~~1A. 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 licensee or registrant.

~~2B. 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.

~~BC. 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.~~

~~C. A joint report or concurrent report accepted by the commissioner under this Section may be accepted as an official report of the commissioner for purposes of the VCBA and 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, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

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

§1919. Network Examination

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~~

~~2D. The commissioner's acceptance of an Consider licensing or 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 47:~~

~~§1921. Renewal/Quarterly Reports~~

~~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 47:~~

~~§19213. Records~~

~~Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such books, records, and accounts of its virtual currency business activities, 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 47:~~

~~§1925. Policies and Procedures~~

~~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 47:~~

~~§192715. Consent Agreements~~

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

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

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

~~§192917. Civil Penalties~~

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

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

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

~~§19319. Miscellaneous Provisions~~

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

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

C. Required Disclosures – Licensees engaging in virtual currency business activity in Louisiana shall provide ~~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 and individuals who use the licensee’s products or services. The commissioner shall also determine, by policy, the time and form required for such disclosures. ~~Required disclosures required by this section~~ must be made separately from any other information provided by the licensee ~~to a persons and individuals~~ and 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 47:

§193321. Fees

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

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

Description	Fee
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. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

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

§19235. Exceptions

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

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

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

§193725. Severability

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

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

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

ENCLOSURE 3
PROPOSED RULE

RULE

Office of the Governor Office of Financial Institutions

Virtual Currency Business Activity (LAC 10:I.1901-1925)

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§1901. Definitions

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

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

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

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

§1903. Application for License or Notice of Registration

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

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

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

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

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

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

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

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

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

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

§1905. Reserved

§1907. Renewal of License or Notice of Registration

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

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

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

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

(a) The renewal fee; and

(b) The late fee.

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

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

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

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

§1909. Net Worth/Tangible Net Worth

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

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

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

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

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

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

§1911. Examination

The commissioner may:

- A. Conduct on-site examination or investigation the books, records, and accounts used in the business of a licensee or registrant.
- B. Consider results of an inspection conducted by a comparable official in any in which the books, records, and accounts used in a licensee's or registrant's virtual currency business are located.
- C. Enter into agreements or relationships with other government officials or state and/or federal regulatory agencies.-
- D. Consider licensing or examination reports prepared by other governmental agencies or officials, within or outside Louisiana.

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

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

§1913. Records

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

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

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

§1915. Consent Agreements

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

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

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

§1917. Civil Penalties

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

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

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

§1919. Miscellaneous Provisions

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

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

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

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

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

§1921. Fees

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

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

Description	Fee
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. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

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

§1923. Exceptions

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

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

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

§1925. Severability

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

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

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

ENCLOSURE 4
PUBLIC
COMMENTS

July 10, 2022

Ms. Susan Rouprich
General Counsel, Office of Financial Institutions
8660 United Plaza Boulevard
Second Floor, Baton Rouge, LA 70809

Re: Non-Depository Notice: Virtual Currency Business Activity Rule

Dear Ms. Rouprich,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide additional comments on the virtual currency business activity rule (the “Proposed Rule”) published by the Office of Financial Institutions (“OFI”). ETA supports a regulatory approach to virtual currency that both fosters the innovation of new products and services that benefit consumers and protects consumers from predatory and intentionally deceptive practices.

Once finalized, the Proposed Rule will formalize the framework for the OFI’s execution of its duties under Louisiana’s Virtual Currency Businesses Act (“VCBA”). Though the VCBA has been in effect since August 1, 2020, the Proposed Rule is effectively the industry’s first look into how the OFI envisions operationalizing various aspects of the VCBA. The Proposed Rule is a helpful step toward providing certainty to the industry, consumers, and even other states as to how Louisiana intends to regulate virtual currency and related activities. However, as outlined below, we believe that certain components of the VCBA remain unaddressed by the Proposed Rule and that some topics in the Proposed Rule warrant further clarification.

I. Industry participants and the OFI alike would benefit from greater clarity in the Proposed Rule’s defined terms

A. “Control”

Under the Proposed Rule, “control” would be broadly defined to include not only instances contemplated by the underlying law (i.e., the VCBA) but also other circumstances similar to those that are considered to be indicators of control in other financial services regulatory contexts, like the power to direct the policies or management of an entity. ETA understands and appreciates the need for these additional scenarios to be in-scope given the types of industry participants likely to engage in virtual currency business activities. We disagree, however, with the Proposed Rule’s inclusion of a “catch-all” of sorts in §1901 (A)(e), which states that “control” also includes *“any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute control.”*

This is overly broad and should be removed from any Final Rule. Parts (a) through (d) of the “control” definition give the OFI sufficient discretion to determine control. Similarly, we recommend that the OFI consider removing the phrase “*but is not limited to*” from the outset of the “control” definition. Taken together with the catch-all provision in (e), this language, if included in a Final Rule, will result in ambiguity and uncertainty for applicants, licensees, and, arguably, the OFI itself as it grapples with gray areas and competing interpretations that may arise over time as the OFI’s virtual currency framework evolves. To the extent additional indicators of control need to be addressed in the OFI’s regulations as the regulatory environment evolves, the OFI should consider explicitly stating in subsequent rulemakings or amendments to any Final Rule the specific facts and circumstances that would result in a control determination rather than relying on broad and potentially confusing discretionary clauses like those in the Proposed Rule.

Alternatively, the OFI could consider removing the term “control” from any Final Rule and instead relying on the definition of the same term that was already decided upon by the Legislature when enacting the VCBA (see RS 6:1382(2)(b)), rather than expanding the term to include things clearly not contemplated by the people’s representatives when establishing the statutory foundation on which the OFI rules must be built.

B. “Unsafe or Unsound Act or Practice”

ETA is generally supportive of the OFI leveraging the Proposed Rule as a mechanism for ensuring that those who engage in virtual currency business activities within its jurisdiction do so in a safe and sound manner. We recommend that the OFI amend the existing definition of “unsafe or unsound act or practice” to include a reasonableness standard applicable to the commissioner’s exercise of discretion to determine that an act or practice not expressly listed in the Proposed Rule’s definition. Specifically, ETA recommends the latter portion of the definition be amended as follows in any Final Rule: “and any other set of facts or circumstances, as **reasonably** determined by the commissioner in his discretion, that may constitute an unsafe or sound practice.” Adding “reasonably” here would also be consistent with the VCBA’s mandate that the OFI must have “good cause” to deny a license to an applicant when the applicant otherwise complies with the VCBA. See RS 6:1387(A).

