Marked-Up Version

PROPOSED
MONEY SERVICES RULES
EFFECTIVE – December 1, 2011

ARKANSAS SECURITIES DEPARTMENT
Heritage West Building, Suite 300
201 East Markham
Little Rock, Arkansas 72201

Uniform Money Services Act
Table of Contents

Article 1	General Provisions	p. 1
Article 2	Money Transmission Licenses	p. 5
Article 3	[Reserved]	p. 11
Article 4	Currency Exchange Licenses	p. 11
Article 5	Authorized Delegates	p. 14
Article 6	Examinations - Reports - Records	p. 15
Article 7	Permissible Investments	p. 24
Article 8	Enforcement	p. 27
Article 9	Administrative Procedures	p. 32
Article 10	Miscellaneous Provisions	p. 33

CHAPTER 1
GENERAL PROVISIONS

RULE 102. DEFINITIONS

When the terms listed below are used in the Arkansas Uniform Money Services Act, any Rules or forms promulgated under the Arkansas Uniform Money Services Act, or any order of the Commissioner under the Arkansas Uniform Money Services Act, the following definitions shall apply, unless a contrary definition is expressly provided or clearly required by the context, to the extent that they do not conflict with the definitions set forth in the Arkansas Uniform Money Services Act.

(1) **Act.** The term "Act" means the Arkansas Uniform Money Services Act, Ark. Code Ann. § 23-55-101 et seq., as the same may be codified and amended from time to time.

(2) **Applicant.** The term "applicant" means a person who submits an application for a money transmission or currency exchange license ~~or a person who submits an application for approval to engage in money transmission or currency exchange~~ in Arkansas ~~without being licensed.~~

(3) **Application.** The term "application" means the form prescribed by the Commissioner for filing in connection with obtaining either a money transmission license~~,~~ or currency exchange license~~, or the Commissioner's approval to engage in money transmission or currency exchange~~ in Arkansas, including all amendments, papers, documents and exhibits incidental thereto.

(4) **Audited financial statement.** The term "audited financial statement" means a financial statement prepared in accordance with generally accepted accounting principles and ~~prepared~~ audited by an independent accountant according to generally accepted ~~accounting principles~~ auditing standards in the United States.

(5) **Commissioner.** The term "Commissioner" means the Arkansas Securities Commissioner and includes the Commissioner's designees.

(6) **Currency exchange.** The term "currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(A) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(B) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(C) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(D) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(7) **Department.** The term "Department" means the Arkansas Securities Department.

(8) **Engaged in the business of money services.** The term "engaged in the business of money services," unless otherwise provided, includes any person who holds himself out as being a currency dealer or exchanger; an issuer of traveler's checks, money orders, prepaid access, or stored value; a seller or redeemer of traveler's checks, money orders, prepaid access, or stored value; or who receives money or monetary value for the purpose of transmitting said money or monetary value using a system outside that of a conventional financial institution.

(9) **Medium of exchange.** The term "medium of exchange" connotes that the value is accepted by a larger group than the two parties to the change. Therefore, no monetary value, as that term is defined in the Act, would exist if the product (i.e. gift certificate) or payment mechanism (i.e. universal payment card) is only accepted by one merchant.

(10) **Money transmission.** The term "money transmission" means selling or issuing payments instruments, stored value, prepaid access, or receiving money or monetary value for transmission. The term excludes entities that provide delivery services (e.g. courier or package delivery services) and entities that act as mere conduits for the transmission of data (e.g. Internet service providers). The term does, however, include the following:

(A) A bill payer service, except that the term does not include a service that transfers money or monetary value directly from a purchaser to a creditor of the purchaser or to an agent of the creditor; and

(B) Any informal money transfer system engaged in as a business for, or network of persons who engage as a business in, facilitating the transfer between persons who engage as a business in, facilitating the transfer of money outside the conventional financial institutions system to a location within or outside the United States.

(11) **Prepaid Access.** The term "prepaid access" means access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

~~(11)~~(12) **Principal.** The term "principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ~~twenty-five~~ 25% ~~percent~~ or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.

~~(12)~~(13) **Staff.** The term "Staff" means the Staff of the Arkansas Securities Department.

RULE 103. EXCLUSIONS

Upon the Staff's request, the person seeking to qualify for the exclusion codified at Ark. Code Ann. § 23-55-103(4) must submit:

(a) a general description of its business plan;

(b) a letter, signed by a duly authorized officer of the bank; bank holding company; office of the international banking corporation; branch of a foreign bank; corporation organized pursuant to the Bank Service Corporation Act; or corporation organized under the Edge Act, confirming that the institution, branch, or agency:

(1) assumes all legal responsibility in the State of Arkansas for satisfying the money services obligations owed to Arkansas purchasers of the money transmission services upon receipt of the purchaser's money or monetary value by ~~you~~the person or ~~your~~ the person's agents; and

(2) assumes all risk of loss that a purchaser may suffer as a result of the failure of ~~you~~ the person or one of ~~your~~ the person's agents to transmit the purchaser's funds to the entity;

(c) an executed agreement between ~~you~~ the person and the bank; bank holding company; office of the international banking corporation; branch of a foreign bank; corporation organized pursuant to the Bank Service Corporation Act; or corporation organized under the Edge Act that:

(1) includes terms consistent with this statements contained in the letter described in paragraph (2); and

(2) appoints ~~you~~ the person as the agent of the bank; bank holding company; office of the international banking corporation; branch of a foreign bank; corporation organized pursuant to the Bank Service Corporation Act; or corporation organized under the Edge Act, sets out the limits of ~~your~~ the person's authority, and includes ~~your~~ the person's agreement to act only within the scope of that authority; and

(d) any other information the Staff reasonably requests.

