

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Securities Department

Department Securities

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Statutory Authority for Promulgating Rules Ark. Code Ann. § 23-55-104

Rule Title: Amendments to the Money Services Rules

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

David H. Smith

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01/02/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501.324.8694

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Phone Number

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General Counsel

Title

01/02/2020

Date

Amendments to the following Rules of the Money Services Rules

Effective February 2, 2020

RULE 102. DEFINITIONS

- (4) **Audited financial statement.** The term “audited financial statement” means a financial statement prepared in accordance with generally accepted accounting principles and audited by an independent accountant according to generally accepted auditing standards in the United States or for a company formed outside the United States, “audited financial statement” means a financial statement prepared in accordance with international financial reporting standards promulgated by the International Financing Reporting Standards Foundation and the International Accounting Standards Board.
- ...
- (11) **Nationwide Multistate Licensing System (NMLS)** means the automated licensing system developed and maintained by the Conference of State Bank Supervisors for the licensing and registration of money transmitters, agents of money transmitters, and currency exchangers.
- (12) **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.
- (13) **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 percent (25%) or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.
- (14) **Staff.** The term “Staff” means the Staff of the Arkansas Securities Department.

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 thirty (30) day extension to submit the additional information requested if the Department receives a written extension request from the applicant within ten (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 thirty (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 tenth (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.

- (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 applicant will be notified that the application is considered abandoned. The Commissioner's determination may not be appealed. The Department will not refund the fee paid in connection with the abandoned application.
- (d) **Forms and instructions.** Pursuant to the Act, the Commissioner designates NMLS to receive and store filings, collect related fees from applicants and licensees, and facilitate communication with applicants and licensees on behalf of the Commissioner.

RULE 204. SURETY BOND

- (a) (1) \$10,000 Bond. Each application must be accompanied by a surety bond acceptable to the commissioner in the amount of \$10,000.
- (2) After the initial calendar year of licensure, a licensee shall maintain a surety bond of:

- (A) \$10,000 if the licensee's annualized money transmissions in Arkansas are not more than \$500,000.
 - (B) \$50,000 if the licensee's annualized money transmissions in Arkansas are greater than \$500,000 but not more than \$5,000,000;
 - (C) \$100,000 if the licensee's annualized money transmissions in Arkansas are greater than \$5,000,000 but not more than \$25,000,000;
 - (D) \$200,000 if the licensee's annualized money transmissions in Arkansas are greater than \$25,000,000 but not more than \$75,000,000; or
 - (E) \$300,000 if the licensee's annualized money transmissions in Arkansas are greater than \$75,000,000.
- (3) Annualized money transmission means the money transmission, payment instrument, and stored value dollar volume in Arkansas during the prior calendar year.
 - (4) If an increase in surety bond is required, the surety bond must be increased by March 31. Failure to maintain the proper surety bond amount shall be grounds for discipline under the Act.
- (b) The Commissioner may increase the amount of surety bond 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:
 - (1) Significant reduction of net worth.
 - (2) Financial losses.
 - (3) Potential losses resulting from the Act, or these Rules;
 - (4) Licensee filing for bankruptcy.
 - (5) The initiation of any proceedings against the licensee in any state or foreign country.
 - (6) 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.
 - (7) A licensee, executive officer, board director, person in control, responsible individual, principal or authorized delegate being convicted of a crime.

- (8) Any unsafe or unsound practice.
- (9) 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.
- (10) 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 ten (10) years, including, but not limited to, the money service industry;
 - (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;
 - (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 ten (10) years;

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

RULE 206. RENEWAL OF A 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 prevented 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.

RULE 207. NET WORTH

A money transmitter applicant or licensee must demonstrate and maintain net worth calculated at ten thousand dollars for every one million dollars of total company-wide money transmission, payment instrument, and stored value dollar volume during the

prior calendar year. The minimum net worth is fifty thousand dollars and the maximum required amount is one million dollars.

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 thirty (30) day extension to submit the additional information requested if the Department receives a written extension request from the applicant within ten (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 thirty (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 tenth (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 applicant will be notified that the application is considered abandoned. The Commissioner's determination may not be appealed.

The Department will not refund the fee paid in connection with the abandoned application.

- (d) **Forms and instructions.** Pursuant to the Act, the Commissioner designates NMLS to receive and store filings, collect related fees from applicants and licensees, and facilitate communication with applicants and licensees on behalf of the Commissioner.

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 ten (10) years, including, but not limited to, the money service industry;
 - (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;
 - (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 ten (10) years;
 - (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;

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

RULE 404. RENEWAL OF A 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.

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 forty-five (45) days after the end of each calendar 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.