

CSBS UNIFORM MONEY TRANSMISSION MODERNIZATION ACT

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ARTICLE I
Short Title & Purpose

Section 1.01 Short Title.

This [Act] may be cited as the Uniform Money Transmission Modernization Act.

Section 1.02 Purpose.

This [Act] is designed to replace existing state money transmission laws currently codified at [insert relevant citation].¹ It is the intent of the Legislature that the provisions of this [Act] accomplish the following:

- (a) Ensure states can coordinate in all areas of regulation, licensing, and supervision to eliminate unnecessary regulatory burden and more effectively utilize regulator resources;
- (b) Protect the public from financial crime;
- (c) Standardize the types of activities that are subject to licensing or otherwise exempt from licensing; and
- (d) Modernize safety and soundness requirements to ensure customer funds are protected in an environment that supports innovative and competitive business practices.

ARTICLE II
Definitions

Section 2.01 Definitions.

For purposes of this [Act], the following definitions shall apply:

- (a) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
- (b) "Authorized delegate" means a person a licensee designates to engage in money transmission on behalf of the licensee.
- (c) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations [in this state] at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under this [Act] for any licensee required to do so, the given period of time shall be the quarters ending March 31,

¹ Commentary: The [Commissioner] is encouraged to recognize and honor any guidance issued under existing state money transmission law when such guidance was issued based on language under such existing law that is substantially similar to language in this [Act].

June 30, September 30, and December 31.

(d) "Bank Secrecy Act" means the Bank Secrecy Act, 31 U.S.C. Section 5311, *et seq.* and its implementing regulations, as amended and recodified from time to time.

(e) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value;

(f) "Control" means

(1) (A) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(B) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) 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.

(2) Rebuttable Presumption of Control.

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.²

(B) A person presumed to exercise a controlling influence as defined by this [Section 2.01(f)] can rebut the presumption of control if the person is a passive investor.

(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.

(g) "Eligible rating" shall mean a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating

² Commentary: The obligation to rebut control rests exclusively with the person acquiring $\geq 10\%$ of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. It is not the responsibility of the licensee to rebut control. This is consistent with Section 601(a) of the Act which requires the person acquiring control to obtain prior approval.

category modifiers such as "plus" or "minus" for S&P, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

(h) "Eligible rating service" shall mean any Nationally Recognized Statistical Rating Organization (NRSRO) as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the [Commissioner] by rule or order.

(i) "Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.

(j) "In this state" means at a physical location within this state for a transaction requested in person. For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is "in this state" by relying on other information provided by the person regarding the location of the individual's residential address or a business entity's principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate such location, including but not limited to an address associated with an account.

(k) "Individual" means a natural person.³

(l) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.⁴

(m) "Licensee" means a person licensed under this [Act].

(n) "Material litigation" means litigation, that according to United States generally accepted accounting principles, is significant to a person's financial health and would be required to be disclosed in the person's annual audited financial statements, report to shareholders, or similar records.

³ Commentary: This Act differentiates between persons and individuals. A person can include both a natural person and a corporate entity, whereas an individual can only be a natural person.

⁴ Commentary: Key individuals are limited to the natural persons responsible for establishing or approving policies and procedures relating to material functional areas of the licensee or applicant. Such areas generally include compliance, finance, information security, and operations. States are strongly encouraged to utilize the NMLS Key Individual Wizard to ensure consistency, including that only the minimum number of key individuals with ultimate responsibility for policies and procedures are identified.

(o) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(p) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(q) "Money transmission" means any of the following:

(1) Selling or issuing payment instruments to a person located in this state.

(2) Selling or issuing stored value to a person located in this state.

(3) Receiving money for transmission from a person located in this state.

The term includes payroll processing services. The term does not include the provision solely of online or telecommunications services or network access.

(r) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(s) "Multistate licensing process" means any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.⁵

(t) "NMLS" means the Nationwide Multistate Licensing System and Registry 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.

(u) "Outstanding money transmission obligations" shall be established and extinguished in accordance with applicable state law and shall mean:

(1) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or

⁵ Commentary: A primary objective of this Act is to enable state participation in multistate licensing initiatives, such as the Multistate MSB Licensing Agreement.

(2) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws.

(3) For purposes of this [Section 2.01(u)], "in the United States" shall include, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country.

(v) "Passive investor" means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have 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;⁶ and

(4) Either:

(A) Attests to (1), (2), and (3), in a form and in a medium prescribed by the [Commissioner]; or

(B) Commits to the passivity characteristics of (1), (2), and (3), in a written document.

(w) "Payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include stored value or any instrument that (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or (2) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(x) "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, [make payments relating to employee benefit plans], or make distributions of other authorized deductions from wages or salaries. The term payroll processing services does not include an employer performing payroll processing services on its own behalf or

⁶ Commentary: A person does not have the power to exercise a controlling influence if the person does not participate in the day-to-day decisions or operations of a licensee or person in control of a licensee.

on behalf of its affiliate[, or a professional employment organization subject to regulation under other applicable state law].

(y) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the [Commissioner].

(z) "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

(aa) "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes, but is not limited to, "prepaid access" as defined by 31 C.F.R. Section 1010.100, as amended or recodified from time to time. Notwithstanding the foregoing, the term "stored value" does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(bb) "Tangible net worth" shall mean the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

ARTICLE III Exemptions

Section 3.01 Exemptions.

This [Act] does not apply to:

(a) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted by this [Section 3.01] or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.

(b) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

(1) there exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(2) the payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

(3) payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee.

(c) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity:

(1) is properly licensed or exempt from licensing requirements under this [Act];

(2) provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(3) bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient.

(d) The United States or a department, agency, or instrumentality thereof, or its agent.

(e) Money transmission by the United States Postal Service or by an agent of the United States Postal Service.

(f) A state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent.

(g) A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. Section 3102, as amended or recodified from time to time, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Sections 1861-1867, as amended or recodified from time to time, or corporation organized under the Edge Act, 12 U.S.C. Sections 611-633, as amended or recodified from time to time, under the laws of a state or the United States.

(h) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a state or governmental subdivision, agency, or instrumentality thereof.

(i) A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Sections 1-25, as amended or recodified from time to time, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

(j) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant.

(k) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

(l) An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of the [Act] when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor.

(m) A person expressly appointed as a third party service provider to or agent of an entity exempt under [Section 3.01(g)], solely to the extent that:

(1) such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(2) the exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.

(n) A person exempt by regulation or order if the [Commissioner] finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this [Act].

Section 3.02 Authority to Require Demonstration of Exemption.

The [Commissioner] may require that any person claiming to be exempt from licensing pursuant to [Section 3.01] provide information and documentation to the [Commissioner] demonstrating that it qualifies for any claimed exemption.

ARTICLE IV

Implementation, Confidentiality, Supervision & Relationship to Federal Law

Section 4.01 Implementation.

(a) In order to carry out the purposes of this [Act], the [Commissioner] may, subject to the provisions of [Section 4.02(a) and(b)]:

(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 resources, records or related information obtained under this [Act];

(2) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this [Act].

