

CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT  
ADDENDUM TO THE INITIAL STATEMENT OF REASONS  
FOR THE RULE CHANGES UNDER THE  
MONEY TRANSMISSION ACT

The following statements supplement the Initial Statement of Reasons:

As required by Section 11346.2 of the Government Code, the California Department of Business Oversight's Commissioner ("Commissioner") sets forth below the reasons for the proposed amendments to regulations under the California Money Transmission Act (Financial Code Section 2000 et seq.).

Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight, in accordance with the Governor's Reorganization Plan 2 (GRP 2, 2012), a reorganization of state departments and agencies to provide services more efficiently and effectively. The Department of Business Oversight has all of the powers, authority, enforcement, jurisdiction, laws and regulations that were under the former Department of Corporations and former Department of Financial Institutions.

**Specific Purpose, Problem and Rationale**

General Purpose Statement:

Effective January 1, 2011, the Legislature repealed the provisions of the California Financial Code relating to money transmitters, issuers of travelers checks, and sellers of payment instruments and enacted the Money Transmission Act (Financial Code Section 2000 et seq.), which provides for the regulation and licensure by the Commissioner of persons in the business of money transmission, defined to mean the selling or issuing of payment instruments or stored value and the receiving of money for transmission.

Existing regulations correspond to the repealed Payment Instruments Law. The proposed regulatory action would update the regulations for the Money Transmission Act by deleting references to "payment instruments" and replacing the term with "money transmission." Because the definition of "money transmission" now includes "stored value," pursuant to Financial Code Section 2003(q), the proposed rulemaking would also add the term "stored value" wherever there is a reference to what is included in the definition of "money transmission."

Nonsubstantive Changes Statement:

All of the "authority" and "reference" citations throughout the proposed regulations have been updated to correspond to the Money Transmission Act. In addition, the "authority" citations have been updated to conform to the Financial Code, which was reorganized and renumbered, effective January 1, 2012. These renumbering changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

The specific purpose, problem and rationale for each subsection is described in greater detail below.

**Subchapter 80. Payment Instruments**  
**Article 1. General Provisions**  
**Subarticle 1. Citation and Construction**

Title of Subchapter 80 is being amended to replace Payment Instruments with Money Transmission.

**Section 80.1 Scope.**

Subsections 80.1(a) and 80.1(b) are amended to replace “payment instruments” with “money transmission.” See General Purpose Statement.

Subsection 80.1(c) remains unchanged.

Section 80.1 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**Section 80.2 Citation.**

Subsection 80.2(a) is amended to replace “Payment Instruments” with “Money Transmission.” See General Purpose Statement.

Subsection 80.2(b) remains unchanged.

Section 80.2 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**Section 80.3 Unsafe and Unsound Acts.**

Subsections 80.3(a) and 80.3(b) are amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.3 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.4 References to Corporations.**

Specific purpose: The purpose of the amendment to Section 80.4 is to add “limited liability companies” to general references to corporations within the Money Transmission Act.

Problem: The existing regulation only references corporations and omits limited liability

companies. Financial Code Section 2031 expressly authorizes corporations or limited liability companies to apply for a money transmitter license.

Rationale: By adding limited liability companies to the general reference to corporations, the regulation would become consistent with current law.

Section 80.4 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.5 Financial Statements and Accounting Items - Generally Accepted Accounting Principles**

Specific purpose: The purpose of the amendment to Section 80.5 is to specify that the generally accepted accounting principles with which financial statements must be prepared in conformity, must be “United States” generally accepted accounting principles.

Problem: The existing regulation only references generally accepted accounting principles. Financial Code Section 2039 states that audited financial statements must be prepared in accordance with “United States generally accepted accounting principles.”

Rationale: By clarifying that financial statements must be prepared or determined in conformity with “United States generally accepted accounting principles,” the regulation would become consistent with current law.

Section 80.5 is also amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.5 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and the renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.6 Financial Statements - Certification.**

Specific purpose: The purpose of the amendment to Section 80.6 is to specify that if a financial statement is available as certified by an independent certified public accountant, it must be certified to be “in accordance with United States generally accepted accounting principles.”

Problem: The existing regulation is silent on how such certification is to be made. Financial Code Section 2039 states that audited financial statements must be prepared in accordance with “United States generally accepted accounting principles.”

Rationale: By clarifying that financial statements must be “in accordance with United States generally accepted accounting principles,” the regulation would become consistent with current law.

Section 80.6 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See

Nonsubstantive Changes Statement.

### **80.7 Financial Statements - Consolidating Statements.**

Specific purpose: The purpose of the amendment to Section 80.7 is to require the inclusion of a schedule of eliminating entries along with the consolidating financial statement in order to determine the volume and nature of intercompany transactions and the impact of those transactions on the licensee's balance sheet and capital accounts.

Problem: The existing regulation does not require the schedule of eliminating entries to be included with the consolidating financial statement. Without the schedule, the consolidating financial statement alone does not provide sufficient detail to accurately determine how a licensee's own balance sheet and capital accounts relate to its affiliates' financial statements. A comprehensive understanding of the licensee's financial condition is critical to making a determination of the safety and soundness of such condition.