CHAPTER 2
MONEY TRANSMISSION LICENSES

RULE 201. LICENSE REQUIRED

(a) For purposes of this chapter:

(1) a person engages in the business of money transmission if the person conducts money transmission for persons located in this state or conducts money transmission from a physical location in this state for persons located outside this state and receives compensation or expects to receive compensation, directly or indirectly, for conducting the transmissions; and

(2) a persons engaging in the business of money transmission shall be presumed to solicit, advertise, or hold itself out as a person that engages in the business of money transmission in this state if the person fails to provide a disclaimer listing either the states in which it is licensed ~~or approved to do business~~ or the states in which it is not licensed ~~or approved to do business~~.

RULE 202. APPLICATION FOR LICENSE

(a) **Additional information.** The Staff will review the application and, as authorized by Ark. Code Ann. § 23-55-205, investigate the applicant and all related facts to determine if the applicant possesses the qualifications and satisfies the requirements for the license. At any time during the review and investigation process, the Department may require such information as the Staff considers necessary to evaluate the application, including opinion of counsel or an opinion, review, or audited financials prepared by a certified public accountant. It is the applicant's responsibility to provide or cause to be provided all the information the Department requires.

(b) **Extension of time.** The Commissioner may give the applicant a 30-day extension to submit the additional information requested if the Department receives a written extension request from the applicant within 10 days of the Staff's request for additional information. Upon a finding of good cause, the Commissioner may give the applicant an additional extension if the Department receives a written request and sworn affidavits to support the claimed facts before the expiration of the 30-day period described above. The request must explain in detail the reasons the extension is needed. The Commissioner will notify the applicant of the decision by letter mailed via regular mail to the address provided by the applicant on or before the 10th day after the date the Department receives the request.

In this rule, "good cause" means that the applicant acted diligently and took the steps reasonably necessary to enable the applicant to file the required information in a timely manner, but that circumstances beyond the applicant's control prevent it from doing so. Good cause cannot be based upon ignorance of the law or facts that could have been

learned through the exercise of due diligence or failure to take the actions necessary to ensure timely and complete filing and payment.

After reviewing the information provided in response to the Staff's initial request for additional information, the Staff may determine that still more information is required. The Staff will notify the applicant in writing by regular mail to the address provided by the applicant if further information is required and specify the date by which the Department must receive the information.

(c) **Abandoned application.** If the applicant fails to provide any and all additional information required within the specified timeframe, the Commissioner may determine the application to be abandoned, without prejudice to an applicant's rights to file a new application. The Commissioner will notify the applicant in writing via regular mail to the address provided by the applicant if the application is considered abandoned. The Commissioner's determination is effective the date the Department mails the applicant the notice and may not be appealed. The Department will not refund the fee paid in connection with the abandoned application.

(d) **Forms and instructions.** Copies of forms and instructions for the preparation of applications for licenses are available on the Department's web site at http://www.securities.arkansas.gov or may be obtained upon request from the Staff. The Commissioner may from time to time adopt additional forms and instructions, and alter, amend or discontinue any form or instruction.

RULE 203. ~~APPROVAL TO ENGAGE IN MONEY TRANSMISSION WHEN LICENSED IN ANOTHER STATE~~(Reserved)

~~**(a)** Nothing in Ark. Code Ann. § 23-55-203 shall be construed to relieve a person that is licensed to engage in money transmission in another state from submitting an application for approval to engage in money transmission in Arkansas, a nonrefundable fee in the amount of $1,000, and a certification of license history in the other state.~~

~~**(b)** The application to engage in money transmission when licensed in another state must state or contain the information required of applicants for a money transmission license set out in Ark. Code Ann. § 23-55-202(b) and (c).~~

RULE 204. INCREASE OF SECURITY

The Commissioner may increase the amount of security required, to a maximum of one million dollars ($1,000,000), if the financial condition of a money transmitter licensee so requires. The Commissioner may consider, without limitation, the following criteria:

(a) Significant reduction of net worth.

(b) Financial losses.

(c) Potential losses resulting from the Act, or these Rules;

(d) Licensee filing for bankruptcy.

(e) The initiation of any proceedings against the licensee in any state or foreign country.

(f) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.

(g) A licensee, executive officer, board director, person in control, responsible individual, principal or authorized delegate being convicted of a crime.

(h) Any unsafe or unsound practice

(i) A judicial or administrative finding against a money transmitter licensee under the Act, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.

(j) Other events and circumstances that, in the judgment of the Commissioner, impair the ability of the licensee to meet its obligations to its money services customers.