(3) Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by such other state or federal government agencies or officials; and

(4) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

(b) BROAD ADMINISTRATIVE AUTHORITY—The Commissioner shall have the broad administrative authority to administer, interpret and enforce this [Act], and promulgate rules or regulations implementing this [Act] and to recover the cost of administering and enforcing this [Act] by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of this [Act].

Section 4.02 Confidentiality.⁷

(a) Except as otherwise provided in [Section 4.02(b)], all information or reports obtained by the [Commissioner] from an applicant, licensee, or authorized delegate, and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the [Commissioner], or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under [this state's open records law].

(b) The [Commissioner] may disclose information not otherwise subject to disclosure under [Section 4.02(a)] to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the [Commissioner] finds that the release is reasonably necessary for the protection and interest of the public [in accordance with [state open records law]].

(c) This [Section 4.02] does not prohibit the [Commissioner] from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.

(d) Information contained in the records of [Department] that is not confidential and may be made available to the public either on the [Department's] website, upon receipt by the [Department] of a written request, or in NMLS shall include:

- (1) The name, business address, telephone number, and unique identifier of a licensee;
- (2) The business address of a licensee's registered agent for service;
- (3) The name, business address, and telephone number of all authorized delegates;

⁷ Commentary: Section 4.02 is an important confidentiality provision that protects the business or proprietary financial information that may be submitted by a license applicant or licensee. It is important to provide license applicants and licensees with an appropriate degree of protection for certain information, especially business and proprietary information, that is contained in applications and reports filed with state regulators. In the absence of such protections, information concerning an applicant's or licensee's receivables, for example, could be used to reconstruct the market share of a particular license applicant or licensee.

(4) The terms of or a copy of any bond filed by a licensee, provided that confidential information, including, but not limited to, prices and fees for such bond is redacted;

(5) Copies of any non-confidential final orders of the [Department] relating to any violation of this [Act] or regulations implementing this [Act]; and

(e) Imposition of an administrative fine or penalty under this [Act].

Section 4.03 Supervision.

(a) The [Commissioner] may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this [Act] or by a rule adopted or order issued under this [Act] as reasonably necessary or appropriate to administer and enforce this [Act], regulations implementing this [Act], and other applicable law, including the Bank Secrecy Act and the USA PATRIOT ACT. The [Commissioner] may:

(1) conduct an examination either on-site or off-site as the [Commissioner] may reasonably require;

(2) conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;

(3) accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the [Commissioner]; and

(4) summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(b) A licensee or authorized delegate shall provide, and the [Commissioner] shall have full and complete access to, all records the [Commissioner] may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the [Commissioner], provided, the [Commissioner] may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this [Section 4.03(b)].⁸

(c) Unless otherwise directed by the [Commissioner], a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's

⁸ Commentary: The [Commissioner] is encouraged to instruct examiners to: (1) include all examination requests in the Day 1 letter that may require the licensee to obtain records located outside of the U.S., including but not limited to evidence demonstrating when an outstanding money transmission obligation has been extinguished; and (2) accept electronic bank statements as provided to the licensee by the bank.

authorized delegates.

Section 4.04 Networked Supervision.

(a) To efficiently and effectively administer and enforce this [Act] and to minimize regulatory burden, the [Commissioner] is authorized and encouraged to participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees that hold licenses in this state and other states. As a participant in multistate supervision, the [Commissioner] will:

(1) cooperate, coordinate, and share information with other state and federal regulators in accordance with [Section 4.02] of this [Act];

(2) enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and

(3) cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with [Section 4.02] of this [Act].

(b) The [Commissioner] may not waive, and nothing in this [Section 4.04] constitutes a waiver of, the [Commissioner's] authority to conduct an examination or investigation or otherwise take independent action authorized by this [Act] or a rule adopted or order issued under this [Act] to enforce compliance with applicable state or federal law.

(c) A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this [Act].

Section 4.05 Relationship to Federal Law.

(a) In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of this [Act] and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.

(b) In the event of any inconsistencies between this [Act] and a federal law that governs pursuant to Section [4.05(a)], the [Commissioner] may provide interpretive guidance that:

(1) identifies the inconsistency; and

(2) identifies the appropriate means of compliance with federal law.

ARTICLE V
Money Transmission Licenses

Section 5.01 License Required.

(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under this [Act];

(b) [Section 5.01(a)] does not apply to:

(1) A person that is an authorized delegate of a person licensed under this [Act] acting within the scope of authority conferred by a written contract with the licensee; or

(2) A person that is exempt pursuant to [Section 3.01] and does not engage in money transmission outside the scope of such exemption.

(c) A license issued under [Section 5.05] is not transferable or assignable.

Section 5.02 Consistent State Licensing.

(a) To establish consistent licensing between [this state] and other states, the [Commissioner] is authorized and encouraged to:

(1) implement all licensing provisions of this [Act] in a manner that is consistent with other states that have adopted this [Act] or multistate licensing processes; and

(2) participate in nationwide protocols for licensing cooperation and coordination among state regulators provided that such protocols are consistent with this [Act].

(b) In order to fulfill the purposes of this [Act], the [Commissioner] is authorized and encouraged to establish relationships or contracts with NMLS or other entities designated by NMLS to enable the [Commissioner] to:

(1) collect and maintain records;

(2) coordinate multistate licensing processes and supervision processes;

(3) process fees; and

(4) facilitate communication between [state] and licensees or other persons subject to this [Act].

(c) The [Commissioner] is authorized and encouraged to utilize NMLS for all aspects of licensing in accordance with this [Act], including but not limited to, license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background

checks, credit checks, fee processing, and examinations.⁹

(d) The [Commissioner] is authorized and encouraged to utilize NMLS forms, processes, and functionalities in accordance with this [Act].¹⁰ In the event NMLS does not provide functionality, forms, or processes for a provision of this [Act], the [Commissioner] is authorized and encouraged to strive to implement the requirements in a manner that facilitates uniformity with respect to licensing, supervision, reporting, and regulation of licensees which are licensed in multiple jurisdictions.

(e) Waive or Modify Requirements.— For the purpose of participating in the Nationwide Multistate Licensing System & Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements and to establish new requirements as reasonably necessary to participate in the Nationwide Multistate Licensing System & Registry.

[Alternative to Section 5.02(e)]: The [Commissioner] is authorized and encouraged to establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in NMLS upon the [Department's] determination that each requirement is consistent with law, public interest, and the purposes of this [Section 5.02].]

Section 5.03 Application for License.

(a) Applicants for a license shall apply in a form and in a medium as prescribed by the [Commissioner]. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the [Commissioner] and may be changed or updated by the [Commissioner] in accordance with applicable law in order to carry out the purposes of this [Act] and maintain consistency with NMLS licensing standards and practices. The application must state or contain, as applicable:

- (1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;
- (2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the [10]-year period next preceding the submission of the application;
- (3) a description of any money transmission previously provided by the applicant and the money transmission that the applicant seeks to provide in this state;

⁹ Commentary: The [Commissioner] acting through its representatives should review and ensure that NMLS functionalities, forms, and processes are consistent with this Act before adopting such NMLS functionalities, forms, and processes.

¹⁰ Commentary: The [Commissioner] acting through its representatives should review and ensure that NMLS functionalities, forms, and processes are consistent with this Act before adopting such NMLS functionalities, forms, and processes.