Rationale: By including a requirement that the schedule of eliminating entries be included with the consolidating financial statement, it will ensure that the appropriate information is submitted to enable the Department to make a determination as to the licensee's financial condition.

Section 80.7 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.8 Actions of Courts and Governmental Agencies.**

Section 80.8 is amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.9 Forms of Payment Instruments.**

Subsection 80.9 is amended to replace "Payment Instruments Law" with "Money Transmission Act." See General Purpose Statement.

Subsections 80.9(a) and 80.9(b) remain unchanged.

Section 80.9 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

## **Subarticle 2. Definitions**

### **Part 1. Money Transmission Act**

#### **80.100. Scope.**

Section 80.100 is amended to add the phrase "of terms in" to clarify which definitions the Section is referencing because the amendment repeals the citation to the former Payment Instruments Law.

Section 80.100 is amended to replace "Payment Instruments Law" with "Money Transmission Act". See General Purpose Statement.

Section 80.100 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

## **Part 2. Definitions - Payment Instruments Law**

Title of Part 2 is being amended to replace "Payment Instruments" Law with "Money Transmission Act." See General Purpose Statement.

### **80.125. Scope.**

Section 80.100 is amended to add the phrase "of terms in" to clarify which definitions the Section is referencing because the amendment repeals the citation to the former Payment Instruments Law.

Section 80.125 is also amended to replace "Payment Instruments Law" with "Money Transmission Act". See General Purpose Statement.

Section 80.125 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.125.10. Advertising.**

Specific purpose: Section 80.125.10 is adopted to clarify the terms "advertise, solicit, or hold itself out" as providing money transmission in the state of California.

Problem: Financial Code Section 2030 states, in relevant part: "A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division . . . ." (Emphasis added.) It is unclear, however, whether the term "itself" modifies "advertise" and "solicit," or whether it only modifies "hold." If "itself" does not modify "advertise" and "solicit," then the mere advertising or soliciting of money transmission in this state by a third party on behalf of a licensee would require the third party to be licensed as a money transmitter. An example is a newspaper, which runs an advertisement for a money transmitter licensee. The newspaper does not itself provide money transmission services; it only advertises the services provided by others. Thus, it becomes critical to determine whether the term "itself" modifies all three terms "advertise, solicit, or hold." Depending on how the law is interpreted, a newspaper may or may not need a money transmitter license.

The Department has determined that the Money Transmission Act was not intended to require licensing of entities that merely provide advertising services, but do not receive or take possession of money.

Rationale: By explaining that “advertise, solicit, or hold itself out” means advertising itself, soliciting for itself, or holding itself out as providing money transmission in this state, the proposed regulation will clarify that licensing is required only if a person advertises itself, solicits for itself, or holds itself out as providing money transmission. Merely advertising on behalf of a licensee, without more, will not require licensing.

Section 80.125.10 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.126. California Agent.**

Specific purpose: The purpose of the amendment to Section 80.126 is to clarify the definition of “agent” and to update the term to correspond to the Money Transmission Act.

Problem: The existing regulation defines “California agent” in the context of the repealed law. Section 80.126 deletes “California” from the term “California agent” because the term, “California agent” is not a defined term, nor is it used, in the Money Transmission Act. Section 80.126, therefore, also updates the definition of “agent” to correspond to current law.

Financial Code Section 2030 states, in relevant part: “A person shall not engage in the business of money transmission in this state . . . unless the person is licensed or exempt from licensure under this division or is an agent of a person licensed or exempt from licensure under this division.” (Emphasis added.) The term “agent” is used in Section 2030 to describe two situations: (1) agent of a licensee and (2) agent of an exempt person. These have two different meanings. However, Financial Code Section 2030 does not make a distinction between the two meanings. (1) Agent of a licensee is defined in Financial Code Section 2003(b). (2) Agent of an exempt person is not defined in the Financial Code.

Rationale: Section 80.126 clarifies that “agent,” when referring to an agent of a licensee, means an agent as defined in Financial Code Section 2003(b). Section 80.126 also clarifies that “agent,” when referring to an agent of a person exempt from licensure means an agent as defined in California Civil Code, Division 3, Part 4, Title 9 (commencing with Section 2295). Civil Code 2295 et seq. corresponds to general agency law.

Section 80.126 therefore resolves any confusion as to which definition of “agent,” a person must satisfy for purposes of Financial Code Section 2030.

Section 80.126 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

## **80.127. Insured Bank.**

Specific purpose: Section 80.127 repeals the definition of “insured bank.”

Problem: The term “insured bank” was a defined term in the repealed Payment Instruments Law. It is not a defined term in the Money Transmission Act. Moreover, Financial Code Section 181, which applies to the Money Transmission Act (see Financial Code Section 99) provides a definition of the term “insured” in the context of banks.