C. “Reciprocity Agreement”

The VCBA defines “reciprocity agreement” as “an arrangement between the department and the appropriate licensing agency of another state which permits a licensee operating under a license granted by the other state to engage in virtual currency business activity with or on behalf of a resident.” RS 6:1382(10). However, any reference to reciprocity is notably absent from the Proposed Rule. Given that one of the stated purposes of the Proposed Rule is to “enable OFI to achieve its regulatory goals and objectives regarding proper supervision and oversight of such persons included within the scope of the VCBA in a manner that is not overly complex, costly, or burdensome”, it is imperative that the OFI in any Final Rule or future rulemaking specifically

address how reciprocal licensing will be handled, in terms of initial license applications as well as renewals. Arguably, the OFI is required to address reciprocity per the plain language of the VBCA that empowers the OFI to issue the Proposed Rule and ultimately enact the VBCA's implementing regulations. See RS 6:1394. The VCBA expressly contemplates a reciprocity framework of some sort by defining the term in the first place and by making reference to "reciprocal licensing" when laying out the required contents of any license renewal report. See RS 6:1388. Addressing reciprocity in a Final Rule or subsequent proposal would not only reflect the OFI's adherence to the Legislature's direction but would also provide industry participants and consumers with greater clarity as to how virtual currency related licensing in other states will impact similar business activities in Louisiana.

D. "Surety Bond Requirements"

The Proposed Rule does not address additional information on the surety bond requirements. In Section 1386 of the Virtual Currency Businesses Act, the surety bond requirement specifies, "or in an amount the department specifies based on the nature and extent of risks in the applicant's virtual currency business model." This is vague with no proposed cap on the surety bond, or an explanation on how risk in the business model will be defined. The law also includes a "security" requirement, is that considered distinct from the surety bond requirement? Prior to a final rule being published, ETA requests additional clarity on the details of the surety bond requirements.

II. If adopted as written, the Proposed Rule's license application procedures for existing and prospective virtual currency businesses will result in confusion for industry participants and potentially unnecessary service interruptions for Louisiana consumers

ETA acknowledges the significant administrative lift the OFI must undertake to operationalize the VCBA, both in terms of processing filings as well as ensuring appropriate safety and soundness and consumer protection considerations are accounted for along the way. The path to a Final Rule presents the OFI with an opportunity to get out in front of friction that might otherwise arise if the Proposed Rule is adopted as-is. We recommend that the OFI address the following when developing revisions to Section 1905 of the Proposed Rule or issuing guidance regarding filing timeframes:

- **Publication of forms:** The virtual currency business activity application and registration forms are not publicly available as of the close of the Proposed Rule's comment period. Under the proposal, existing virtual currency businesses operating in Louisiana would be required to submit an application or registration within ninety (90) days of the Final Rule's effective date. See § 1905(A). To increase the likelihood of industry participants submitting filings that are substantially complete to the satisfaction of the OFI, ETA respectfully requests that the OFI publish all necessary forms as far in advance of any Final Rule's effective day as practicable.

- Application Deadlines & Approval Process: The Proposed Rule provides for a transition that entities engaging in covered activities must submit an application within 90 days of effective date of the rule. Once an application is submitted, the applicant shall be deemed in compliance with the relevant licensing/registration provisions of the VCBA and permitted to operate unless the applicant is notified that the application has been denied. However, the VCBA itself says that if the department does not notify an applicant of its decision within 30 days after an application is complete, the application shall be deemed denied. A default denial of applications after 30 days of submission is problematic and could have a serious negative impact on covered entities including such a denial triggering notice to other regulators. ETA urges OFI to adopt changes that will reconcile the Proposed Rule with the VCBA and align the process under the VCBA with state money transmission laws more generally.
- Timing of filings: Within Sections 1905 and 1913 of the Proposed Rule, there are dates and deadlines that appear to be in conflict with one another. Specifically, it is unclear whether relevant filing deadlines for initial applications and registrations as well as renewals of the same are due annually on November 1 or December 31 in order to be considered “timely”. If the OFI intends to provide a grace period for late filings and/or a window in which submissions must be made rather than a single deadline, we suggest expressly stating this in any Final Rule or related guidance. If no such grace period or window is contemplated, ETA recommends revising Section 1905 and 1913 or otherwise introducing a single, new section speaking specifically to deadlines in any Final Rule.
- Appeals process for denials: The VCBA states that an “applicant may appeal a denial of its application . . . not later than thirty days after [the OFI] notifies the applicant of the denial or the application is deemed denied.” RS 6:1387(B). However, the Proposed Rule is silent as to the specifics of an appeals process that will be implemented by the OFI to facilitate applicants’ exercise of this statutory right. Instead, the Proposed Rule speaks to denials in only three contexts: (1) If a renewal application is timely filed (see above regarding necessary clarification on “timely”), the filing party’s existing license or registration shall remain in effect until the renewal is approved or denied (§ 1913(C)); (2) A broad statement that denials may be based on the applicant’s noncompliance with the VCBA (§ 1931(A)); and (3) If an existing virtual currency business that files its application within ninety (90) days of the Final Rule’s effective date receives notice from the OFI that the business’ application has been denied, it must “immediately cease operating in Louisiana and doing business with residents of Louisiana” (§ 1905(A)). ETA believes it is incumbent upon the OFI, in accordance with the VCBA, to promulgate clear procedures for appeals that affords due process to applicants and does not interrupt the provision of services to an applicant’s customers unless and until the applicant has exhausted the right to appeal set forth in the VCBA and the decision on the application is final. While the Proposed Rule does contemplate applicants receiving notice of a denial, it does not outline or even incorporate by reference a framework through which an applicant will be provided a reasonable opportunity for an appellant to be heard. Requiring a business, especially one that is already servicing Louisiana residents prior to any Final Rule’s effective date, to

cease operations prior to the conclusion of an appeal gives the OFI's initial denial of an application a degree of finality that does not appear to be permitted under the plain language of the VCBA.