(4) a list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission;

(5) a list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;

(7) a sample form of contract for authorized delegates, if applicable;

(8) a sample form of payment instrument or stored value, as applicable;

(9) the name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and

(10) any other information the [Commissioner] or NMLS reasonably requires with respect to the applicant.

(b) If an applicant is a corporation, limited liability company,¹¹ partnership, or other legal entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and state or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the [10]-year period next preceding the submission of the application of each key individual and person in control of the applicant;

(5) a list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the [10]-year period preceding the submission of the application;

(6) a copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the

¹¹ Commentary: Though this Act contemplates licensing of both individuals and legal entities, some states may limit licensing to corporations and limited liability companies.

application or, if determined to be acceptable to the [Commissioner], certified unaudited financial statements for the most recent fiscal year or other period acceptable to the [Commissioner];

(7) a certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;

(8) if the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time;

(9) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the U.S. Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time; or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) the name and address of the applicant's registered agent in this state;
and

(11) any other information the [Commissioner] reasonably requires with respect to the applicant.

(c) A nonrefundable [application fee of [\$X]] [and a license fee of [\$X]] must accompany an application for a license under this [Section 5.03]. [The license fee shall be refunded if the application is denied.]

(d) The [Commissioner] may waive one or more requirements of [Sections 5.03(a) and (b)] or permit an applicant to submit other information in lieu of the required information.

Section 5.04 Information Requirements for Certain Individuals.

(a) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the [Commissioner] through NMLS the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the [Commissioner] for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years.

(2) Personal history and experience in a form and in a medium prescribed by the [Commissioner], to obtain the following:

(A) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement shall be waived;

(B) Information related to any criminal convictions or pending charges; and

(C) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(b) If the individual has resided outside of the United States at any time in the last ten years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) Not be affiliated with or have an interest with the individual it is researching.

(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:

(A) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(B) Criminal records information for the past ten years, including, but not limited to, felonies, misdemeanors, or similar convictions¹² for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

¹² Commentary: Countries have criminal law offenses classifications that do not align with felonies and misdemeanors. When vetting an individual living or working in a jurisdiction without felonies and misdemeanors, states are encouraged to perform diligence on the search firm's methodologies and, if acceptable, utilize the search firm's results. If present in the search firm's report, a regulator may consider whether the convictions would disqualify an applicant from licensing in the jurisdiction at issue.

- (C) Employment history;
- (D) Media history, including an electronic search of national and local publications, wire services, and business applications; and
- (E) Financial services-related regulatory history, including but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

Section 5.05 Issuance of License.

(a) When an application for an original license under this [Act] appears to include all the items and addresses all of the matters that are required, the application is complete and the [Commissioner] shall promptly notify the applicant in a record of the date on which the application is determined to be complete, and:¹³

(1) The [Commissioner] shall approve or deny the application within 120 days after the completion date; or

(2) if the application is not approved or denied within 120 days after the completion date:

(A) the application is approved; and

(B) the license takes effect as of the first business day after expiration of the 120-day period.

(C) The [Commissioner] may for good cause extend the application period.

(b) A determination by the [Commissioner] that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the Criminal Background Check response from the FBI, and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(c) When an application is filed and considered complete under this [Section 5.05], the [Commissioner] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [Commissioner] may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The [Commissioner] shall issue a license to an applicant under this [Section 5.05] if the [Commissioner] finds that all of the following conditions have been fulfilled:

¹³ Commentary: NMLS will accommodate and streamline the process of communicating when applications are received and when states consider them to have been complete. The intent of this [Act] is for the application period to begin on the day an application is determined to be complete.

(1) The applicant has complied with Section [5.03 and 5.04]; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

(d) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) the [Commissioner] is authorized and encouraged to accept the investigation results of a lead investigative state for the purpose of [Section 5.05(c)] if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) if [state] is a lead investigative state, the [Commissioner] is authorized and encouraged to investigate the applicant pursuant to [Section 5.05(c)] and the timeframes established by agreement through the multistate licensing process, provided however, that in no case shall such timeframe be noncompliant with the application period in [Section 5.05(a)(1)].

(e) The [Commissioner] shall issue a formal written notice of the denial of a license application within thirty (30) days of the decision to deny the application. The [Commissioner] shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the [Commissioner] under this [Section 5.05(e)] may appeal within thirty (30) days¹⁴ after receipt of the written notice of the denial [pursuant to state administrative law procedures].

(f) The initial license term shall begin on the day the application is approved. The license shall expire on December 31st of the year in which the license term began, unless the initial license date is between November 1 and December 31, in which instance the initial license term shall run through December 31st of the following year.

Section 5.06 Renewal of License.

(a) A license under this [Act] shall be renewed annually.

(1) An annual renewal fee of [\$X] shall be paid no more than 60 days before the license expiration.

(2) The renewal term shall be for a period of 1 year and shall begin on January 1 of each year after the initial license term and shall expire on December 31 of the year the renewal term begins.

(b) A licensee shall submit a renewal report with the renewal fee, in a form and

¹⁴ Commentary: Administrative procedures for challenging a departmental decision may be derived from other aspects of state law. In such a case, this Act should be adjusted to reflect the relevant administrative process.

in a medium prescribed by the [Commissioner]. The renewal report must state or contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the [Commissioner].

(c) The [Commissioner] for good cause may grant an extension of the renewal date.

(d) The [Commissioner] is authorized and encouraged to utilize NMLS to process license renewals provided that such functionality is consistent with this [Section 5.06].

Section 5.07 Maintenance of License.

(a) If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the [Commissioner] may suspend or revoke the licensee's license in accordance with the procedures established by this [Act] or other applicable state law for such suspension or revocation.

(b) An applicant for a money transmission license must demonstrate that it meets or will meet, and a money transmission licensee must at all times meet, the requirements in [Sections 10.01, 10.02, and 10.03] of this [Act].

ARTICLE VI

Acquisition of Control and Change of Key Individual

Section 6.01 Acquisition of Control.

(a) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the [Commissioner] prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(b) A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee:

(1) Submit an application in a form and in a medium prescribed by the [Commissioner]; and

(2) Submit a nonrefundable fee of [\$X] with the request for approval.

(c) Upon request, the [Commissioner] may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the [Commissioner] pursuant to [Section 6.01(b)(1)] without using NMLS.

(d) The application required by [Section 6.01(b)(1)] shall include information required by [Section 5.04] for any new key individuals that have not previously completed the requirements of [Section 5.04] for a licensee.

(e) When an application for acquisition of control under this [Section 6.01] appears to include all the items and address all of the matters that are required, the application shall be considered complete and the [Commissioner] shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:¹⁵

(1) The [Commissioner] shall approve or deny the application within 60 days after the completion date; or

(2) if the application is not approved or denied within 60 days after the completion date:

(A) the application is approved; and

(B) the person, or group of persons acting in concert, are not prohibited from acquiring control.

(3) The [Commissioner] may for good cause extend the application period.