Rationale: A definition of “insured bank” is no longer necessary because it is already defined elsewhere in the Financial Code. The term does not have a different meaning in the Money Transmission Act. Therefore, repealing the definition of “insured bank” will prevent duplication.

## **80.129. Receiving Money for Transmission.**

Specific purpose: Section 80.129 is adopted to clarify the definition of the term, "receiving money for transmission."

Problem: Financial Code Section 2003(u) defines "receiving money for transmission" to mean "receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means." Since the enactment of the Money Transmission Act, the public has expressed confusion as to whether the definition of the term includes only receiving instructions or orders to transmit money.

If a person "receives money for transmission," that person must be licensed under the Money Transmission Act. The Department has determined that the Money Transmission Act was not intended to require licensing of persons that merely receive instructions, orders, or directions to transmit money, but do not receive or take possession of money.

Rationale: Section 80.129 clarifies that "receiving money for transmission" means actually or constructively receiving, taking possession, or holding any money or monetary value for transmission. It further explains that the term does not include only receiving instructions, orders, or directions to transmit money or monetary value. Section 80.129 therefore resolves any confusion regarding what activities qualify as "receiving money for transmission."

## **Part 2. Definitions - Regulations**

### **80.150. Scope.**

Section 80.150 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.151. Definitions in Payment Instruments Law.**

Section 80.151 is amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.151 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.152. \_\_\_Percent Equity Security Owner.**

Section 80.152 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.153. \_\_\_Percent (Including Associates) Equity Security Owner.**

Section 80.153 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.154. \_\_\_Percent Voting Security Owner.**

Section 80.154 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.155. \_\_\_Percent (Including Associates) Voting Security Owner.**

Section 80.155 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.156. Associate.**

Section 80.156 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.157. Beneficial.**

Section 80.157 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.158. California Corporation.**

Section 80.158 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

**80.158.10. California Limited Liability Company.**

Specific purpose: Section 80.158.10 is adopted to clarify the definition of the term "California limited liability company."

Problem: Section 80.4 proposes to add a reference to "limited liability companies" to be consistent with Financial Code Section 2031, which expressly authorizes corporations or limited liability companies organized under the laws of California to apply for a money transmitter license. However, there is currently no definition of a "California limited liability company."

Rationale: By adding a definition of "California limited liability company" to mean an entity formed under Title 2.6 of the Corporations Code, it clarifies the new term added to Section 80.4.

### **80.159. Clearing Bank.**

Section 80.159 is amended to add "or stored value" to references to payment instruments. See General Purpose Statement.

Section 80.159 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.160. Documented Nominee.**

Section 80.160 is amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.161. Equity Security.**

Section 80.161 is amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.162. Executive Officer.**

Section 80.162 is amended to replace "payment instrument" with "money transmission." See General Purpose Statement.

Section 80.162 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.163. Extend Credit.**

Section 80.163 is amended to add "stored value" and to delete references to "travelers checks." Financial Code Section 2003(s) defines the term "payment instrument" to include a "traveler's check." Because Section 80.163 already includes reference to payment instruments, it is unnecessary and duplicative to refer to travelers checks. See General

## Purpose Statement.

Section 80.163 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.164. Foreign Corporation.**

Specific purpose: The purpose of the amendment to Section 80.164 is to add a definition of "foreign limited liability company." That term is used in Section 80.4304 with regard to the filing of a Certificate of Good Standing.

Problem: The existing regulation only references foreign corporations and omits foreign limited liability companies. Financial Code Section 2031 authorizes limited liability companies organized under the laws of any state within the United States to apply for a money transmitter license. However, Section 2031 does not permit a license to be issued to a limited liability company that is organized outside the United States.

Rationale: Section 80.164 clarifies that "foreign limited liability company" means any unincorporated entity formed under the law of a jurisdiction other than California, except it does not include an entity organized outside of the United States. It further clarifies which entities must comply with Section 80.4304.

Section 80.164 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act, renumbered Financial Code, and the Corporation Code. See Nonsubstantive Changes Statement.

### **80.165. Majority-Owned Subsidiary.**

Section 80.165 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.166. Parent.**

Section 80.166 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.166.10. Paying Agent.**

Specific purpose: Section 80.166.10 is adopted to clarify the definition of "paying agent." That term is used in Section 80.4118 with regard to information concerning paying agents that must be included in an application for a money transmitter license.

Problem: Without a definition, it would be unclear what a "paying agent" means. Financial Code Section 2003(b) defines "agent" with respect to a person who receives money or monetary value on behalf of a licensee. Licensees, however, can also have “paying agents,” which are distinct from “agents” defined in Financial Code Section 2003(b).

Rationale: Section 80.166.10 defines a “paying agent” to mean a person that disburses transmission funds to the beneficiary. Thus, it distinguishes “paying agent” (disburses money) from “agent” (receives money).

#### **80.167. Payment Instrument or Travelers Check Money Transmitter License.**

Section 80.167 is amended to replace “Payment Instrument or travelers check” with “Money Transmitter.” It also updates the provision to reference the business of “money transmission.” See General Purpose Statement.