RULE 205. ISSUANCE OF LICENSE

(a) The Commissioner may consider the following factors, without limitation, in determining whether an applicant has fulfilled the conditions for a license codified in Ark. Code Ann. § 23-55-205(a)(2):

(1) whether the applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of any felony within the past ~~ten~~ 10 years;

(2) whether the applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of a crime involving a financial transaction or fraud within the past ~~ten~~ 10 years;

(3) whether the applicant, an executive officer, proposed responsible person, board director or person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) or fraud within the past ~~ten~~ 10 years;

(4) whether the applicant, an executive officer, proposed responsible person, board director or person in control is the subject of an order, including any denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to

be subject, entered within the past 5 years, including, but not limited to, the money service industry;

~~(4)~~(5) whether the applicant, an executive officer, proposed responsible person, board director, or person in control has falsified any information supplied in connection with the application;

~~(5)~~(6) whether the applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past ~~five~~ 5 years;

~~(6)~~(7) whether the applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

~~(7)~~(8) whether the applicant, or any authorized delegate thereof, failed to respond to a request for information from the Commissioner;

~~(8)~~(9) whether the description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

~~(9)~~(10) whether the applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

~~(10)~~(11) whether the applicant, an executive officer, proposed responsible individual, board director, or person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(b) In lieu of denying an application as authorized by any of the findings in subsection (a) of this section, the Commissioner may return the application or extend the review period if the Commissioner determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The Commissioner may resume processing the application if the Commissioner determines that a favorable resolution of the disqualifying condition has occurred.

RULE 206. RENEWAL OF LICENSE

(a) **Extension of time.** Compliance with Ark. Code Ann. § 23-55-206(a) is necessary for the Department to orderly and efficiently administer and enforce the Act. However, Ark. Code Ann. § 23-55-206(d) authorizes the Commissioner to allow the licensee to file or complete the filing of its renewal report at a date later than required for good cause. The licensee has the burden to demonstrate good cause.

(b) **Good cause.** In this rule, "good cause" means that the licensee acted diligently and took the steps reasonably necessary to enable the licensee to file the complete renewal report and pay the renewal fee in a timely manner, but that circumstances beyond the licensee's control prevent it from doing so.

The licensee is expected to know and comply with the requirements of Ark. Code Ann. § 23-55-206(a) and (b). Good cause cannot be based upon ignorance of the law or facts that could have been learned through the exercise of due diligence or failure to take the actions necessary to ensure timely and complete filing and payment. For example, the licensee should know the time and information requirements necessary to obtain an audited financial statement. The inability or failure of the licensee's accountant to timely produce an audited financial statement is generally not considered to be a circumstance beyond the licensee's control.

(c) **Application for extension of time.** Applications for an extension of the renewal date must be submitted in writing to the Department no later than 60 days ~~before the anniversary of the issuance~~ prior to the expiration date of the license. The request must:

(1) state in detail the facts that support the licensee's claim that good cause exists for the extension;

(2) be accompanied by sworn affidavits to support the claimed facts; and

(3) state the period of time for which the extension is sought.

CHAPTER 3
(RESERVED)

CHAPTER 4
CURRENCY EXCHANGE LICENSES

RULE 401. LICENSE REQUIRED

(a) For purposes of this chapter:

(1) a person engages in the business of currency exchange if the person conducts currency exchange for persons located in this state or conducts currency exchange from a physical location in this state for persons located outside this state; and

(2) persons engaging in the business of currency exchange shall be presumed to solicit, advertise, or hold itself out as a person that engages in the business of currency exchange in this state if the person fails to provide a disclaimer listing either the states in which it is licensed or approved to do business or the states in which it is not licensed or approved to do business.

RULE 402. APPLICATION FOR LICENSE

(a) **Additional information.** The Staff will review the application and, as authorized by Ark. Code Ann. § 23-55-403, investigate the applicant and all related facts to determine if the applicant possesses the qualifications and satisfies the requirements for the license. At any time during the review and investigation process, the Department may require such information as the Staff considers necessary to evaluate the application, including opinion of counsel or an opinion, review, or audited financials prepared by a certified public accountant. It is the applicant's responsibility to provide or cause to be provided all the information the Department requires.

(b) **Extension of time.** The Commissioner may give the applicant a 30-day extension to submit the additional information requested if the Department receives a written extension request from the applicant within 10 days of the Staff's request for additional information. Upon a finding of good cause, the Commissioner may give the applicant an additional extension if the Department receives a written request and sworn affidavits to support the claimed facts before the expiration of the 30-day period described above. The request must explain in detail the reasons the extension is needed. The Commissioner will notify the applicant of the decision by letter mailed via regular mail to the address provided by the applicant on or before the 10th day after the date the Department receives the request.

In this rule, "good cause" means that the applicant acted diligently and took the steps reasonably necessary to enable the applicant to file the required information in a timely manner, but that circumstances beyond the applicant's control prevent it from doing so. Good cause cannot be based upon ignorance of the law or facts that could have been

learned through the exercise of due diligence or failure to take the actions necessary to ensure timely and complete filing and payment.

After reviewing the information provided in response to the Staff's initial request for additional information, the Department may determine that still more information is required. The Staff will notify the applicant in writing by regular mail to the address provided by the applicant if further information is required and specify the date by which the Department must receive the information.

(c) **Abandoned application.** If the applicant fails to provide any and all additional information required within the specified timeframe, the Commissioner may determine the application to be abandoned, without prejudice to an applicant's rights to file a new application. The Commissioner will notify the applicant in writing via regular mail to the address provided by the applicant if the application is considered abandoned. The Commissioner's determination is effective the date the Department mails the applicant the notice and may not be appealed. The Department will not refund the fee paid in connection with the abandoned application.

(d) **Forms and instructions.** Copies of forms and instructions for the preparation of applications for licenses are available on the Department's web site at http://www.securities.arkansas.gov or may be obtained upon request from the Staff. The Commissioner may from time to time adopt additional forms and instructions, and alter, amend or discontinue any form or instruction.