(f) A determination by the [Commissioner] that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(g) When an application is filed and considered complete under [Section 6.01(e)], the [Commissioner] shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The [Commissioner] shall approve an acquisition of control pursuant to this [Section 6.01] if the [Commissioner] finds that all of the following conditions have been fulfilled:

(1) The requirements of subsections (b) and (d) have been met, as applicable; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(h) If an applicant avails itself or is otherwise subject to a multistate licensing

¹⁵ Commentary: NMLS will accommodate and streamline the process of communicating when applications are received and when states consider them to have been complete. The intent of this Act is for the application period to begin on the day an application is determined to be complete.

process:

(1) the [Commissioner] is authorized and encouraged to accept the investigation results of a lead investigative state for the purpose of [Section 6.01(g)] if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) if [state] is a lead investigative state, the [Commissioner] is authorized and encouraged to investigate the applicant pursuant to [Section 6.01(g)] and the timeframes established by agreement through the multistate licensing process.

(i) The [Commissioner] shall issue a formal written notice of the denial of an application to acquire control within thirty (30) days of the decision to deny the application. The [Commissioner] shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the [Commissioner] under this [Section 6.01(i)] may appeal within thirty (30) days¹⁶ after receipt of the written notice of the denial [pursuant to state administrative law procedures].

(j) The requirements of [Section 6.01(a) and (b)] do not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;

(4) A person that is exempt under [Section 3.01(g)];

(5) A person that the [Commissioner] determines is not subject to [Section 6.01(a)] based on the public interest;

(6) A public offering of securities of a licensee or a person in control of a licensee; or

(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(k) Persons in [Sections 6.01(j)(2), (3), (4), (6), (7)] in cooperation with the licensee shall notify the [Commissioner] within [15] days after the acquisition of control.¹⁷

¹⁶ Commentary: Administrative procedures for challenging a departmental decision may be derived from other aspects of state law. In such a case, this Act should be adjusted to reflect the relevant administrative process.

¹⁷ Commentary: Notice is satisfied upon updating the licensee's NMLS record.

(l) Streamlined Acquisition of Control

(1) The requirements of [Section 6.01(a) and (b)] do not apply to a person that has complied with and received approval to engage in money transmission under this [Act] or was identified as a person in control in a prior application filed with and approved by the [Commissioner] or by an MSB accredited state pursuant to a multistate licensing process, provided that:

(A) the person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous 5-years;

(B) if the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by an MSB accredited state if such rating was given;

(C) the licensee to be acquired is projected to meet the requirements of [Sections 10.01, 10.02, and 10.03] of this [Act] after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of [Sections 10.01, 10.02, and 10.03] of this [Act] after the acquisition of control is completed;

(D) the licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(E) the person provides notice of the acquisition in cooperation with the licensee and attests to [Section 6.01(k)(1)(A), (B), (C), and (D)] in a form and in a medium prescribed by the [Commissioner].

(2) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice is deemed approved.

(m) Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the [Commissioner] as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the [Commissioner] determines that the person would not be a person in control of a licensee, the proposed Person and transaction is not subject to the requirements of [Section 6.01(a) and (b)] of this [Act].

(n) If a multistate licensing process includes a determination pursuant to [Section 6.01(m)] and an applicant avails itself or is otherwise subject to the multistate licensing process:

(1) The [Commissioner] is authorized and encouraged to accept the control determination of a lead investigative state with sufficient staffing, expertise, and minimum standards for the purpose of [Section 6.01(m)]; or

(2) If state is a lead investigative state, the [Commissioner] is authorized and encouraged to investigate the applicant pursuant to [Section 6.01(m)] and the timeframes established by agreement through the multistate licensing process,

Section 6.02 Notice and Information Requirements for a Change of Key Individuals.

(a) A licensee adding or replacing any key individual shall:

(1) Provide notice in a manner prescribed by the [Commissioner] within 15 days after the effective date of the key individual's appointment; and

(2) Provide information as required by [Section 5.04] within 45 days of the effective date.

(b) Within 90 days of the date on which the notice provided pursuant to [Section 6.02(a)] was determined to be complete, the [Commissioner] may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(c) A notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval [pursuant to state administrative law procedures] [within thirty (30) days]¹⁸ after receipt of such notice of disapproval.

(d) If the notice provided pursuant to [Section 6.02(a)] is not disapproved within 90 days after the date on which the notice was determined to be complete, the key individual is deemed approved.

(e) If a multistate licensing process includes a key individual notice review and disapproval process pursuant to [Section 6.02] and the licensee avails itself or is otherwise subject to the multistate licensing process:

(1) the [Commissioner] is authorized and encouraged to accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purpose of [Section 6.02]; or

(2) if [state] is a lead investigative state, the [Commissioner] is authorized and encouraged to investigate the applicant pursuant to [Section 6.02(b)] and the timeframes established by agreement through the multistate licensing process.

¹⁸ Commentary: Administrative procedures for challenging a departmental decision may be derived from other aspects of state law. In such a case, this Act should be adjusted to reflect the relevant administrative process.

ARTICLE VII

Reporting and Records

Section 7.01 Report of Condition.

(a) Each licensee shall submit a report of condition within 45 days of the end of the calendar quarter, or within any extended time as the [Commissioner] may prescribe.¹⁹

(b) The report of condition shall include:

(1) Financial information at the licensee level;

(2) Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(3) Permissible investments report;

(4) Transaction destination country reporting for money received for transmission, if applicable; and

(5) Any other information the [Commissioner] reasonably requires with respect to the licensee. The [Commissioner] is authorized and encouraged to utilize NMLS for the submission of the report required by this [Section 7.01(a)] and is authorized to [change or] update as necessary the requirements of this [Section 7.01] to carry out the purposes of this [Act] and maintain consistency with NMLS reporting.

(c) The information required by [Section 7.01(b)(4)] shall only be included in a report of condition submitted within 45 days of the end of the fourth calendar quarter.

Section 7.02 Audited Financials.

(a) Each licensee shall, within 90 days after the end of each fiscal year, or within any extended time as the [Commissioner] may prescribe, file with the [Commissioner]:

(1) An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and

(2) Any other information as the [Commissioner] may reasonably require.

(b) The audited financial statements shall be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the [Commissioner];

¹⁹ Commentary: This language is designed to implement state use of the NMLS MSB Call Report.

(c) The audited financial statements shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the [Commissioner]. If the certificate or opinion is qualified, the [Commissioner] may order the licensee to take any action as the [Commissioner] may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

Section 7.03 Authorized Delegate Reporting.

(a) Each licensee shall submit a report of authorized delegates within 45 days of the end of the calendar quarter.²⁰ The [Commissioner] is authorized and encouraged to utilize NMLS for the submission of the report required by this [Section 7.03(a)] provided that such functionality is consistent with the requirements of this [Section 7.03].

(b) The authorized delegate report shall include, at a minimum, each authorized delegate's:

- (1) Company legal name;
- (2) Taxpayer employer identification number;
- (3) Principal provider identifier;
- (4) Physical address;
- (5) Mailing address;
- (6) Any business conducted in other states;
- (7) Any fictitious or trade name;
- (8) Contact person name, phone number, and email
- (9) Start date as licensee's authorized delegate;
- (10) End date acting as licensee's authorized delegate, if applicable;
- (11) [Court orders pursuant to [Section 8.03];] and
- (12) Any other information the [Commissioner] reasonably requires with respect to the authorized delegate.