Section 80.167 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.168. Pre-Clear.**

Section 80.168 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.169. Records.**

Section 80.169 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.170. Reporting Company.**

Section 80.170 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.171. Reporting/Remitting Office.**

Specific purpose: Section 80.171 repeals the definition of “reporting/remitting office” because the term is no longer used elsewhere in the proposed regulations or in the Money Transmission Act.

Problem: The term “reporting/remitting office” was used in Section 80.4313 with respect to information that needed to be filed after commencing to transact money transmission. However, the portion of Section 80.4313 that referred to the term is being repealed. In addition, the term was generally defined as the location of a “California agent.” The term “California agent” has also been repealed. See Section 80.126.

Rationale: A definition of “reporting/remitting office” is no longer necessary because the term is not used in the proposed regulations.

#### **80.172. Security.**

Section 80.172 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.173. Significantly Involved in Payment Instrument Business.**

Section 80.173 is amended to replace “Payment Instruments” with “Money Transmission.” It also replaces references to “issuer of payment instruments” with “money transmitter” or “licensee.” Lastly, it adds a reference to “stored value.” See General Purpose Statement.

Section 80.173 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.174. Significant Subsidiary.**

Section 80.174 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.175. Subsidiary.**

Section 80.175 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.176. Unpaid.**

Section 80.176 adds references to “stored value.” See General Purpose Statement.

Section 80.176 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.177. Voting Securities.**

Section 80.177 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **Article 4. Exemptions**

#### **80.3000. Scope.**

Section 80.3000 is amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.3000 is also amended to change the “authority” and “reference” citations to

update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.3001. Construction of Exemptions.**

Section 80.3001 is amended to delete references to the Payment Instruments Law and various references and citations to it. See General Purpose Statement.

Section 80.3001 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.3002. Exemptions.**

Specific purpose: Section 80.3002 is amended to replace “Payment Instruments Law” with “Money Transmission Act” and other related references.

Financial Code Section 2011 authorizes the Commissioner of Business Oversight to exempt from the Money Transmission Act, by regulation or order, any person or transaction or class of persons or transactions, if the Commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of the Act. Thus, Section 80.3002 is amended to establish: (1) two new categories of persons and/or transactions that are exempt from the Money Transmission Act; (2) an administrative standard for factors that the Commissioner may consider in determining whether a person or transaction is exempt from the Money Transmission Act; and (3) the procedure for applying for an exemption from the Money Transmission Act.

Problem: Financial Code Section 2011 is silent on the factors that the Commissioner may consider in determining whether to exempt a person or transaction from the Money Transmission Act. Section 2011 also does not specify the procedure for applying for an exemption. Thus, the law does not provide guidance on what types of activities are exempt or how to request an exemption.

Rationale: Section 80.3002 proposes to provide that guidance.

#### Clarification of Exemptions

The amendments clarify that the exemptions in Section 80.3002 are in addition to the exemption statutorily provided for in Financial Code Section 2010. It repeals subsections (a) and (b) because those exemptions are already set forth in Financial Code Sections 2010(d) and 2030.

#### New Exemptions

Section 80.3002 establishes two new exemptions: (1) sale of a money transmission service or product of a person exempt pursuant to Financial Code Section 2010; and (2) an Internal Revenue Code Section 501(c)(3) public benefit nonprofit.

The Department has determined that exemption (1) is appropriate based on the following reasons. Since Financial Code Section 2010 entities (e.g., banks and governmental agencies) are exempt, it would be logical to extend the exemption to the money transmission products and services they provide - even if those products and services are sold by a third party. The sale of such products should not be transformed into licensable money transmission merely because those products are sold by a third party. For example, if a bank issues a stored value card, the sale of such card by a third party would be exempt. This is because the exempt entity, in this example, a bank, is still the party who is ultimately responsible for its product. Therefore, the exemption of a sale of a money transmission service or product of a person exempt pursuant to Financial Code Section 2010 is in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of the Act.

The Department has determined that exemption (2) is appropriate for various reasons. A 501(c)(3) public benefit nonprofit is subject to oversight by the Internal Revenue Service in order to maintain its exempt status. In addition, the organizational purpose of such companies is to be a public benefit nonprofit. A 501(c)(3) organization may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. Donors to nonprofits are different than consumers of traditional money transmission services, who often use such services to pay for the necessities of life and transmitting money to family members. Donations are not payments for consumer goods or services, nor are they typically directed at a specific beneficiary. Thus, a failure of a 501(c)(3) public benefit nonprofit would not necessarily cause a loss to “consumers, disrupt the payments mechanism in this state, or undermine public confidence in financial institutions.” (See. e.g., Financial Code Section 2001 for discussion of legislative intent behind the Money Transmission Act.) For all of the foregoing reasons, the Department has concluded that an exemption of an Internal Revenue Code Section 501(c)(3) public benefit nonprofit is in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of the Act.