RULE 403. ISSUANCE OF LICENSE

(a) The Commissioner may consider the following factors, without limitation, in determining whether an applicant has fulfilled the conditions for a license codified in Ark. Code Ann. § 23-55-403(a)(2):

(1) whether the applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of any felony within the past ~~ten~~ 10 years;

(2) whether the applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of a crime involving a financial transaction or fraud within the past ~~ten~~ 10 years;

(3) whether the applicant, an executive officer, proposed responsible person, board director or person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) or fraud within the past ~~ten~~ 10 years;

(4) whether the applicant, an executive officer, proposed responsible person, board director or person in control is the subject of an order, including any denial, suspension, or revocation of authority to engage in a regulated activity by any

other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past 5 years, including, but not limited to, the money service industry;

~~(4)~~(5) whether the applicant, an executive officer, proposed responsible person, board director, or person in control has falsified any information supplied in connection with the application;

~~(5)~~(6) whether the applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past ~~five~~ 5 years;

~~(6)~~(7) whether the applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

~~(7)~~(8) whether the applicant, or any authorized delegate thereof, failed to respond to a request for information from the Commissioner;

~~(8)~~(9) whether the description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

~~(9)~~(10) whether the applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

~~(10)~~(11) whether the applicant, an executive officer, proposed responsible individual, board director, or person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(b) In lieu of denying an application as authorized by any of the findings in subsection (a) of this section, the Commissioner may return the application or extend the review period if the Commissioner determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The Commissioner may resume processing the application if the Commissioner determines that a favorable resolution of the disqualifying condition has occurred.

RULE 404. RENEWAL OF LICENSE

(a) **Extension of time.** Compliance with Ark. Code Ann. § 23-55-404(a) is necessary for the Department to orderly and efficiently administer and enforce the Act. However, Ark. Code Ann. § 23-55-404(d) authorizes the Commissioner to allow the licensee to file or complete the filing of its renewal report at a date later than required for good cause. The licensee has the burden to demonstrate good cause.

(b) **Good cause.** In this rule, "good cause" means that the licensee acted diligently and took the steps reasonably necessary to enable the licensee to file the complete renewal report and pay the renewal fee in a timely manner, but that circumstances beyond the licensee's control prevent it from doing so.

The licensee is expected to know and comply with the requirements of Ark. Code Ann. § 23-55-404(a) and (b). Good cause cannot be based upon ignorance of the law or facts that could have been learned through the exercise of due diligence or failure to take the actions necessary to ensure timely and complete filing and payment.

(c) **Application for extension of time.** Applications for an extension of the renewal date must be submitted in writing to the Department no later than 60 days ~~before the biennial anniversary of the issuance~~ prior to the expiration date of the license. The request must:

(1) state in detail the facts that support the licensee's claim that good cause exists for the extension;

(2) be accompanied by sworn affidavits to support the claimed facts; and

(3) state the period of time for which the extension is sought.

CHAPTER 5
AUTHORIZED DELEGATES
(RESERVED)

CHAPTER 6
EXAMINATIONS – REPORTS – RECORDS

RULE 603. REPORT OF MATERIAL CHANGE

(a) Material changes described in this section must be reported to the Commissioner within ~~fifteen (15)~~ business days of the occurrence of the change.

(b) "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

(1) A change of the physical and/or mailing address;

(2) A change of the responsible individual;

(3) A change of the licensee's name or trade name;

(4) A change in the location where the records of the licensee that are required to be retained under Ark. Code Ann. § 23-55-605 are kept;

(5) The obtaining, revocation, suspension, or surrender of a money services license in any other jurisdiction;

(6) The conviction of the licensee, an executive officer, responsible individual, board director, principal, or person in control of a misdemeanor or gross misdemeanor involving a financial transaction or fraud; and

(7) Other similar activities or events.

(c) In accordance with Ark. Code Ann. § 23-55-603(b), a licensee shall file with the Commissioner within 45 days after the end of each fiscal quarter a current list of all authorized delegates and locations in this state where the licensee or an authorized delegate of the licensee provides money services. Compliance is deemed where the licensee provides to the Commissioner:

(1) Any addition or deletion of the licensee-owned locations where money services are provided, including mobile locations;

(2) Any change in the name or trade name or business address of an existing authorized delegate; and

(3) Any additions or deletions from its roster of authorized delegates.

RULE 604. CHANGE OF CONTROL

A request for approval of change of control as required by Ark. Code Ann. § 23-55-604 shall be made within ~~fifteen~~ 15 days after learning of the proposed change of control. The request for approval shall include:

(a) A comprehensive description of the proposed change that sets forth:

(1) The identity of all persons acquiring control under the proposed change;

(2) The ownership interest and managerial authority of all persons in control under the proposed change.

(b) For each new person in control under the proposed change:

(1) Biographical information, including employment history for the immediate previous ~~ten~~ 10 years;

(2) A signed authorization for a background investigation on a form prescribed by the Commissioner.

RULE 608. DISCLOSURE REQUIREMENTS

CHAPTER 7
PERMISSIBLE INVESTMENTS
(RESERVED)

CHAPTER 8
ENFORCEMENT

RULE 805. CIVIL PENALTIES

(a) The Commissioner may assess a civil penalty against a person that violates the Act or these rules or an order issued under the Act.