A. Examinations

Section 1917 of the Proposed Rule outlines the approach the OFI is contemplating when carrying out the examination authority provided to it under the VCBA. ETA is appreciative of the Proposed Rule's articulation of the types of examinations and related activities the OFI may elect to undertake. However, the absence of a defined cadence for these exam activities presents a challenge for industry participants, especially those who currently have or in the future will obtain virtual currency business licenses in other states. To ease regulatory burden, ETA recommends that the OFI consider setting a cadence of examinations for licensees and registrants. This would provide some degree of predictability and would track with how examination practices are articulated at the federal level and in other states with virtual currency licensing (e.g., NY virtual currency licensee exams). For example, in a Final Rule, the OFI could state that the commissioner may conduct an examination whenever they choose but, in any case, will not examine any less than once every two years. Regardless of cadence, specificity and predictability in this context will allow industry participants to be better prepared for their engagement with various regulators, including the OFI, because each licensee will be better positioned to incorporate Louisiana-specific considerations into their regulatory, internal audit, and compliance strategies in a manner that is consistent with the OFI's defined schedule.

B. Disclosure Requirements

Section 1931(C) of the Proposed Rule states that anyone "engaging in virtual currency business activity in Louisiana shall 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." This section goes on to also add that the commissioner will issue policies dictating the time and form of required disclosures and provides an opportunity for licensees to propose alternative disclosures to the OFI for its approval. ETA appreciates the flexibility contemplated by this latter portion; giving licensees the ability to tailor disclosures so that they adequately address unique aspects of a licensee's products or business model, for example, will benefit Louisiana residents and allow industry participants to foster trust and transparency with their customers. What the Proposed Rule lacks, however, is a statutory basis upon which the OFI can rely when asserting that material and substantive requirements related to disclosures will be promulgated "by policy". We recommend that the OFI address disclosures in a subsequent proposed rulemaking so that the public has the opportunity to provide feedback to the OFI regarding what constitutes "proper" disclosures, the potential regulatory burden associated with any proposed timing and form of such disclosures, and other substantive disclosure requirements and related processes the OFI is considering. ETA respectfully submits that any such requirements are not interpretative in nature and therefore cannot be appropriately addressed through statements of policy or similar guidance documents but rather must be subject to public notice and comment in accordance with the Administrative Procedure Act ("APA").

In a subsequent proposed rulemaking on VCBA-related disclosure requirements, ETA recommends that the OFI (1) specify what constitutes “proper disclosures”, in terms of substantive content, timing and cadence of publication, and form; (2) consider permitting any required disclosures to be made electronically; (3) outline the process licensees must follow to get approval of alternative disclosures; and (4) offer a “safe harbor” for licensees with disclosures that have been approved by the relevant authority in one or more states outside of Louisiana with a virtual currency business licensing framework, allowing those licensees to use such disclosures in connection with their business with Louisiana residents so long as certain minimum content requirements established by the OFI are satisfied. Specifically in the context of the form of disclosures, ETA believes that expressly permitting electronic disclosures will provide regulatory certainty and allow licensees, many of which rely heavily on technology, to provide disclosures in a manner consistent with their operations. If the OFI believes an APA-compliant rulemaking process is not necessary for these substantive disclosure requirements, ETA respectfully requests that, at a minimum, the OFI provide date-certain for the subsequent publication of the policies referenced in Section 1931(C) of the Proposed Rule.

*

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully Submitted,

Matt Tremblay

Matt Tremblay

Sr. Manager, State Government Relations

Electronic Transactions Association

202.677.7417 | mtremblay@electran.org





STATE OF LOUISIANA
OFFICE OF FINANCIAL
INSTITUTIONS
BATON ROUGE, LOUISIANA



September 7, 2022

VIA ELECTRONIC TRANSMISSION

Mr. Matt Tremblay, Sr. Manager, State Government Relations
Electronic Transactions Association
1620 L Street NW, Suite 1020
Washington, DC 20036

Re: Non-Depository Notice: Virtual Currency Business Activity Rule (“Proposed Rule”)

Dear Mr. Tremblay:

The Louisiana Office of Financial Institutions (“OFI”) would like to thank you and your members for the thoughtful and comprehensive comment letter dated July 10, 2022, regarding the notice of intent of the Proposed Rule, published in the Louisiana Register on June 20, 2022.

We acknowledge and appreciate that “ETA supports a regulatory approach to virtual currency that both fosters the innovation of new products and services that benefit consumers and protects consumers from predatory and intentionally deceptive practices.” Further, we acknowledge and appreciate your comment, “The Proposed Rule is a helpful step toward providing certainty to the industry, consumers, and even other states as to how Louisiana intends to regulate virtual currency and related activities.”

ETA’s comments and OFI’s responses to each are enclosed. A strikethrough version and the rule as amended are also enclosed for review. OFI anticipates final publishing in the October 20, 2022 issue of the Louisiana Register.

Again, thank you for taking the time to review and comment on the Proposed Rule. If you have any questions regarding this response, please contact Chief Examiner Michelle Jeansonne at (225) 922-2596, or by email at mjeansonne@ofi.la.gov, or Executive Management Advisor Sid Seymour at (225) 925-4675, or by email at ss Seymour@ofi.la.gov, or OFI General Counsel Sue Rouprich at (225) 922-1028, or by email at srouprich@ofi.la.gov.

Sincerely,

A handwritten signature in blue ink that reads "Stanley M. Dameron".

Stanley M. Dameron
Commissioner of Financial Institutions

Enclosures

POST OFFICE BOX 94095, BATON ROUGE, LOUISIANA 70804-9095 (225) 925-4660
DEPOSITORY FAX # (225) 925-4548 HUMAN RESOURCES FAX # (225) 925-4665 LEGAL FAX # (225) 922-2592
SECURITIES FAX # (225) 925 4511 NON DEPOSITORY # (225) 922-2860 MAIL ROOM FAX # (225) 925-4524
Web site: www.ofi.la.gov email: ofi@ofi.la.gov

**ENCLOSURE 5
RESPONSE TO
PUBLIC
COMMENTS**



STATE OF LOUISIANA
OFFICE OF FINANCIAL
INSTITUTIONS
BATON ROUGE, LOUISIANA



**RESPONSE TO COMMENTS ON
PROPOSED LAC 10:I.1901-1937**

On June 20, 2022, the Office of Financial Institutions (“OFI”) published a Notice of Intent (“NOI”) to promulgate Louisiana Administrative Code 10:I.1901 through 1937, relative to the La. R.S. 6:1381, et seq., the Virtual Currency Business Act (“Act”), in the Louisiana Register, in accordance with La. R.S. 49:950, et seq., the Louisiana Administrative Procedure Act (“LAPA”). This NOI provided notice for public comment, ending July 10, 2022 at 5:00 p.m. No public hearing was requested in accordance with the LAPA. The only public comment offered was correspondence dated July 10, 2022 and transmitted to OFI’s General Counsel, Susan Rourpich, via email at 2:04 p.m. CST. A copy of this correspondence is attached to this report for convenience. This report contains any/all issue(s) presented for consideration by OFI and OFI’s response to each such issue.