### Administrative Standard

Section 80.3002(b) establishes an administrative standard setting forth the factors that may be considered in determining whether to grant an exemption. Those factors are:

- (1) Whether the person is licensed by a government agency and is examined by that licensing government agency in a manner satisfactory to the Commissioner for factors such as:
  - (A) The nature and volume of the projected or established business.
  - (B) The amount, nature, quality, and liquidity of its assets.
  - (C) The amount and nature of its liabilities.
  - (D) The amount of earnings and income.
  - (E) The quality of its operations.
  - (F) The quality of its management.

The reason that the Department selected the foregoing as a factor is because if a person is already licensed by a government agency and is examined for factors that the Commissioner would consider in examining the Department’s own licensees, such fact

could be relevant in determining whether it would be necessary for the Department to subject such person to concurrent jurisdiction under the Money Transmission Act. Factors (1)(A)-(F) are factors that the Commissioner must consider, among others, in determining the required amount of tangible shareholder's equity that a licensee or applicant for a license must possess. Thus, they are factors for which the Commissioner would want to know if another licensing government agency is already examining the person seeking an exemption.

(2) Whether the transmission activity is necessary and incidental to the performance of the person's business transactions.

The Department included the foregoing as a factor because it elicits facts regarding the person's business model and how money transmission is incorporated into that model. For example, what is the person's primary business activity? Can the person conduct that activity without engaging in money transmission? How integral is money transmission to the person's business model? Is money transmission necessary to complete transactions, or is money transmission the purpose of the transactions? Can the person structure its business model to utilize a money transmitter licensee or Financial Code Section 2010 exempt entity to perform the money transmission?

(3) The risk and potential harm of the proposed business activities to persons located in California.

This factor was included because it addresses consumer protection issues. Pursuant to Financial Code Section 2001, one of the primary purposes of the Money Transmission Act is to protect the interests of consumers of money transmission businesses in this state and to preserve the health, safety, and general welfare of the people of this state. Thus, it is necessary for the Department to have information about the risk and potential harm of the proposed business activities to persons in California in order to weigh whether an exemption would be appropriate.

(4) The actual or projected nature and volume of transactions with persons located in California.

This factor was included because it also relates to the potential impact of the proposed business activities to persons in California.

(5) Other facts as may in the opinion of the Commissioner be relevant.

This factor was included to provide the Commissioner with the discretion and flexibility to obtain additional information, which may be relevant to each specific case.

#### Procedure for Applying for Exemption

Section 80.3002(c) establishes a procedure to apply for an exemption under Financial Code Section 2011.

Subsections (c)(1)-(4) require that an applicant for an exemption provide basic information regarding the purpose of the application, the applicant's name, and a description of the

applicant's business and organizational structure. This information is necessary to provide background and context for the applicant's request. For example, it is necessary for the Department to know the identity of the entity or entities that are involved before the Department can grant an exemption to those entities. It is also necessary to have a complete description of the applicant's business to determine whether an exemption for that business is appropriate.

Subsection (c)(5) requires an applicant to describe in detail how money or monetary value is moved among the sender of money, the recipient of money or monetary value, the applicant, and any other relevant persons. The description also must include details about how the money or monetary value is held. For example, is the money held in a depository account? Who controls the withdrawal of money from the account? This information is necessary to determine whether the applicant itself is in fact engaging in money transmission or whether another entity is performing the money transmission.

Subsection (c)(6) requires an applicant to address the factors in subdivision (b). As discussed above, Section 80.3002(b) sets forth the factors that may be considered in determining whether to grant an exemption. Thus, it is necessary for an applicant to discuss its business model in the context of those factors so that the Department can weigh whether the applicant's business should be exempted.

Subsection (c)(7) requires an applicant to provide an objective legal analysis supporting its claim for an exemption. Because the applicant is seeking an exemption, the applicant has the burden of establishing that its request for an exemption is supported by applicable law and regulations, or previous opinions issued by the Department.

Subsection (c)(8) authorizes the Commissioner to require other information from the applicant as may be relevant on a case by case basis.

Subsection (d) authorizes the Commissioner to waive the information required under subsection (c) or permit the submission of alternative information. Subsections (c)(8) and (d) were included to provide the Commissioner with the discretion and flexibility to waive submission requirements and to obtain additional information, as needed in each specific case.

Section 80.3002 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

## **Article 5. Issuance of License**

### **Subarticle 1. General Provisions**

#### **80.4000. Definition of "Applicant" and Scope.**

Specific purpose: Section 80.4000(a) adds reference to a "limited liability company" and clarifies the definition of "applicant" to emphasize that the applicant must file "a substantially complete application."

Problem: Financial Code Section 2031 expressly authorizes corporations or limited liability

companies organized under the laws of California to apply for a money transmitter license. The existing regulation, however, omits reference to limited liability companies.

In addition, the existing regulation defines “applicant” to mean a corporation or limited liability company that “applies to” the Department for a license. The Department, however, periodically receives applications that are incomplete or otherwise do not address all of the application requirements in Financial Code Section 2032.

Rationale: By clarifying the definition of applicant, Section 80.4000 will make it consistent with the Money Transmission Act and serve as a reminder to applicants that applications must be substantially complete in order for the Department to effectively process an application for a license.