(b) **Notice of assessment of civil penalties.** Upon the request of the Staff, the Commissioner shall issue a notice of assessment of a civil penalty. The notice shall include the following:

(1) a statement of the violation(s) or unsafe or unsound practice(s) or breaches alleged;

(2) a statement of the facts supporting the assessment of the civil penalty;

(3) notice that the licensee or other person is entitled to a hearing in accordance with Ark. Code Ann. § 23-55-902(a), to determine whether a civil penalty should be assessed against the licensee or other person, if the licensee or other person requests the hearing within ~~thirty~~ 30 days of service of the notice of assessment of a civil penalty;

(4) notice that, if the licensee or other person makes a timely request for a hearing, the licensee or other person may appear at the hearing in person, by attorney, or by presenting positions, arguments, and contentions in writing, and at the hearing may present evidence and examine witnesses for and against the licensee or other person;

(5) notice that failure of the licensee or other person to make a timely request for a hearing to determine whether a civil penalty should be assessed against the licensee or other person, or to appear at the hearing, in person, by attorney, or by writing, is consent by the licensee or other person to the assessment of the civil penalty.

(c) **Amount of civil penalty.** The Commissioner is authorized by Ark. Code Ann. § 23-55-805 to assess a civil penalty in an amount not to exceed $1,000 per day for each day the violation is outstanding, plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

(d) In determining the amount of civil penalty to be assessed pursuant to Ark. Code Ann. § 23-55-805, the Commissioner shall consider all of the following:

(1) the seriousness of and the risk posed by the violation;

(2) the licensee's or other person's good faith efforts to prevent the violation;

(3) the licensee's or other person's history regarding violations;

(4) the licensee's or other person's financial resources; and

(5) any other matters justice may require.

CHAPTER 9
ADMINISTRATIVE PROCEEDINGS

RULE 901. ADMINISTRATIVE PROCEEDINGS

These rules should be read in conjunction with the Administrative Procedures Act ("APA"), Ark. Code Ann. §-25-15-201 – ~~217~~ 219.

RULE 901.1. LOCATION OF OFFICE, CONTACT INFORMATION AND BUSINESS HOURS

Address or deliver all communications and inquiries to:

(a) Arkansas Securities Department, 201 East Markham, Heritage West Building, Suite 300, Little Rock, Arkansas 72201.

(b) The general information number for the Department is (501) 324-9260 and the toll free number is (800) 981-4429.

(c) The Department's web-site is located at http://www.securities.arkansas.gov.

(d) The business hours of the Department are 8:00 a.m. to 4:30 p.m. each day except Saturdays, Sundays and legally declared state holidays.

RULE 901.2. SUBMISSIONS AND FILINGS

(a) Motions, requests, petitions, requests for advisory opinions or interpretations and other materials submitted to the Department shall be filed with the Commissioner at the office of the Department or with any person authorized or designated by the Commissioner to receive a filing.

(b) A filing may be made by personal delivery, first-class, registered or certified mail or any express delivery service. Where permitted by the Commissioner, a filing may be made by facsimile or any other electronic means provided the Department can print such filing. The Commissioner may require that a signed original of any document filed by electronic means be filed with the Department.

(c) All petitions, correspondence, motions or other documents shall be deemed filed when received by the Commissioner or any person authorized or designated by the Commissioner to receive a filing.

RULE 901.3. ADVISORY OPINIONS OR OTHER LEGAL INTERPRETATIONS

The Commissioner or his designee may issue advisory opinions or other legal interpretations regarding the Act, these rules, or any order issued under the Act or these rules. Requests for

written opinions or interpretations of the laws or rules shall be in writing. The request must state or contain:

(a) An original and one copy of each request.

(b) The specific section or subsection of the particular statute, rule, or order to which the request pertains must be indicated in the request.

(c) The names of each person and entity involved in the underlying facts. Requests relating to unnamed persons or entities, or to hypothetical situations, will not be answered.

(d) Requests should be limited to the particular situation involving the problem at hand and must not attempt to include every possible type of situation that may arise in the future. The facts and representations must be specific, not general.

(e) While it is essential that the request contain all of the facts necessary to reach a conclusion in the matter, the request should be concise and to the point.

(f) An indication why the requesting party thinks a problem exists, his own opinion in the matter, and the basis for his opinion.

(g) If the requesting party seeks confidential treatment, a separate letter requesting confidential treatment and stating the basis for confidential treatment must be submitted with the request for informal advice.

RULE 901.4. COMPUTATIONS OF TIME

In computing any period of time prescribed or allowed by the Act or these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legally declared state holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legally declared state holiday. When the period of time prescribed or allowed is less than ~~seven (7)~~ days, intermediate Saturdays, Sundays, and legally declared state holidays shall be excluded in the computation.

RULE 901.5. EXTENSIONS OF TIME

Except as otherwise provided by law, the Commissioner may, for good cause shown, extend any time limit prescribed or allowed by the rules or by any notice or order issued in a contested case or other proceeding. The Commissioner may grant extensions upon motion of a party or the Staff, after notice and opportunity to respond is afforded to all non-moving parties and the Staff, if the Staff is not the movant, or on the Commissioner's own motion. All motions for extensions shall be made before the expiration of the period prescribed.

RULE 901.6. EFFECT OF FILING

The filing with the Commissioner of any motion, petition, request for declaratory ruling or any other document shall not relieve any person of the obligation to comply with any statute, rule, or order of the Commissioner. Acceptance of such filing by the Commissioner shall not constitute a waiver of any failure to comply with the Act or these rules. Where appropriate, the Commissioner may require the amendment of any filing.