Section 7.04 Reports of Certain Events.²¹

²⁰ Commentary: This language is designed to implement state use of the NMLS Uniform Authorized Agent Reporting (UAAR) process.

²¹ Commentary: States are encouraged to utilize NMLS to satisfy Section 7.04 reporting requirements if NMLS develops new functionality to prioritize reporting of significant events.

(a) A licensee shall file a report with the [Commissioner] within one business day after the licensee has reason to know of the occurrence of any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or

(3) the commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

(b) A licensee shall file a report with the [Commissioner] within three business day after the licensee has reason to know of the occurrence of any of the following events:

(1) a [charge or] conviction of the licensee or of a key individual or person in control of the licensee for a felony; or

(2) a [charge or] conviction of an authorized delegate for a felony.

Section 7.05 Bank Secrecy Act Reports.

A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this [Section 7.05] with the appropriate federal agency is deemed compliant with the requirements of this [Section 7.05].

Section 7.06 Records.

(a) Licensee shall maintain the following records, for determining its compliance with this [Act] for at least [three] years:

(1) a record of each outstanding money transmission obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding money transmission obligations;

(5) records of each outstanding money transmission obligation paid within the [three]-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the [Commissioner] reasonably requires by rule.

(b) The items specified in [Section 7.06(a)] may be maintained in any form of record.

(c) Records specified in [Section 7.06(a)] may be maintained outside this state if they are made accessible to the [Commissioner] on [seven] business-days' notice that is sent in a record.

(d) All records maintained by the licensee as required in [Section 7.06(a)–(c)] are open to inspection by the [Commissioner] pursuant to [Section 4.03(a)].

ARTICLE VIII

Authorized Delegates

Section 8.01 Relationship Between Licensee and Authorized Delegate.

(a) In this [Section 8.01], "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

(1) adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;

(2) enter into a written contract that complies with [Section 8.01(d)];
and

(3) conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

(c) An authorized delegate must operate in full compliance with this [Act].

(d) The written contract required by [Section 8.01(b)] must be signed by the licensee and the authorized delegate and, at a minimum, must:

(1) appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;

(2) set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;

(3) require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this [Act] and regulations implementing this [Act], relevant provisions of the Bank Secrecy Act and the USA PATRIOT ACT;

(4) require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;

(5) impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;

(6) require the authorized delegate to prepare and maintain records as required by this [Act] or regulations implementing this [Act], or as reasonably requested by the [Commissioner];

(7) acknowledge that the authorized delegate consents to examination or investigation by the [Commissioner];

(8) state that the licensee is subject to regulation by the [Commissioner] and that, as part of that regulation, the [Commissioner] may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(9) (9) acknowledge receipt of the written policies and procedures required under [Section 8.01(b)(1)].

(e) If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five (5) business days, provide documentation to the [Commissioner] that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the [Commissioner] of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

(f) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of

fees received from money transmission.²²

(g) An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee.

Section 8.02 Unauthorized Activities

A person shall not engage in the business of money transmission on behalf of a person not licensed under this [Act] or not exempt pursuant to [Article III] of this [Act]. A person that engages in such activity provides money transmission to the same extent as if the person were a licensee, and shall be jointly and severally liable with the unlicensed or nonexempt person.

Section 8.03 [Optional]: Prohibited Authorized Delegates.

(a) The [appropriate court] in an action brought by a licensee shall have jurisdiction to grant appropriate equitable or legal relief, including without limitation prohibiting the authorized delegate from directly or indirectly acting as an authorized delegate for any licensee in this state and the payment of restitution, damages or other monetary relief, if the [appropriate court] finds that an authorized delegate failed to remit money in accordance with the written contract required by [Section 8.01(b)] or as otherwise directed by the licensee or required by law.

(b) If the [appropriate court] issues an order prohibiting a person from acting as an authorized delegate for any licensee pursuant to [Section 8.03(a)], the licensee that brought the action shall report the order to the [Commissioner] within thirty (30) days and shall report the order through NMLS within ninety (90) days.

(c) An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit more than [\$XXX] of such money is guilty of a [reference to state classification] felony.

(d) An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit no more than [\$XXX] of such money is guilty of a [reference to state classification] misdemeanor.

ARTICLE IX

Timely Transmission, Refunds, and Disclosures

Section 9.01 Timely Transmission.

(a) Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

(b) If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure

²² Commentary: An express trust account or segregated bank account is not required.

unless providing a response would violate a state or federal law, rule, or regulation.

Section 9.02 Refunds.

(a) This [Section 9.02] does not apply to:

(1) money received for transmission subject to the federal Remittance Rule (12 C.F.R. Part 1005, Subpart B), as amended or recodified from time to time; or

(2) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

(b) Every licensee shall refund to the sender within 10 days of receipt of the sender's written request for a refund of any and all money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date on which the money was received for transmission;

(2) Instructions have been given committing an equivalent amount of money to the person designated by the sender within 10 days of the date on which the money was received for transmission;

(3) The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond 10 days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this [Section 9.02]; or

(4) The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

(5) The refund request does not enable the licensee to:

(A) Identify the sender's name and address or telephone number;
or,

(B) Identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

Section 9.03 Receipts.

(a) This [Section 9.03] does not apply to:

(1) Money received for transmission subject to the federal Remittance Rule (12 C.F.R. Part 1005, Subpart B), as amended or recodified from time to time;

(2) money received for transmission that is not primarily for personal, family or household purposes;

(3) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(4) payroll processing services.

(b) For purposes of this [Section 9.03] "receipt" means a paper receipt, electronic record or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.

(c) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(1) The receipt shall contain the following information, as applicable:

(A) The name of the sender;

(B) The name of the designated recipient;

(C) The date of the transaction;

(D) The unique transaction or identification number;

(E) The name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's customer service telephone number;

(F) The amount of the transaction in United States dollars;

(G) Any fee charged by the licensee to the sender for the transaction; and

(H) Any taxes collected by the licensee from the sender for the transaction.

(2) The receipt required by this [Section 9.03] shall be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically or by phone, if other than English.

Section 9.04 [Optional]: Notice.

Every licensee or authorized delegate shall include on a receipt or disclose on the licensee's website or mobile application the name and phone number of the [Department] and a statement

that the licensee's customers can contact the [Department] with questions or complaints about the licensee's money transmission services.

Section 9.05 Disclosures for Payroll Processing Services.

(a) A licensee that provides payroll processing services shall:

(1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and

(2) Make available worker paystubs or an equivalent statement to workers.

(b) Section [9.05(a)] does not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by [Section 9.05(a)(2)].

ARTICLE X
Prudential Standards.

Section 10.01 Net Worth.

(a) A licensee under this [Act] shall maintain at all times a tangible net worth of the greater of \$100,000 or 3 percent of total assets for the first \$100 million, 2 percent of additional assets for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion.

(b) Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to [Section 5.03(b)(6)].

(c) Notwithstanding the foregoing provisions of this [Section 10.01], the [Commissioner] shall have the authority, for good cause shown, to exempt, in-part or in whole, from the requirements of this [Section 10.01] any applicant or licensee.

Section 10.02 Surety Bond.