I. Industry participants and the OFI alike would benefit from greater clarity in the Proposed Rule’s defined terms

A. “Control”

Comment

Under the Proposed Rule, “control” would be broadly defined to include not only instances contemplated by the underlying law (i.e., the VCBA) but also other circumstances similar to those that are considered to be indicators of control in other financial services regulatory contexts, like the power to direct the policies or management of an entity. ETA understands and appreciates the need for these additional scenarios to be in-scope given the types of industry participants likely to engage in virtual currency business activities. We disagree, however, with the Proposed Rule’s inclusion of a “catch-all” of sorts in §1901 (A)(e), which states that “control” also includes “*any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute control.*”

This is overly broad and should be removed from any Final Rule. Parts (a) through (d) of the “control” definition give the OFI sufficient discretion to determine control. Similarly, we

recommend that the OFI consider removing the phrase “*but is not limited to*” from the outset of the “control” definition. Taken together with the catch-all provision in (e), this language, if included in a Final Rule, will result in ambiguity and uncertainty for applicants, licensees, and, arguably, the OFI itself as it grapples with gray areas and competing interpretations that may arise over time as the OFI’s virtual currency framework evolves. To the extent additional indicators of control need to be addressed in the OFI’s regulations as the regulatory environment evolves, the OFI should consider explicitly stating in subsequent rulemakings or amendments to any Final Rule the specific facts and circumstances that would result in a control determination rather than relying on broad and potentially confusing discretionary clauses like those in the Proposed Rule.

Alternatively, the OFI could consider removing the term “control” from any Final Rule and instead relying on the definition of the same term that was already decided upon by the Legislature when enacting the VCBA (see RS 6:1382(2)(b)), rather than expanding the term to include things clearly not contemplated by the people’s representatives when establishing the statutory foundation on which the OFI rules must be built.

Applicable Provision of Law

La. R.S. 6:1382(2) defines “control” to mean “(a) When used in reference to a transaction or relationship involving virtual currency, power to execute unilaterally or prevent indefinitely a virtual currency transaction. (b) When used in reference to a person, the direct or indirect power to direct the management, operations, or policies of the person through legal or beneficial ownership of voting power in the person or under a contract, arrangement, or understanding.”

Applicable Provision of Proposed Rule

Proposed LAC 10:I.1901 defines “control” “mean 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 [Act]; (b) the power to vote, directly or indirectly, at least 25 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee, including persons acting in concert in such instances; (c) the power to elect or appoint a majority of key individuals of a licensee; (d) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and (e) any other set of facts and circumstances, as determined by the commissioner in his discretion, that may constitute control.”

Response

OFI has considered this comment and determined that it is in the best interest of both OFI and persons licensed or registered to engage in the virtual currency business in Louisiana to amend this definition.

Proposed LAC 10:I.1901(3) is amended to provide:

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

- a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
- b. power to directly or indirectly vote at least 25 percent of outstanding voting shares or voting interests of any:
 - i. applicant, licensee or registrant; or
 - ii. applicant's, licensee's or registrant's responsible individual or responsible individuals, including persons acting in concert;
- c. power to directly or indirectly elect, appoint or remove any applicant's, licensee's or registrant's responsible individual or 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. other facts or circumstances that may evidence or constitute control.

B. “Unsafe or Unsound Act or Practice”

Comment

ETA is generally supportive of the OFI leveraging the Proposed Rule as a mechanism for ensuring that those who engage in virtual currency business activities within its jurisdiction do so in a safe and sound manner. We recommend that the OFI amend the existing definition of “unsafe or unsound act or practice” to include a reasonableness standard applicable to the commissioner’s exercise of discretion to determine that an act or practice not expressly listed in the Proposed Rule’s definition. Specifically, ETA recommends the latter portion of the definition be amended as follows in any Final Rule: “and any other set of facts or circumstances, as *reasonably* determined by the commissioner in his discretion, that may constitute an unsafe or sound practice.” Adding “reasonably” here would also be consistent with the VCBA’s mandate that the OFI must have “good cause” to deny a license to an applicant when the applicant otherwise complies with the VCBA. *See* RS 6:1387(A).

Applicable Provision of Law

La. R.S. 6:2(17) provides:

“Unsafe and unsound practice or condition” means the inability of a financial institution to meet its withdrawal requests, the violation of the institution’s articles of incorporation, or the violation of any law or any regulation governing that institution.

Applicable Provision of Proposed Rule

Proposed LAC 10:I.1901(8) defines “unsafe or unsound act or practice” to mean and include, “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.”

Response

OFI has considered this comment and determined that it is in the best interest of both OFI and persons licensed or registered to engage in the virtual currency business in Louisiana to amend this definition.

Proposed LAC 10:I.1091(8) is amended to provide:

Unsafe or Unsound Act or Practice—means the 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.

C. “Reciprocity Agreement”

Comment

The VCBA defines “reciprocity agreement” as “an arrangement between the department and the appropriate licensing agency of another state which permits a licensee operating under a license granted by the other state to engage in virtual currency business activity with or on behalf of a resident.” RS 6:1382(10). However, any reference to reciprocity is notably absent from the Proposed Rule. Given that one of the stated purposes of the Proposed Rule is to “enable OFI to achieve its regulatory goals and objectives regarding proper supervision and oversight of such persons included within the scope of the VCBA in a manner that is not overly complex, costly, or burdensome”, it is imperative that the OFI in any Final Rule or future rulemaking specifically address how reciprocal licensing will be handled, in terms of initial license applications as well as

renewals. Arguably, the OFI is required to address reciprocity per the plain language of the VBCA that empowers the OFI to issue the Proposed Rule and ultimately enact the VBCA's implementing regulations. *See* RS 6:1394. The VCBA expressly contemplates a reciprocity framework of some sort by defining the term in the first place and by making reference to "reciprocal licensing" when laying out the required contents of any license renewal report. *See* RS 6:1388. Addressing reciprocity in a Final Rule or subsequent proposal would not only reflect the OFI's adherence to the Legislature's direction but would also provide industry participants and consumers with greater clarity as to how virtual currency related licensing in other states will impact similar business activities in Louisiana.