Section 80.3002 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

## **Subarticle 2. Application**

### **80.4100. Scope.**

Section 80.4100 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

### **80.4100.10. Pre-Filing Conference.**

Specific purpose: Section 80.4100.10 is adopted to provide a prospective applicant notice of and an opportunity for a pre-filing conference and submission of documents in advance of filing an application for a license.

Problem: Currently, there is no procedure for how a prospective applicant can contact the Department to discuss questions in advance of filing an application for a license.

Rationale: Section 80.4100.10 establishes a pre-filing conference that the applicant may request to discuss questions relating to an application for a license. Section 80.4100.10 also provides that a prospective applicant may submit to the Department documents related to its business plan for review in advance of the pre-filing conference. Thus, Section 80.4100.10 affords an opportunity for persons to informally discuss, at no cost, a potential application with the Department in order to determine whether it wants to pursue an application.

### **80.4101. Included Applications.**

Specific purpose: Section 80.4101 is amended to add that an application for a license shall be deemed to include an application for approval of receipts for money received for transmission. The proposed regulation also repeals subsection (b) relating to approval of a clearing bank.

Problem: The existing regulation does not include reference to an application for a receipt approval. The Money Transmission Act, however, requires approval of receipts. It does not require approval of a clearing bank.

Rationale: Therefore, Section 80.4101 would add appropriate language to address an application for receipt approval. It would also delete reference to an approval of a clearing bank as such approval is no longer required by law.

Section 80.4101 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4102. Facing Page.**

Section 80.4102 is amended to update a form number for the facing page of an application for a license.

Section 80.4102 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4103. Additional Information and Number of Copies.**

Specific purpose: Section 80.4103 is amended to require an applicant to submit "one original and one copy of the application."

Problem: The existing regulation only requires the submission of the original application. For administrative reasons, it would improve the ability of the Department to process applications if the applicant provided an extra copy that the Department could use as a working copy while retaining a "clean" original for recordkeeping.

Rationale: The amendment to Section 80.4103 would address this problem by requiring the submission of an additional copy of the application for a license.

Section 80.4103 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4104. Information Regarding History and Business.**

Specific purpose: Section 80.4104 is amended to clarify the types of information regarding an applicant's history and business that must be submitted to as part of an application for a license. The amendments to the regulations regarding application requirements are generally intended to organize into categories the list of requirements in Financial Code Section 2032. The purpose is to create a checklist for each category to enable an applicant to easily ascertain the required information for each category that must be submitted as part of an application.

Problem: Financial Code Section 2032 requires an application to include at least 22 types

of information. The 22 items are not grouped or listed in any particular order, which can make it more difficult for an applicant to organize its application materials and for the Department to assess the submitted materials.

Rationale:

Sections 80.4104(a), (b), (g) list the requirements in Financial Code Section 2032(c)(1), (c)(11), and (c)(5), respectively. The amendments provide guidance to the applicant that these items should be grouped together with other information regarding the applicant's history and business. The amendments are therefore intended to make the application requirements easily understood by those persons directly affected by them.

Section 80.4104(c) is added to provide information about the applicant's prior business background. In order to approve an application for a license, Financial Code Section 2033(b)(3) requires the Commissioner to make a finding that the applicant is "competent to engage in the business of money transmission." Thus, the information called for in Section 80.4104(c) enables the Commissioner to evaluate the applicant's potential for competency to engage in money transmission business by reviewing the successes or deficiencies in its past business operations.

Section 80.4104(e) is added to provide further explanatory background of why the applicant seeks a money transmitter license. In order to approve an application for a license, Financial Code Section 2033(b)(4) requires the Commissioner to make a finding that the "applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation." The information called for in Section 80.4104(e) enables the Commissioner to evaluate the applicant's motivation and objectives for seeking a license to determine whether the applicant's plan affords reasonable promise of successful operation.

Section 80.4104(f) is added to provide information about the applicant's banking and business references. In order to approve an application for a license, Financial Code Section 2033(b)(2) requires the Commissioner to make a finding that the applicant is of "good character and sound financial standing." The information called for in Section 80.4104(f) enables the Commissioner to evaluate whether an applicant is of good character and sound financial standing.

Section 80.4104(h) is added to obtain information regarding the applicant's prior compliance with federal anti-money laundering laws. Financial Code Section 2123 requires a licensee and its agents that are money services businesses under the regulations adopted pursuant to the United States Bank Secrecy Act (31 C.F.R. Part 103) to comply with those regulations. Thus, the information in Section 80.4104(h) provides information which enables the Department to assess the applicant's potential for future compliance with Financial Code Section 2123.