(a) An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond [in a form satisfactory to the [Commissioner]]²³ [or, with the [Commissioner]'s approval, a deposit instead of a bond in accordance with this [Section 10.02].²⁴]

(b) The amount of the required security shall be:

²³ Commentary: The administrative aspects of a bond, including the form, beneficiary, liability provisions, cancellation, claims and judgments against bonds, and deposits in lieu of bonds, will continue to be state specific. States are encouraged to utilize the NMLS Electronic Surety Bond feature to minimize administrative burden on both industry and states.

²⁴ Commentary: Option to include a state-specific deposit as an alternative to the bond at the election of the licensee.

(1) the greater of [\$100,000] or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of [\$500,000];²⁵ [or

(2) [in the event that the licensee's tangible net worth exceeds [10]% of total assets, the licensee shall maintain a surety bond of [\$100,000.]]

(c) A licensee that maintains a bond in the maximum amount provided for in [Section 10.02(b)(1) [or (2), as applicable]] shall not be required to calculate its average daily money transmission liability in this state for purposes of this [Section 10.02].²⁶

(d) A licensee may exceed the maximum required bond amount pursuant to [Section 10.04(a)(5)].

Section 10.03 Maintenance of Permissible Investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.

(b) Except for permissible investments enumerated in [Section 10.04(a)], the [Commissioner], with respect to any licensee, may by [rule or order]²⁷ limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this [Section 10.03(c)] shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) Upon the establishment of a statutory trust in accordance with [Section

²⁵ Commentary: For states with a maximum requirement greater than \$500,000, a licensee will hold security equal to the greater maximum amount to the extent required to do so.

²⁶ Commentary: States that currently require licensees to report average daily money transmission liability either related to calculating the surety bond amount or for other purposes could retain this reporting requirement in the reporting requirements section of their law. If all states were to require reporting of average daily money transmission liability in each state, it will become burdensome and costly for licensees, so reporting for licensees maintaining the maximum bond amount should only be required if it is to maintain an existing reporting requirement.

²⁷ Commentary: Each state should utilize its relevant administrative procedures, ensuring the state has authority to limit the extent an asset is permissible without legislative change.

10.03(c)] or when any funds are drawn on a letter of credit pursuant to [Section 10.04(a)(4)], the [Commissioner] shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established hereunder shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) The [Commissioner] by rule or by order may allow other types of investments that the [Commissioner] determines are of sufficient liquidity and quality to be a permissible investment. The [Commissioner] is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

Section 10.04 Types of Permissible Investments.

(a) The following investments are permissible under [Section 10.03]:

(1) cash (including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution) and cash equivalents including ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations,²⁸ debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating service;

(2) certificates of deposit or senior debt obligations of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) an obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) the full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the [Commissioner] that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to

²⁸ Commentary: Regulators expect all cash in transit via armored car, cash in smart safes, and cash in licensee-owned locations to be subject to appropriate policies, procedures, and controls.

the letter of credit amount within [7] days of presentation of the items required by [Section 10.04(a)(4)(C)].²⁹

(A) The letter of credit must:

(i) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that (1) bears an eligible rating or whose parent company bears an eligible rating; and (2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

(ii) Be irrevocable, unconditional and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

(iii) Not contain reference to any other agreements, documents or entities, or otherwise provide for any security interest in the licensee; and

(iv) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the [Commissioner] in writing by certified or registered mail or courier mail or other receipted means, at least sixty (60) days prior to any expiration date, that the irrevocable letter of credit will not be extended.

(B) In the event of any notice of expiration or non-extension of a letter of credit issued under [Section 10.04(a)(4)(A)(iv)], the licensee shall be required to demonstrate to the satisfaction of the [Commissioner], 15 days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with [Section 10.03(a)] upon the expiration of the letter of credit. If the licensee is not able to do so, the [Commissioner] may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with [Section 10.03(a)]. Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the [Commissioner] or the [Commissioner's] designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

²⁹ Commentary: A licensee will be able to use a letter of credit for which the stated beneficiary is the Commissioner of a single state (or a duly appointed agent of the Commissioner) as a permissible investment to meet corresponding outstanding money transmission obligations in the United States. State regulators will work to develop an administration process for a single letter of credit.

(C) The letter of credit shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(i) The original letter of credit (including any amendments); and

(ii) A written statement from the beneficiary stating that any of the following events have occurred:

1. the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

2. the filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

3. the seizure of assets of a licensee by a [Commissioner] pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

4. The beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with [Section 10.03(a)] upon the expiration or non-extension of the letter of credit.

(D) The [Commissioner] may designate an agent to serve on the [Commissioner]'s behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the [Commissioner]. The [Commissioner]'s agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this [Section 10.04(a)(4)] are assigned to the [Commissioner].

(E) The [Commissioner] is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including but not limited to services provided by the NMLS and State Regulatory Registry, LLC.

(5) One hundred percent of the surety bond [or deposit] provided for under [Section 10.02] that exceeds the average daily money transmission liability in this state.

(b) Unless permitted by the [Commissioner] by rule or by order to exceed the limit as set forth herein, the following investments are permissible under [Section 10.03] to the extent specified:

(1) receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to 50% of the aggregate value of the licensee's total permissible investments;

(2) of the receivables permissible under [Section 10.04(b)(1)], receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed 10% of the aggregate value of the licensee's total permissible investments.

(3) the following investments are permissible up to 20% per category and combined up to 50% of the aggregate value of the licensee's total permissible investments:

(A) A short-term (up to six months) investment bearing an eligible rating;

(B) Commercial paper bearing an eligible rating;

(C) A bill, note, bond, or debenture bearing an eligible rating;

(D) U.S. tri-party repurchase agreements collateralized at 100% or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

(E) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P, or the equivalent from any other eligible rating service; and

(F) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in [Section 10.04(a)(1)–(3)].

(4) cash (including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers) at foreign depository institutions are permissible up to 10% of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

(A) has an eligible rating;

(B) is registered under the Foreign Account Tax Compliance Act;

(C) is not located in any country subject to sanctions from the Office of Foreign Asset Control; and

(D) is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

ARTICLE XI Enforcement³⁰

Section 11.01 [Optional]: Suspension and Revocation.

(a) The [Commissioner] may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this [Act] or a rule adopted or an order issued under this [Act];

(2) the licensee does not cooperate with an examination or investigation by the [Commissioner];

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this [Act], as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

³⁰ Commentary: States differ significantly in the norms of enforcement and administrative procedures. Differences among states have not, historically, been an obstacle to enforcing money transmission laws. This Article is optional for states that seek standardized enforcement language and it is consistent with the Uniform Law Commission's Uniform Money Services Act. This Article is not intended to alter existing administrative procedures, allocation of enforcement authority between regulators and attorneys general, or judicial procedures.

All enforcement authorities contained in Article XI must be subject to review pursuant to a state's administrative and judicial procedures.

(8) the licensee does not remove an authorized delegate after the [Commissioner] issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this [Act].

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the [Commissioner] may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this [Act], and the previous conduct of the person involved.

Section 11.02 [Optional]: Suspension and Revocation of Authorized Delegates.