Applicable Provision of Law

La. R.S. 6:1382(10) defines "reciprocity agreement" as "an arrangement between the department and the appropriate licensing agency of another state which permits a licensee operating under a license granted by the other state to engage in virtual currency business activity with or on behalf of a resident."

Applicable Provision of Proposed Rule

There is no apparent corresponding provision of the Proposed Rule.

Response

OFI is not currently a party to any "reciprocity agreement" or agreements, as defined by the Act.

D. "Surety Bond Requirements"

Comment

The Proposed Rule does not address additional information on the surety bond requirements. In Section 1386 of the Virtual Currency Businesses Act, the surety bond requirement specifies, "or in an amount the department specifies based on the nature and extent of risks in the applicant's virtual currency business model." This is vague with no proposed cap on the surety bond, or an explanation on how risk in the business model will be defined. The law also includes a "security" requirement, is that considered distinct from the surety bond requirement? Prior to a final rule being published, ETA requests additional clarity on the details of the surety bond requirements.

Applicable Provision of Law

La. R.S. 6:1386 provides:

A.(1) Before a license is issued pursuant to the provisions of this Chapter, an applicant shall submit a surety bond in the amount of one hundred thousand dollars to the department that secures the applicant's faithful performance of its duties pursuant to the provisions of this Chapter or in an amount the department specifies based on the nature and extent of risks in the applicant's virtual currency business model.

Applicable Provision of Proposed Rule

There is no apparent corresponding provision of the Proposed Rule.

Response

The Act sufficiently enumerates the surety bond applicants will be required with the initial application. OFI has no apparent authority to amend the Act by rule or otherwise. OFI will publish the Proposed Rule, as amended, on October 20, 2022 and applications will be made available through the Nationwide Multi-State Licensing System (NMLS).

II. If adopted as written, the Proposed Rule's license application procedures for existing and prospective virtual currency businesses will result in confusion for industry participants and potentially unnecessary service interruptions for Louisiana consumers

ETA acknowledges the significant administrative lift the OFI must undertake to operationalize the VCBA, both in terms of processing filings as well as ensuring appropriate safety and soundness and consumer protection considerations are accounted for along the way. The path to a Final Rule presents the OFI with an opportunity to get out in front of friction that might otherwise arise if the Proposed Rule is adopted as-is. We recommend that the OFI address the following when developing revisions to Section 1905 of the Proposed Rule or issuing guidance regarding filing timeframes:

Comment

- Publication of forms: The virtual currency business activity application and registration forms are not publicly available as of the close of the Proposed Rule's comment period. Under the proposal, existing virtual currency businesses operating in Louisiana would be required to submit an application or registration within ninety (90) days of the Final Rule's effective date. *See* § 1905(A). To increase the likelihood of industry participants submitting filings that are substantially complete to the satisfaction of the OFI, ETA respectfully requests that the OFI publish all necessary forms as far in advance of any Final Rule's effective day as practicable.

Applicable Provision of Law

La. R.S. 6:1385 provides, in pertinent part:

An applicant for a license pursuant to the provisions of this Chapter shall submit the application through the NMLS and satisfy all of the following:

(1) Except as otherwise provided in Subsection B of this Section, provide all of the following information relevant to the applicant's proposed virtual currency business activity:

(a) The legal name of the applicant, each current or proposed business United States Postal Service address of the applicant, and any fictitious or trade name the applicant uses or plans to use in conducting its virtual currency business activity with or on behalf of a resident.

(b) The legal name, any former or fictitious name, and the residential and business United States Postal Service address of each executive officer and responsible individual of the applicant, and each person that has control of the applicant.

(c) A description of the current and former business of the applicant for the five years before the application is submitted or, if the business has operated for less than five years, for the time the business has operated, including its products and services, associated internet website addresses and social media pages, principal place of business, projected user base, and specific marketing targets.

(d) The name, United States Postal Service address, and telephone number of a person that manages each server the applicant expects to use in conducting its virtual currency business activity with, or on behalf of, a resident and a copy of any agreement with that person.

(e) A list of both of the following:

(i) Each money service or money transmitter license the applicant holds in another state and the date the license expires.

(ii) Any license revocation, license suspension, or other disciplinary action taken against the licensee in another state and any license applications rejected by another state.

(f) A list of any criminal conviction, deferred prosecution agreement, or pending criminal proceeding in any jurisdiction against all of the following:

(i) The applicant.

(ii) Each executive officer of the applicant.

(iii) Each responsible individual of the applicant.

(iv) Each person that has control over the applicant.

(v) Each person over which the applicant has control.

(g) A list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant, or an executive officer or a responsible individual of the applicant, 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 audited financial statements, reports to equity owners, and similar statements or reports.

(h) A list of any bankruptcy or receivership proceeding in any jurisdiction for the ten years before the application is submitted in which any of the following was a debtor:

(i) The applicant.

(ii) Each executive officer of the applicant.

(iii) Each responsible individual of the applicant.

(iv) Each person who has control over the applicant.

(v) Each person over which the applicant has control.

(i) The name and United States Postal Service address of each bank in which the applicant plans to deposit funds obtained by its virtual currency business activity.

(j) The source of funds and credit to be used by the applicant to conduct virtual currency business activity with, or on behalf of, a resident and documentation demonstrating that the applicant has the net worth and reserves required pursuant to R.S. 6:1386.

(k) The United States Postal Service address and electronic mail address to which communications from the department may be sent.

(l) The name, United States Postal Service address, and electronic mail address of the registered agent of the applicant in this state.

(m) 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 for itself, an executive officer, a responsible individual, or the applicant's users.

(n) If applicable, the date on which, and the state where, the applicant is formed and a copy of a current certificate of good standing issued by that state.

(o) If a person has control of the applicant 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.

(p) If a person has control of the applicant 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 Subparagraph (o) of this Paragraph filed with the foreign regulator in the domicile of the person.