RULE 901.7. SERVICE

(a) Service of all documents shall be by personal service, first-class, registered or certified mail, or any express delivery service.

(b) A copy of any document served by any party showing the addresses to which the document or other paper was served shall be placed in the Commissioner's files and shall be prima facie evidence of such service and the date of such service.

(c) A party, intervenor, or the Staff filing documents with the Commissioner in a contested case shall serve a copy of such documents upon the counsel of record for all parties or intervenors that are represented by counsel, upon any party or intervenor not represented and upon counsel for the Department. Certification of such service shall be endorsed on all documents when filed with the Commissioner.

RULE 901.8. RIGHTS OF WITNESSES

(a) Any person who appears and testifies in a deposition or a contested case may be accompanied, represented and advised by counsel. The right to be accompanied, represented and advised by counsel means the right of a person testifying to have counsel present at all times while testifying and to have counsel:

(1) Advise the person before and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(b) The Commissioner may take such action as the circumstances warrant against a person who engages in dilatory or obstructionist conduct during the course of a deposition, including exclusion of the offending person from participation in the deposition or contested case.

RULE 902. COMMENCEMENT OF CONTESTED CASE

A matter that is a contested case by operation of law commences when the Department so designates, but in no event not later than the date when the Commissioner issues a notice of hearing.

RULE 902.1. NOTICE OF HEARINGS

(a) Unless otherwise provided by statute, notice of a hearing shall be given at least ~~fourteen~~ ~~(~~14~~)~~ days prior to the hearing.

(b) The Commissioner may issue a notice that sets the date and time of the hearing.

(c) The Commissioner may amend the notice of hearing at any stage of the contested case prior to the close of evidence. The Commissioner shall provide parties and intervenors with notice of the amendment and shall provide them with sufficient time to prepare their case in light of the amendment. A party that has requested a hearing on the original notice need not request a hearing on the amended notice and any such hearing shall proceed on the amended notice as if it were the original notice.

RULE 902.2. HEARING LOCATION

Unless by direction of the Commissioner a different place is designated, all hearings of the Department shall be held at the office of the Department.

RULE 902.3. POWERS OF THE COMMISSIONER

The Commissioner shall have all the powers necessary to conduct the proceeding in a fair and impartial manner and to avoid unnecessary delay. The powers of the Commissioner include, but are not limited to, the following:

(a) Administering oaths and affirmations;

(b) Regulating the course of the hearing and the conduct of the parties and their counsel, including the power to receive relevant, material and nonrepetitious evidence, rule upon the admissibility of evidence and offers of proof, and exclude or suspend a party's counsel from the proceedings for dilatory, obstructionist, egregious, contemptuous, or contumacious conduct;

(c) Scheduling and holding prehearing conferences and conferences prior to and during the course of a hearing;

(d) Considering and ruling upon all procedural and other motions appropriate in a proceeding, including petitions to add a party or intervenor;

(e) Recusing for bias or conflict of interest himself or herself on a motion made by a party or the Staff and appointing a new hearing officer in his place;

(f) Performing all other functions necessary and appropriate to discharge the duties of Commissioner.

RULE 902.4. CONSOLIDATION AND SEVERANCE

(a) The Commissioner may, for good cause, upon the Commissioner's own motion or upon motion by a party or the Department, consolidate proceedings involving related questions of law or fact.

(b) The Commissioner may, for good cause, upon the Commissioner's own motion or upon motion by a party or the Department, sever the proceeding for separate resolution of the matter as to any party or issue. In determining whether to sever the proceeding, the Commissioner shall consider whether any undue prejudice or injustice that would result from not severing the proceeding outweighs the interests of judicial economy and expeditiousness in the complete and final resolution of the proceeding.

RULE 902.5. MOTIONS

(a) **(1)** A motion may be made in writing or orally, unless the Commissioner directs that such motion be reduced to writing.

(2) All written motions shall state with particularity the relief sought and may be accompanied by a proposed order.

(3) No oral arguments may be held on written motions except as otherwise directed by the Commissioner. Written memoranda, briefs, affidavits or other relevant materials or documents may be filed in support of or in opposition to a motion.

(b) Motions shall be filed with the Commissioner. There shall be filed an original and ~~two~~ ~~(2)~~ copies of each pleading and each exhibit.

(c) **(1)** Not more than ~~seven~~ 7 days after service of any motion, or such longer period of time as may be permitted by the Commissioner for good cause, any party or the Staff may file a written response to a written motion.

(2) The Commissioner shall not rule on any oral or written motion before each party and the Staff have had an opportunity to respond.

(3) The failure of a party or the Staff to oppose a motion is deemed consent by that party or the Staff to the entry of an order granting the relief sought.

RULE 902.6. CONTINUANCES

The Commissioner may continue the hearing on his or her own motion or on the motion of any party or the Department on such terms as the Commissioner may require. The Commissioner may grant any additional requests for a continuance for settlement purposes or in the event that the denial of a continuance request would substantially prejudice a party's or the Department's case.

RULE 902.7. FAILURE TO REQUEST OR APPEAR AT A HEARING

(a) When a party fails to request a hearing within the time specified in the cease and desist order or other administrative order, the allegations against the party may be deemed admitted. ~~Without further proceedings or notice to the party, the Commissioner shall issue a final decision. The Commissioner may, if deemed necessary, receive evidence from the Staff, as part of the record, concerning the appropriateness of the amount of any civil penalty sought in the request.~~

(b) When a party fails to appear at a scheduled hearing, the allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the Commissioner shall issue a final decision. The Commissioner may, if deemed necessary, receive evidence from the Staff, as part of the record, concerning the appropriateness of the amount of any civil penalty sought in the request.