(a) The [Commissioner] may issue an order suspending or revoking the designation of an authorized delegate, if the [Commissioner] finds that:

(1) the authorized delegate violated this [Act] or a rule adopted or an order issued under this [Act];

(2) the authorized delegate did not cooperate with an examination or investigation by the [Commissioner];

(3) the authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the [Commissioner] may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this [Act] or a rule adopted or order issued under this [Act], and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the [Commissioner].

Section 11.03 [Optional]: Orders to Cease and Desist.

(a) If the [Commissioner] determines that a violation of this [Act] or of a rule adopted or an order issued under this [Act] by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the

[Commissioner] may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(b) The [Commissioner] may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the [Commissioner].

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding [pursuant to state administrative procedures].

(d) A licensee or an authorized delegate that is served with an order to cease and desist may petition the [appropriate court], for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding [pursuant to state administrative procedures].

(e) An order to cease and desist expires unless the [Commissioner] commences an administrative proceeding [pursuant to state administrative procedures] within [10] days after it is issued.

Section 11.04 [Optional]: Consent Orders.

The [Commissioner] may enter into a consent order at any time with a person to resolve a matter arising under this [Act] or a rule adopted or order issued under this [Act]. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this [Act] or a rule adopted or an order issued under this [Act] has been violated.

Section 11.05 [Optional]: Criminal Penalties.

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this [Act] or that intentionally makes a false entry or omits a material entry in such a record is guilty of a [reference to state classification] felony.

(b) A person that knowingly engages in an activity for which a license is required under this [Act] without being licensed under this [Act] and who receives more than [\$500] in compensation within a 30-day period from this activity is guilty of a [reference to state classification] felony.

(c) A person that knowingly engages in an activity for which a license is required under this [Act] without being licensed under this [Act] and who receives no more than [\$500] in compensation within a 30-day period from this activity is guilty of a [reference to state classification] misdemeanor.

Section 11.06 [Optional]: Civil Penalties.

The [Commissioner] may assess a civil penalty against a person that violates this [Act] or a rule adopted or an order issued under this [Act] in an amount not to exceed [\$1,000] per day for each day the violation is outstanding, plus this State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

Section 11.07 [Optional]: Unlicensed Persons.

(a) If the [Commissioner] has reason to believe that a person has violated or is violating [Section 5.01], the [Commissioner] may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of [Section 5.01].

(b) In an emergency, the [Commissioner] may petition the [appropriate court] for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

(c) An order to cease and desist becomes effective upon service of it upon the person.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding [pursuant to state administrative procedures].

(e) A person that is served with an order to cease and desist for violating [Section 5.01] may petition the [appropriate court] for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to [state administrative procedures].

(f) An order to cease and desist expires unless the [Commissioner] commences an administrative proceeding within [10] days after it is issued.

ARTICLE XII
Miscellaneous Provisions

Section 12.01 Uniformity of Application and Construction.

In applying and construing this [Act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 12.02 Severability Clause.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 12.03 Transition Period.

(a) A person licensed in this state to engage in the business of money transmission shall not be subject to the provisions of this [Act], to the extent that they conflict with

current law or establish new requirements not imposed under current law, until such time as the licensee renews its current license or for [X months] after the effective date of this [Act], whichever is later.

(b) Notwithstanding [Section 12.03(a)], a licensee shall only be required to amend its authorized delegate contracts for contracts entered into or amended after the effective date or the completion of any transition period contemplated under [Section 12.03(a)]. Nothing herein shall be construed as limiting an authorized delegate’s obligations to operate in full compliance with this [Act] as required by [Section 8.01(c)].

(c) [Optional for States Not Previously Regulating Payroll Processors] A person providing payroll processing services in this state without a license shall not be considered in violation of [Section 5.01] if the person applies for a license within [6-months] of the enactment of this Act, or [April 1, 202X], whichever is later. The [Commissioner] may for good cause extend the transition period in conjunction with the extension of an application period.

Section 12.04 [Optional for States with Qualified Individual Requirements] Qualified Individuals.

The qualified individual requirement of [state qualified individual statute] is inapplicable to this [Act], and no licensee shall be required to employ any individual or retain any person within [state-specific geographic restriction for qualified individuals].

Section 12.05 Repeals.

The following Acts and parts of Acts are repealed:

- (a)
- (b)
- (c)

ARTICLE XIII
Virtual Currency³¹

Section 13.01 Definitions.³²

For the purposes of this Article:

(a) "Control of virtual currency," when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction;

(b) "Exchange," used as a verb, means to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:

(1) virtual currency for money, bank credit, or one or more forms of virtual currency; or

(2) money or bank credit for one or more forms of virtual currency.

(c) "Transfer" means to assume control of virtual currency from or on behalf of a person and to:

(1) credit the virtual currency to the account of another person;

(2) move the virtual currency from one account of a person to another account of the same person; or

(3) relinquish control of virtual currency to another person.

(d) "U.S. Dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular date or period specified in this [Act].

(e) "Virtual currency":

(1) means a digital representation of value that:

(A) is used as a medium of exchange, unit of account, or store of value; and

(B) is not money, whether or not denominated in money; and

³¹ Commentary: Derived from the Virtual-Currency Businesses Act published by the Uniform Law Commission's Uniform Regulation of Virtual Currency Businesses Act.

³² Commentary: Any state that incorporates this Article into the Act may find it necessary to make conforming modifications to the other provisions of the Act for consistency.

(2) does not include:

(A) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or

(B) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

(f) "Virtual-currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.

(g) "Virtual-currency business activity" means:

(1) exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;

(2) holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(3) exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:

(A) virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or

(B) money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.³³

(h) "Virtual-currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

Section 13.02 Scope.

(a) This Article does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent the Electronic Fund Transfer Act of 1978, 15 U.S.C. Sections 1693 through 1693r, as amended or recodified from time to time, the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a through 78oo, as amended or recodified from time to time, the Commodities Exchange Act of 1936, 7 U.S.C. Sections 1 through 27f, as

³³ Commentary: For avoidance of doubt, virtual-currency business activity does not include solely receiving money from a person for transmission to a person that is engaged in virtual-currency business activity, or receiving money from a person engaged in virtual-currency business activity for transmission to a person.

amended or recodified from time to time, or [insert citation to "blue sky" laws of this state] govern the activity.