(q) If the applicant is a partnership or a member-managed limited liability company, the names and United States Postal Service addresses of all general partners or members.

(r) If the applicant is required to register with the Financial Crimes Enforcement Network of the United States Department of the Treasury as a money service business, evidence of the registration.

(s) A set of fingerprints for each executive officer and responsible individual of the applicant.

(t) If available, for each executive officer and responsible individual of the applicant, for the five years before the application is submitted, employment history and history of any investigation of the individual or legal proceeding to which the individual was a party.

Applicable Provision of Proposed Rule

There is no apparent corresponding provision of the Proposed Rule.

Response

The Act sufficiently enumerates the information applicants will be required to provide in the initial application. OFI has no apparent authority to amend the Act by rule or otherwise. OFI will publish the Proposed Rule, as amended, on October 20, 2022 and applications will be made available through the NMLS.

Comment

- **Application Deadlines & Approval Process:** The Proposed Rule provides for a transition that entities engaging in covered activities must submit an application within 90 days of effective date of the rule. Once an application is submitted, the applicant shall be deemed in compliance with the relevant licensing/registration provisions of the VCBA and permitted to operate unless the applicant is notified that the application has been denied. However, the VCBA itself says that if the department does not notify an applicant of its decision within 30 days after an application is complete, the application shall be deemed denied. A default denial of applications after 30 days of submission is problematic and could have a serious negative impact on covered entities including such a denial triggering notice to other regulators. ETA urges OFI to adopt changes that will reconcile the Proposed

Rule with the VCBA and align the process under the VCBA with state money transmission laws more generally.

Applicable Provisions of Law

La. R.S. 6:1384 provides:

A person shall not engage in virtual currency business activity, or hold itself out as being able to engage in virtual currency business activity, with or on behalf of a resident unless the person is one of the following:

- (1) Licensed in this state by the department pursuant to R.S. 6:1385.
- (2) Registered with the department and operating pursuant to R.S. 6:1390.
- (3) Exempt from licensure or registration pursuant to R.S. 6:1383.

La. R.S. 6:1385 reads, in pertinent part:

C. An application for a license pursuant to this Section shall not be complete until the department receives all information required by the provisions of this Chapter and completes its investigation pursuant to Subsection D of this Section.

D.(1) On receipt of a completed application, the department shall investigate all of the following:

- (a) The financial condition and responsibility of the applicant.
- (b) The relevant financial and business experience, character, and general fitness of the applicant.
- (c) The competence, experience, character, and general fitness of each executive officer, each responsible individual, and any person that has control of the applicant.

(2) At the option of the department, it may investigate the business premises of an applicant.

E.(1) Not later than thirty days after an application is complete, the department shall send the applicant notice of its decision to approve, conditionally approve, or deny the application.

(2) If the department does not send the applicant notice of its decision within thirty-one days of completion of the application, the application shall be deemed denied.

(3) If the department does not receive notice from the applicant that the applicant accepts conditions specified by the department within thirty-one days following the department's notice of the conditions, the application shall be deemed denied.

F. A license shall be effective on the later of either of the following:

- (1) The date on which the department issues the license.

(2) The date the licensee provides the security required pursuant to R.S. 6:1386.

Applicable Provision of Proposed Rule

LAC 10:I.1905 provides, in pertinent part:

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 [Act] or file a notice of registration in accordance with Section 1389 of the [Act] 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 [Act] or the registration requirements of Section 1389 of the [Act] 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 [Act].

Response

The Act provides, in pertinent part, that an initial application “shall not be complete until the department receives all information required by the provisions of [the Act] and completes its investigation”. OFI has considered this comment and determined that it is in the best interest of both OFI and persons seeking licensure or registration to engage in the virtual currency business in Louisiana to amend §1095 to provide clarity of the initial application process. The final version of the Proposed Rule, as amended, will be published on October 20, 2022.

Proposed LAC 10:I.1905 is amended, re-designated as §1903 and provides:

- A. The department shall begin accepting initial applications for licensure and notices of registration on January 1, 2023.
- B. Completed applications for licensure and notices for registration submitted on or before April 1, 2023 will be 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 the 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. 6:1387B, 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.

Comment

- Timing of filings: Within Sections 1905 and 1913 of the Proposed Rule, there are dates and deadlines that appear to be in conflict with one another. Specifically, it is unclear whether relevant filing deadlines for initial applications and registrations as well as renewals of the same are due annually on November 1 or December 31 in order to be considered “timely”. If the OFI intends to provide a grace period for late filings and/or a window in which submissions must be made rather than a single deadline, we suggest expressly stating this in any Final Rule or related guidance. If no such grace period or window is contemplated, ETA recommends revising Section 1905 and 1913 or otherwise introducing a single, new section speaking specifically to deadlines in any Final Rule.

Applicable Provision of Law

La. R.S. 6:1388 provides, in pertinent part:

A. Subject to Subsection G of this Section, not later than fifteen days before the anniversary date of issuance of a license pursuant to the provisions of this Chapter, a licensee may apply for renewal of the license by paying a renewal fee determined by the department, not to exceed the reasonable costs of regulation, and submitting to the department a renewal report pursuant to Subsection B of this Section.

B.(1) The renewal report required by Subsection A of this Section shall be submitted in a form and medium prescribed by the department.

(2) The report shall contain all of the following:

(a) Either a copy of the licensee’s most recent reviewed annual financial statement, if the licensee’s virtual currency business activity in this state was less than an amount, to be determined by the department, for the fiscal year ending before the anniversary date of issuance of its license under this Chapter, or audited annual financial statement if the licensee’s virtual currency business

activity in this state amounted to more than the amount determined by the department for the fiscal year ending before the anniversary date.

(b) If a person other than an individual has control of the licensee, a copy of either of the following:

(i) The person's most recent reviewed annual financial statement if the person's gross revenue was less than an amount, to be determined by the department, in the previous fiscal year, measured as of the anniversary date of issuance of its license pursuant to the provisions of this Chapter.

(ii) The person's most recent audited consolidated annual financial statement if the person's gross revenue was more than an amount, to be determined by the department in the previous fiscal year, measured as of the anniversary date of issuance of its license pursuant to the provisions of this Chapter.

(c) A description of any of the following:

(i) Material change in the financial condition of the licensee.