(c) A party that failed to request or appear at a hearing may file a petition for reconsideration of a final decision.

RULE 902.8. APPEARANCES AND WITHDRAWALS

(a) Attorneys duly admitted to practice law in the State of Arkansas and in good standing may represent others before the Department.

(b) Attorneys in good standing from other jurisdictions may request and, for good cause shown, be allowed to appear in a contested case, provided an attorney admitted to practice in Arkansas is present during the entire proceeding, signs all pleadings and other papers filed in the proceeding and agrees to take full responsibility for supervising the conduct of the attorney.

(c) An individual may appear on his or her own behalf in a contested case; a partner, member or manager of a partnership or limited liability company may appear and represent the partnership or limited liability company; and a duly authorized officer, director or employee of any agency, institution, corporation or authority may appear and represent the agency, institution, corporation or authority.

(d) Each person making an appearance before the Commissioner as counsel or representative in connection with any contested case shall promptly notify the Commissioner in writing by filing a notice of appearance at or before the time such person submits papers or

otherwise appears on behalf of a party in the contested case. The notice of appearance shall include a declaration that the individual is currently qualified as provided in this section and is authorized to represent and accept service on behalf of the represented party.

(e) Any party acting pro se shall so notify the Commissioner in writing by filing a notice of appearance with the Commissioner.

(f) After a notice of appearance is filed by a party or counsel, copies of all subsequent pleadings, notices, rulings, or decisions shall be provided to the person named in the notice of appearance and person designated to represent the Department.

(g) A person that has filed a notice of appearance may withdraw the notice of appearance by filing a written notice of withdrawal with the Commissioner and by providing a copy to all parties, intervenors, and the Department.

RULE 902.09. CONFERENCES

(a) Prior to the hearing, the parties, the Department, and their counsel may meet with the Commissioner, at the direction of the Commissioner or by mutual consent, in person at a specified time and place or confer with the Commissioner by telephone for the purpose of scheduling the course and conduct of the proceeding. The identification of potential witnesses, the time for and manner of inspecting and copying documents, and the exchange of any prehearing materials including witness lists, exhibits, and any other materials may also be determined at the scheduling conference.

(b) The Commissioner may, in addition to the scheduling conference, upon motion by any party or the Department, order the parties, the Staff, and their counsel to meet with the Commissioner in person or by telephone at a prehearing conference or may recess the hearing to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) Issues relating to witnesses and exhibits;

(6) Summary disposition of any and all issues;

(7) Resolution of document production issues or disputes;

(8) Amendments to pleadings; and

(9) Such other matters as may aid in the orderly disposition of the proceeding.

(c) At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the Commissioner may serve on each party and the Staff an order setting forth any agreements reached and any procedural determinations made. If the Commissioner has ordered a party to disclose all witnesses or exhibits, no witness may testify and no exhibit may be introduced at the hearing if such witness or exhibit was not disclosed pursuant to such order, unless the Commissioner allows a party or the Staff sufficient time to prepare in light of the undisclosed witness or exhibit.

(d) Following any discussion among the Commissioner, the parties, and the Staff addressing any issues in a contested case that occurs during a hearing recess, the Commissioner shall place the substance of the communication on the record including any action taken and any agreements made by the parties and the Staff as to any matters that were discussed.

RULE 902.10. CONDUCT OF HEARINGS

(a) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. The Department and each party has the right to present its case or defense by oral examination and documentary evidence and to conduct such cross-examination as may be required for full disclosure of the facts.

(b) The Department shall present its case-in-chief first, unless otherwise ordered by the Commissioner or expressly specified by law. The Department shall be the first to present an opening statement and a closing statement, and may make a rebuttal statement after the other party's closing statement or, in the case of multiple parties, after the closing statements of all parties.

(c) The Commissioner may, at any time prior to the rendering of a final decision, reopen the hearing upon the motion of the Commissioner, any party, or the Department for good cause shown. The parties, intervenors, and the Staff shall be notified of the reopening and the hearing shall be convened not less than ~~five~~ 5 days after the sending of such notice unless waived by the parties and the Staff.

RULE 902.11. RECORDING OF HEARINGS

All hearings shall be recorded either stenographically or electronically. The Commissioner shall serve notice upon the Department and all parties of receipt of the certified transcript. Any party may request a copy of the transcript from the court reporter and such copy shall be made available to any party upon payment of the cost of the transcript.

RULE 902.12. TRANSCRIPT CORRECTIONS

The Commissioner shall have the authority to order the transcript corrected upon a motion to correct, upon stipulation of the Department and the parties, or upon the Commissioner's own motion following notice to the Staff and the parties. The Commissioner may call for the

submission of proposed corrections and may order the corrections at appropriate times during the course of the proceedings. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence, but not more than ~~ten~~ 10 days from the date of receipt of the transcript by the Commissioner.

RULE 902.13. EVIDENCE

(a) The Commissioner may allow witnesses to use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony, provided that upon request by the Commissioner, a party or the Staff, the witness shall provide the books, papers, documents, or sources from which the information contained in such materials is derived prior to its use or admission as evidence.