(b) This [Article XIII] does not apply to activity by:

(1) a person that:

(A) contributes only connectivity software or computing power to a decentralized virtual currency, or to a protocol governing transfer of the digital representation of value;

(B) provides only data storage or security services for a business engaged in virtual-currency business activity and does not otherwise engage in virtual-currency business activity on behalf of another person; or

(C) provides only to a person otherwise exempt from this [Act] virtual currency as one or more enterprise solutions used solely among each other and has no agreement or relationship with a person that is an end-user of virtual currency;

(2) a person using virtual currency, including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services, solely:

(A) on its own behalf;

(B) for personal, family, or household purposes; or

(C) for academic purposes;

(3) a person whose virtual-currency business activity with or on behalf of persons is reasonably expected to be valued, in the aggregate, on an annual basis at \$5,000 or less, measured by the U.S. Dollar equivalent of virtual currency;

(4) an attorney to the extent of providing escrow services to a person;

(5) a title insurance company to the extent of providing escrow services to a person;

(6) a securities intermediary, as defined in [insert citation to U.C.C. Section 8-102 of this state], or a commodity intermediary, as defined in [insert citation to U.C.C. 9-102 of this state], that:

(A) does not engage in the ordinary course of business in virtual-currency business activity with or on behalf of a person in addition to maintaining securities accounts or commodities accounts and is regulated as a securities intermediary or commodity intermediary under federal law, law of this state other than this [act], or law of another state; and

(B) affords a person protections comparable to those set forth in Section 5.02;

(c) a secured creditor under [insert citation to U.C.C. Article 9 of any state] or creditor with a judicial lien or lien arising by operation of law on collateral that is virtual currency, if the virtual-currency business activity of the creditor is limited to enforcement of the security interest in compliance with [insert citation to U.C.C. Article 9 of any state] or lien in compliance with the law applicable to the lien;

(d) a virtual-currency control-services vendor; or

(e) a person that:

(1) does not receive compensation from a person for:

(A) providing virtual-currency products or services; or

(B) conducting virtual-currency business activity; or

(2) is engaged in testing products or services with the person's own funds.

(f) The [Commissioner] may determine that a person or class of persons, given facts particular to the person or class, should be exempt from this [act], whether the person or class is covered by requirements imposed under federal law on a money-service business.

Section 13.03 Conditions Precedent to Engaging in Virtual Currency Business Activity.

(a) A person may 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 another person unless the person is:

(1) licensed in this state by the [Commissioner] pursuant to [Section 5.05]; or

(2) exempt from licensing under [Section 3.01] of this [Act].

(b) A person that is licensed to engage in virtual-currency business activity is engaged in the business of money transmission and is subject to the requirements of this [Act].

Section 13.04 Required Disclosures.

(a) A licensee that engages in virtual currency business activity shall provide to a person who uses the licensee's products or services the disclosures required by [Section 13.04(b)] and any additional disclosure the [Commissioner] by rule determines reasonably necessary for the protection of persons. The [Commissioner] shall determine by rule the time and form required for disclosure. A disclosure required by this section must be made separately from any other information provided by the licensee and in a clear and conspicuous manner in a record the person

may keep. A licensee may propose for the [Commissioner]'s approval alternate disclosures as more appropriate for its virtual-currency business activity with or on behalf of persons.

(b) Before establishing a relationship with a person, a licensee shall disclose, to the extent applicable to the virtual-currency business activity the licensee will undertake with the person:

(1) a schedule of fees and charges the licensee may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) whether the product or service provided by the licensee is covered by:

(A) a form of insurance or is otherwise guaranteed against loss by an agency of the United States:

(i) up to the full U.S. Dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee as of the date of the placement or purchase, including the maximum amount provided by insurance under the Federal Deposit Insurance Corporation or otherwise available from the Securities Investor Protection Corporation; or

(ii) if not provided at the full U.S. Dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee, the maximum amount of coverage for each person expressed in the U.S. Dollar equivalent of the virtual currency; or

(B) private insurance against theft or loss, including cyber theft or theft by other means;

(3) the irrevocability of a transfer or exchange and any exception to irrevocability;

(4) a description of:

(A) liability for an unauthorized, mistaken, or accidental transfer or exchange;

(B) the person's responsibility to provide notice to the licensee of the transfer or exchange;

(C) the basis for any recovery by the person from the licensee;

(D) general error-resolution rights applicable to the transfer or exchange; and

(E) the method for the person to update the person's contact information with the licensee ;

(5) that the date or time when the transfer or exchange is made and the person's account is debited may differ from the date or time when the person initiates the instruction to make the transfer or exchange;

(6) whether the person has a right to stop a pre-authorized payment or revoke authorization for a transfer and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer;

(7) the person's right to receive a receipt, trade ticket, or other evidence of the transfer or exchange;

(8) the person's right to at least 30 days' prior notice of a change in the licensee's fee schedule, other terms and conditions of operating its virtual-currency business activity with the person and the policies applicable to the person's account; and

(9) that virtual currency is not money.

(c) Except as otherwise provided in [Section 13.04(d)], at the conclusion of a virtual-currency transaction with or on behalf of a person, a licensee shall provide the person a confirmation in a record which contains:

(1) the name and contact information of the licensee, including information the person may need to ask a question or file a complaint;

(2) the type, value, date, precise time, and amount of the transaction;
and

(3) the fee charged for the transaction, including any charge for conversion of virtual currency to money, bank credit, or other virtual currency.

(d) If a licensee discloses that it will provide a daily confirmation in the initial disclosure under [Section 13.04(c)], the licensee may elect to provide a single, daily confirmation for all transactions with or on behalf of a person on that day instead of a per-transaction confirmation.

Section 13.05 Property Interests and Entitlements to Virtual Currency.

(a) A licensee that has control of virtual currency for one or more persons shall maintain control of virtual currency in each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.

(b) If a licensee violates [Section 13.05(a)], the property interests of the persons in the virtual currency are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the persons became entitled to the virtual currency or the licensee obtained control of the virtual currency.

- (c) The virtual currency referred to in this section is:
 - (1) held for the persons entitled to the virtual currency;
 - (2) not property of the licensee;
 - (3) not subject to the claims of creditors of the licensee; and
 - (4) deemed a permissible investment under this Act.

Section 13.06 Additional Requirements and Clarifications for Virtual Currency Business Activities.

(a) A licensee engaged in virtual currency business activities must comply with all provisions of this [Act] to the extent applicable to the licensee's activities.

(b) A licensee engaged in virtual currency business activities may include in its calculation of tangible net worth virtual currency, measured by the average value of the virtual currency in U.S. Dollar equivalent over the prior six months, excluding control of virtual currency for a person entitled to the protections pursuant to [Section 13.05].

(c) A licensee shall maintain, for all virtual-currency business activity with or on behalf of a person five years after the date of the activity, a record of:

(1) each transaction of the licensee with or on behalf of the person or for the licensee's account in this state, including:

- (A) the identity of the person;
- (B) the form of the transaction;
- (C) the amount, date, and payment instructions given by the person; and
- (D) the account number, name, and United States Postal Service address of the person, and, to the extent feasible, other parties to the transaction;

(2) the aggregate number of transactions and aggregate value of transactions by the licensee with or on behalf of the person and for the licensee's account in this state, expressed in U.S. Dollar equivalent of virtual currency for the previous 12 calendar months;

(3) each transaction in which the licensee exchanges one form of virtual currency for money or another form of virtual currency with or on behalf of the person;

(4) a general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses of the licensee;

(5) each business-call report the licensee is required to create or provide to the department or NMLS;

(6) bank statements and bank reconciliation records for the licensee and the name, account number, and United States Postal Service address of each bank the licensee uses in the conduct of its virtual-currency business activity with or on behalf of the person;

(7) a report of any dispute with the person; and

(8) a report of any virtual-currency business activity transaction with or on behalf of a person which the licensee was unable to complete.

(d) A licensee shall maintain records required by [Section 13.06(c)] in a form that enables the [Commissioner] to determine whether the licensee is in compliance with this [Act], any court order, and law of this state other than this [Act].