Section 80.4104(i) is amended generally to require information regarding control persons and directors or officers of the applicant. The amendments are based on Financial Code Section 2032(c)(14), which requires certain information regarding "each executive officer, manager, director, or person that has control, of the applicant." In addition, in order to approve an application for a license, Financial Code Section 2033(b)(2) requires the

Commissioner to make a finding that the applicant, directors and officers of the applicant, and control persons of the applicant are of good character and sound financial standing. Furthermore, Financial Code Section 2033(b)(3) requires a finding that the applicant is competent to engage in the business of money transmission. Thus, the information required by the amendments enable the Commissioner to evaluate whether an applicant and its control persons are of good character, sound financial standing, and competent to engage in the business of money transmission.

Section 80.4104(i)(1) is amended to require information regarding the suspension or revocation of any license of an applicant or control person to engage in any business activity, “for any reason.” This amendment clarifies what information must be submitted to satisfy Financial Code Section 2032(c)(5). In addition, the information enables the Commissioner to make the finding required by Financial Code Sections 2033(b)(2) and (3). See general discussion of amendments to Section 80.4104(i) above.

Existing Section 80.4104(b)(1)(B) is repealed and replaced with Section 80.4104(i). Section 80.4104(i) condenses and simplifies the requirements in existing Section 80.4104(b).

Section 80.4104(i)(2) is amended to clarify and rephrase the language of existing Section 80.4104(b)(3)(A).

Section 80.4104(i)(3) renumbers existing Section 80.4104(b)(3)(B).

Section 80.4104(i)(4) clarifies, rephrases, and renumbers existing Section 80.4104(b)(4).

Section 80.4104(i)(5) renumbers existing Section 80.4104(b)(5).

Section 80.4104 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

### **80.4105. Information Regarding Directors, Executive Officers, Control Persons, and 10% Equity Security Owners.**

Specific purpose: Section 80.4105 is amended to require information regarding control persons and 10% equity security owners. The amendments to the regulation also clarify the application requirements in Financial Code Sections 2032(c)(14). In addition, the amendments provide guidance to the applicant that the items in Section 80.4105 should be grouped together with other information regarding the applicant's directors, executive officers, control persons, and 10% equity security owners.

Problem: The existing regulation does not require information regarding control persons and 10% equity security owners. Financial Code Sections 2032(c)(14) and (15), however, require an applicant to submit certain information about persons in control of the applicant.

Rationale: The applicant is already required to submit information regarding directors and officers pursuant to existing regulations. It is essential that the applicant provide similar information regarding control persons and 10% equity security owners so that the

Department may evaluate the applicant as a whole, including control persons.

Financial Code Section 2003(h) defines "control" to have the meaning set forth in Financial Code Section 1250. Section 1250 defines "control" to mean "possession, direct or indirect, of the power: (1) to vote 25 percent or more of any class of the voting securities issued by a person; or (2) to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of paragraph (2) of this subdivision, a person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person."

Thus, Section 80.4105 adds "control persons and 10% equity security owners" throughout the Section to capture both control persons, as defined in Financial Code Section 1250, and 10% equity security owners, who are presumed to control.

Furthermore, Sections 80.4105(c)-(j) provides a format and specifies content that an applicant must include in its application in order to comply with Financial Code Sections 2032(c)(14), (16), and (17).

Section 80.4105(b)(2) adds the requirement of the submission of social security numbers to facilitate the background checks and credit checks of the applicant in order for the Department to evaluate whether an applicant is of good character and sound financial standing pursuant to Financial Code Section 2033(b)(2).

Section 80.4105(c) is added to require the submission of the applicant's confidential resume and current personal financial statement. Such documents must be signed with 90 days before filing of the application in order to ensure that the information is current.

Section 80.4105(d) lists the requirements in Financial Code Section 2032(c)(14). The amendment provides guidance to the applicant that these items should be grouped together with other information regarding the applicant's directors, executive officers, control persons, and 10% equity security owners. The amendment is therefore intended to make the application requirements easily understood by those persons directly affected by them.

Section 80.4105(e) adds the requirement that the applicant describe the amount and type of equity securities owned by each 10% equity security owner. This information would enable the Department to better understand the structure and voting interests of the classes of securities of an applicant.

Section 80.4105(f) is added to provide information about the banking and business references for each individual who is an executive officer, director, or 10% equity security owner of the applicant. In order to approve an application for a license, Financial Code Section 2033(b)(2) requires the Commissioner to make a finding that the applicant is of "good character and sound financial standing." The information called for in Section

80.4104(f) enables the Commissioner to evaluate whether an applicant, including its officers, directors, and control persons, are of good character and sound financial standing.

Section 80.4105(g) is added to require that each individual who is an executive officer, director, or 10% equity security owner of the applicant, provide a written authorization, which permits the Commissioner to obtain information regarding their deposit and credit relationships with financial institutions, and general business background from business and personal references. These authorizations facilitate the background checks and credit checks of these individuals in order for the Department to evaluate whether an applicant, including its officers, directors, and control persons, is of good character and sound financial standing pursuant to Financial Code Section 2033(b)(2).

Section 80.4105(h) lists the requirements in Financial Code Section 2032(c)(15). The amendment provides guidance to the applicant that these items should be grouped together with other information regarding the applicant's directors, executive officers, control persons, and 10% equity security owners. The amendment is therefore intended to make the application requirements easily understood by those persons directly affected by them.