(ii) Material litigation involving the licensee or an executive officer or responsible individual of the licensee.

(iii) License suspension or revocation proceeding commenced, or other action taken, involving a license to conduct virtual currency business activity issued by another state on which reciprocal licensing is based.

(iv) Federal or state investigation involving the licensee.

(v) Data security breach involving the licensee.

(d) The number of virtual currency business activity transactions with, or on behalf of, residents for the period since, subject to Subsection G of this Section, the later of the date the license was issued or the date the last renewal report was submitted.

(e)(i) The amount of United States dollar equivalent of virtual currency in the control of the licensee at, subject to Subsection G of this Section, the end of the last month that ends not later than thirty days before the date of the renewal report.

(ii) The total number of residents for whom the licensee had control of United States dollar equivalent of virtual currency on that date.

(f) Evidence that the licensee continues to satisfy the requirements provided for in R.S. 6:1386.

(g) A list of each location where the licensee operates its virtual currency business activity.

(h) The name, United States Postal Service address, and telephone number of each person that manages a server used by the licensee in conducting its virtual currency business activity with or on behalf of a resident.

C.(1) If a licensee does not timely comply with Subsection A of this Section, the department may use any enforcement measure provided for in R.S. 6:1392.

(2) No notice or hearing shall be required for a suspension or revocation of a license pursuant to the provisions of this Chapter for failure to pay a renewal fee or file a renewal report.

D. If the department suspends or revokes a license pursuant to the provisions of this Chapter for noncompliance with Subsection A of this Section, the department may end the suspension or rescind the revocation and notify the licensee of the action if, subject to Subsection G of this Subsection, not later than twenty days after the license was suspended or revoked, the licensee files a renewal report and pays a renewal fee and pays any penalty assessed by the department.

E. The department shall give prompt notice to a licensee of the lifting of a suspension or rescission of a revocation after the licensee complies with Subsection D of this Section.

F. Suspension or revocation of a license pursuant to the provisions of this Section shall not invalidate a transfer or exchange of virtual currency for, or on behalf of, a resident made during the suspension or revocation and shall not insulate the licensee from liability pursuant to the provisions of this Chapter.

G. For good cause, the department may extend a period of time provided for in this Section.

H. A licensee that does not comply with the provisions of this Section shall cease operations with, or on behalf of, a resident on or before the anniversary date of issuance of its license pursuant to the provisions of this Chapter.

La. R.S. 6:1394 provides, “The department shall adopt rules, in accordance with the Administrative Procedure Act, to implement and enforce the provisions of this Chapter and issue guidance as appropriate.”

Applicable Provision of Proposed Rule

LAC 10:I.1905 provides, in pertinent part:

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.

LAC 10:I.1913 provides, in pertinent part:

B. Beginning November 1, 2023, all applications for renewal for 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, the license or notice of registration shall remain in force and effect until the renewal application is either approved or denied by the commissioner.

Response

OFI has considered this comment and determined that it is in the best interest of both OFI and persons seeking licensure or registration to engage in the virtual currency business activities in Louisiana to amend §§1095 and 1913 to provide clarity of the initial application process.

LAC 10:I.1905 is amended, re-designated as §1903 and provides:

A. The department shall begin accepting initial application for licensure and notices of registration on January 1, 2023.

B. Completed applications for licensure and notices for registration submitted on or before April 1, 2023 will be 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 the 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. Beginning July 1, 2023, any person engaging or wishing to engage in virtual currency business activity in Louisiana, shall comply with La. R.S. 6:1384.

Proposed LAC 10:I.1913 is amended, re-designated as §1907 and provides, in pertinent part:

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 the application 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 submitted on or after the first day of January 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 in Louisiana or on behalf of persons 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.

Comment

- Appeals process for denials: The VCBA states that an “applicant may appeal a denial of its application . . . not later than thirty days after [the OFI] notifies the applicant of the denial or the application is deemed denied.” RS 6:1387(B). However, the Proposed Rule is silent as to the specifics of an appeals process that will be implemented by the OFI to facilitate applicants’ exercise of this statutory right. Instead, the Proposed Rule speaks to denials in only three contexts: (1) If a renewal application is timely filed (see above regarding necessary clarification on “timely”), the filing party’s existing license or registration shall remain in effect until the renewal is approved or denied (§ 1913(C)); (2) A broad statement that denials may be based on the applicant’s noncompliance with the VCBA (§ 1931(A)); and (3) If an existing virtual currency business that files its application within ninety (90) days of the Final Rule’s effective date receives notice from the OFI that the business’ application has been denied, it must “immediately cease operating in Louisiana and doing business with residents of Louisiana” (§ 1905(A)). ETA believes it is incumbent upon the OFI, in accordance with the VCBA, to promulgate clear procedures for appeals that affords due process to applicants and does not interrupt the provision of services to an applicant’s customers unless and until the applicant has exhausted the right to appeal set forth in the VCBA and the decision on the application is final. While the Proposed Rule does contemplate applicants receiving notice of a denial, it does not outline or even incorporate by reference a framework through which an applicant will be provided a reasonable opportunity for an appellant to be heard. Requiring a business, especially one that is already

servicing Louisiana residents prior to any Final Rule's effective date, to cease operations prior to the conclusion of an appeal gives the OFI's initial denial of an application a degree of finality that does not appear to be permitted under the plain language of the VCBA.

Applicable Provision of Law

La. R.S. 6:1387 provides, in pertinent part:

An applicant may appeal a denial of its application pursuant to R.S. 6:1385, in accordance with the Administrative Procedure Act, not later than thirty days after the department notifies the applicant of the denial or the application is deemed denied.

Applicable Provision of Proposed Rule

There is no apparent corresponding provision of the Proposed Rule.

Response

The Act provides that appeals are conducted in accordance with LAPA. OFI has no apparent authority to amend legislation, including the Act and/or LAPA. The LAPA affords any person aggrieved of the Commissioner's denial of a license application a process and forum in which to bring an appeal.