(b) Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party or the Staff, at the time a ruling of the Commissioner is made or sought, makes known to the Commissioner the action that the party or the Staff desires taken or the objections to such action and the grounds for such action or objection. Failure to object to the admission of evidence or any ruling constitutes a waiver of the objection.

(c) Any offer of proof made in connection with an objection taken to a ruling of the Commissioner rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence that would be adduced by such testimony. If the excluded evidence consists of evidence in documentary or written form or refers to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(d) The Commissioner may take administrative notice of judicially cognizable facts and generally recognized technical or scientific facts within the Staff's specialized knowledge.

(e) The Commissioner shall afford the parties and the Staff an opportunity to contest the material noticed before or during the hearing.

(f) The Commissioner shall have the authority to employ the Staff's experience, technical competence and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making findings of fact and arriving at a decision in any contested case.

(g) The parties and the Staff may stipulate as to any relevant matters of fact or the authentication of any relevant documents that may be entered as evidence at the commencement of or during the hearing.

RULE 902.14. FILING OF ADDITIONAL EVIDENCE

At any stage of the hearing, the Commissioner may call for further evidence upon any issue and require that such evidence be produced by the party or parties concerned or by the Staff, or may authorize any party or the Staff to file specific documentary evidence as part of the record, either at the hearing or within a specified time, provided every other party and the Staff shall be afforded a reasonable opportunity to review and rebut or object to such evidence.

RULE 902.15. BRIEFS

Briefs may be filed by a party or the Department either before or during the course of a hearing or within such time as the Commissioner designates. Failure to file a brief shall in no way prejudice the rights of any party or the Department. The order of filing briefs or reply briefs shall be designated by Commissioner. The Commissioner shall provide the parties and the Department at least ~~fourteen~~ 14 days to file a brief after it is requested. A party or the Department may request an extension of the briefing schedule set by the Commissioner prior to the due date. Late briefs may not be considered by the Commissioner.

RULE 902.16. FINAL DECISION

All decisions and orders of the Commissioner concluding a contested case shall be in writing. If a final decision is adverse to a party, the decision shall include all findings of fact and conclusions of law relied upon by the Commissioner in arriving at the decision, the findings of fact and conclusions of law to be separately stated. The findings of fact shall also set forth a concise and explicit statement of the underlying facts supporting the findings of fact, where appropriate.

RULE 902.17. RIGHT TO APPEAL

A person who is aggrieved by the final decision of the Commissioner may seek judicial review of the decision in accordance with the provisions of Ark. Code Ann. § 25-15-212.

RULE 903. PETITIONS AND REQUESTS

Petitions and requests shall include all forms of proposals, requests, notices, petitions, and filings of any nature that are placed before the Commissioner.

RULE 903.1. FORM

The form to be followed in the filing of pleadings pursuant to these rules will vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein. Except as otherwise provided by law or the Commissioner otherwise determines, the petitions and requests shall include the following:

(a) Each pleading shall incorporate a statement setting forth clearly and concisely the authorization or other relief sought. The pleading shall set forth:

(1) Unless the pleading is filed by the Staff, the exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any applicant or petitioner is a corporation, limited liability company, partnership, trust, association, or other organized group, it shall also specify the state under the laws of which it was created or organized.

(2) The name, title, address, and telephone number of the attorney to whom correspondence or communications in regard to the petition or application are to be addressed. Notice, orders and other papers may be served upon the person so named and such service shall be deemed to be service upon the petitioner or applicant.

(3) A concise and explicit statement of the facts on which the Commissioner is expected to rely in granting the authorization or other relief sought.

~~(4)~~ An explanation of any unusual circumstances involved in the petition or request to which the Commissioner will be expected to direct particular attention, including the existence of emergency conditions or any request for the granting of interlocutory relief by way of an interim order during the pendency of the petition or application.

(b) There shall be attached to the pleading any exhibits, sworn written testimony, data, models, illustrations, or other materials that the petitioner or movant deems necessary or desirable to support the granting of the pleading or that any statute or regulation may require for the lawful determination of the petition or request.

(c) All documents, whenever practicable, shall be printed, typewritten, or reproduced on one side of the paper only, and double-spaced with a normal margin on all four sides. All pleadings shall be on paper 8 ½ by 11 inches in size.

(d) Pleadings shall show the venue as "Arkansas Securities Department," the title of the proceedings, the docket number assigned, and an appropriate designation (e.g. Petition, Request, Motion, Brief, Complaint).

CHAPTER 10
MISCELLANEOUS PROVISIONS
~~(RESERVED)~~

RULE 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. (RESERVED)

RULE 1002. SEVERABILITY CLAUSE. (RESERVED)

RULE 1003. EFFECTIVE DATE. (RESERVED)

RULE 1004. (RESERVED)

RULE 1005. SAVINGS AND TRANSITIONAL PROVISIONS. (RESERVED)

RULE 1006. TRANSITION YEAR

(a) A currency exchange license in effect on December 31, 2011, that is scheduled to expire during the 2013 calendar year shall continue until the stated expiration date of the license unless it is terminated by surrender, abandonment, or order of the commissioner.

(b) A currency exchange license renewed during calendar year 2013 shall terminate December 31, 2013.

(1) A currency exchange license renewed prior to July 1, 2013, shall be charged ½ of the renewal fees prescribed in Ark. Code Ann. § 23-55-404(a); and

(2) A currency exchange license renewed after July 2, 2013, shall be charged ¼ of the renewal fees prescribed in Ark. Code Ann. § 23-55-404(a).