III. Oversight of virtual currency businesses should be conducted in a manner that minimizes regulatory burden and promotes transparency and predictability

A. Examinations

Comment

Section 1917 of the Proposed Rule outlines the approach the OFI is contemplating when carrying out the examination authority provided to it under the VCBA. ETA is appreciative of the Proposed Rule's articulation of the types of examinations and related activities the OFI may elect to undertake. However, the absence of a defined cadence for these exam activities presents a challenge for industry participants, especially those who currently have or in the future will obtain virtual currency business licenses in other states. To ease regulatory burden, ETA recommends that the OFI consider setting a cadence of examinations for licensees and registrants. This would provide some degree of predictability and would track with how examination practices are articulated at the federal level and in other states with virtual currency licensing (e.g., NY virtual currency licensee exams). For example, in a Final Rule, the OFI could state that the commissioner may conduct an examination whenever they choose but, in any case, will not examine any less than once every two years. Regardless of cadence, specificity and predictability in this context will

allow industry participants to be better prepared for their engagement with various regulators, including the OFI, because each licensee will be better positioned to incorporate Louisiana-specific considerations into their regulatory, internal audit, and compliance strategies in a manner that is consistent with the OFI's defined schedule.

Applicable Provision of Law

La. R.S. 6:1391 provides:

A. Each person required to be licensed under this Chapter shall maintain in his office the books, records, and accounts of its virtual currency business activities as the commissioner may reasonably require in order to determine whether the person is complying with the provisions of this Chapter and the rules and regulations promulgated under the provisions of this Chapter. Required records may be maintained in any electronic format consistent with the person's ordinary business practices unless the person receives specific written instructions from the commissioner to the contrary. The books, records, and accounts shall be maintained separate and apart from any other business in which the person is involved and shall be kept at the location in the state at which the virtual currency business activities occurred or at the person's principal office unless otherwise permitted in writing by the commissioner. Records shall be made available for review or examination at a nonresidential location approved by the commissioner.

B. If the books and records of any person described in this Section are located outside of the state, he shall make them available to the commissioner at a location within this state convenient to the commissioner or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on his behalf.

C. The licensee shall pay the reasonable cost of the examination as the commissioner shall prescribe by rule. If the examination fee is not paid within thirty days of its assessment, the person examined shall be subject to an administrative penalty.

Applicable Provision of Proposed Rule

There is no apparent corresponding provision of the Proposed Rule.

Response

The Act does not contain any apparent clear expression of legislative intent requiring or authorizing OFI to establish a “cadence” or schedule of examination. OFI will conduct examinations in a manner consistent with applicable law.

B. Disclosure Requirements

Comment

Section 1931(C) of the Proposed Rule states that anyone “engaging in virtual currency business activity in Louisiana shall 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.” This section goes on to also add that the commissioner will issue policies dictating the time and form of required disclosures and provides an opportunity for licensees to propose alternative disclosures to the OFI for its approval. ETA appreciates the flexibility contemplated by this latter portion; giving licensees the ability to tailor disclosures so that they adequately address unique aspects of a licensee’s products or business model, for example, will benefit Louisiana residents and allow industry participants to foster trust and transparency with their customers. What the Proposed Rule lacks, however, is a statutory basis upon which the OFI can rely when asserting that material and substantive requirements related to disclosures will be promulgated “by policy”. We recommend that the OFI address disclosures in a subsequent proposed rulemaking so that the public has the opportunity to provide feedback to the OFI regarding what constitutes “proper” disclosures, the potential regulatory burden associated with any proposed timing and form of such disclosures, and other substantive disclosure requirements and related processes the OFI is considering. ETA respectfully submits that any such requirements are not interpretative in nature and therefore cannot be appropriately addressed through statements of policy or similar guidance documents but rather must be subject to public notice and comment in accordance with the Administrative Procedure Act (“APA”).

In a subsequent proposed rulemaking on VCBA-related disclosure requirements, ETA recommends that the OFI (1) specify what constitutes “proper disclosures”, in terms of substantive content, timing and cadence of publication, and form; (2) consider permitting any required disclosures to be made electronically; (3) outline the process licensees must follow to get approval of alternative disclosures; and (4) offer a “safe harbor” for licensees with disclosures that have been approved by the relevant authority in one or more states outside of Louisiana with a virtual currency business licensing framework, allowing those licensees to use such disclosures in

connection with their business with Louisiana residents so long as certain minimum content requirements established by the OFI are satisfied. Specifically in the context of the form of disclosures, ETA believes that expressly permitting electronic disclosures will provide regulatory certainty and allow licensees, many of which rely heavily on technology, to provide disclosures in a manner consistent with their operations. If the OFI believes an APA-compliant rulemaking process is not necessary for these substantive disclosure requirements, ETA respectfully requests that, at a minimum, the OFI provide date-certain for the subsequent publication of the policies referenced in Section 1931(C) of the Proposed Rule.

Applicable Provisions of Law

La. R.S. 6:1393 provides, in pertinent part:

The department may take an enforcement measure against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity with, or on behalf of, a resident in any of the following instances:

* * *

(3) The licensee, registrant, or person, in the conduct of its virtual currency business activity with, or on behalf, of a resident, engages in any of the following:

- (a) An unsafe or unsound act or practice.
- (b) An unfair or deceptive act or practice.
- (c) Fraud or intentional misrepresentation.
- (d) Another dishonest act.
- (e) Misappropriation of legal tender, virtual currency, or other value held by a fiduciary.

La. R.S. 6:1394 requires OFI to “adopt rules, in accordance with the Administrative Procedure Act, to implement and enforce the provisions of this Chapter and issue guidance as appropriate.”

Applicable Provision of Proposed Rule

LAC 10:I.1901(7) provides:

Unfair or Deceptive Act or Practice—failure to provide any disclosure or disclosures required by Subsection 1931(C) of this rule shall be an unfair or deceptive act or practice for purposes of taking enforcement action against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3)(b).

LAC 10:I.1931C provides:

Required Disclosures – Licensees engaging in virtual currency business activity in Louisiana shall 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. The commissioner shall also determine, by policy, the time and form required for such disclosures. Disclosures required by this section must be made separately from any other information provided by the licensee to a person and 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.

Response

OFI has considered this comment and determined that it is in the best interest of both OFI and persons licensed or registered to engage in the virtual currency business in Louisiana to amend Proposed LAC 10:I.1901(7) and 1931C.

Proposed LAC 10:I.1901(7) is amended to provide:

Unfair or Deceptive Act or Practice—failure to provide any required disclosure or disclosures shall be an unfair or deceptive act or practice for purposes of taking enforcement action against a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3)(b).

Proposed LAC 10:I.1931C is amended, re-designated §1919C and provides:

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