Existing Section 80.4105(c) is repealed because the information regarding the identity of the executive officer in charge of the applicant's payment instrument business would already be included in the information required under Section 80.4115, Information regarding Business Plan.

Section 80.4105(j) is amended to increase the amount of indebtedness of an applicant's directors or officers to the applicant that will trigger a requirement to submit certain information. The existing regulation sets the threshold amount at \$10,000 or 1 percent of the applicant's total assets. The amendment would increase that amount to 5 percent of the applicant's total assets. The purpose of this subsection is to provide information regarding transactions involving insiders of the applicant. The Department has determined that the current amounts are too low to be material. Accordingly, the Department proposes to increase the amount of indebtedness by an applicant's directors or officers to 5 percent of the applicant's total assets, before an applicant is required to submit certain information about the transaction, because it will better capture transactions that could have a material impact on the applicant's balance sheet.

Section 80.4105(j) also deletes the reference to applicant not being a "bank nor a savings and loan association." This is because banks and associations are exempt from the Money Transmission Act pursuant to Financial Code Section 2010(d). Therefore, an applicant would not be one of those types of entities.

Section 80.4105 is also amended to replace "payment Instrument" with "money transmission." The phrases "receiving money for transmission" and "issuing or selling stored value" have also been added. See General Purpose Statement.

Section 80.4105 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4105.10. Fingerprint and Background Checks.**

Specific purpose: Section 80.4105.10 is added to specify the procedure for submission of the applicant's fingerprints to enable the Department of Justice to process criminal record checks.

Problem: The existing regulation does not specify a procedure for the submission of an applicant's fingerprints.

Rationale: In order to approve an application for a license, Financial Code Section 2033(b)(2) requires the Commissioner to make a finding that the applicant is of "good character and sound financial standing." Criminal record checks of the applicant and its executive officers, directors, and control persons, enable the Commissioner to evaluate whether an applicant is of good character and sound financial standing.

The amendment is modelled after Penal Code Section 11077.1, which specifies the manner in which the Department of Justice will accept fingerprint images.

#### **80.4105.11. Information Regarding Control Persons Who Are Not Residents of the United States.**

Specific purpose: Section 80.4105.11 is added to require any control person of an applicant who does not currently reside or has not resided in the United States for at least ten years to engage a search firm to perform an investigative background report of such control person. The amendment also provides for certain requirements regarding the engagement of the search firm, the report itself, and the summary letter describing the search. Section 80.4105.11 also provides for circumstances of when a previously prepared background report may be used.

Problem: If an applicant does not currently reside or has not resided in the United States in the last ten years, then the Department of Justice cannot adequately perform a criminal record check because the results would be limited to activity within the United States. Similarly, the Commissioner would be unable to verify an applicant's credit history or otherwise investigate and verify facts submitted by an applicant.

Rationale: Section 80.4105.11 clarifies requirements set forth in Financial Code Sections 2032(c)(2), (6), (14), and (15) with regard to control persons who are not residents of the United States. Section 80.4105.11 requires the same types of information that is required in Section 80.4105 for control persons who are residents of the United States. The amendment also requires information regarding media records referencing the control person in the foreign country. This is because such media records are typically in a foreign language, and the Commissioner does not have the resources to search and translate foreign media records. The amendment requires an independent search firm to perform the investigative background report at the applicant's expense because the Department of Justice and the Commissioner are unable to perform a comparable search. The Commissioner recognizes that these background searches can be involved and time-consuming; therefore, the amendment permits an applicant to submit a report containing the required information, which has been prepared for another licensing agency within 12

months of the filing of the application, so long as it is accompanied by a statement representing that there have been no material changes to items in the report.

In order to approve an application for a license, Financial Code Section 2033(b)(2) requires the Commissioner to make a finding that the applicant is of "good character and sound financial standing." The information required by Section 80.4105.11 enables the Commissioner to evaluate whether an applicant is of good character and sound financial standing.

#### **80.4106. Information Regarding Corporate Matters.**

Specific purpose: Section 80.4106 is amended to simplify the language in subsection (a) to require the submission of Articles of Incorporation. It replaces existing subsection (a) with subsection (c) to require submission of a copy of the Articles of Information if the applicant is a corporation, or the Articles of Organization and operating agreement if the applicant is a limited liability company. The operating agreement acts as an internal document that establishes the rules and regulations for governing the company.

Section 80.4106(b) is added to clarify the type of information regarding an applicant's corporate matters that must be submitted to as part of an application for a license. The amendments to the regulations regarding application requirements are generally intended to organize into categories the list of requirements in Financial Code Section 2032. The purpose is to create a checklist for each category to enable an applicant to easily ascertain the required information for each category that must be submitted as part of an application.

Problem: Operating agreements for limited liability companies can be oral. This creates an issue as to how a limited liability company applicant can submit a copy of its operating agreement.

In addition, Financial Code Section 2032 requires an application to include at least 22 types of information. The 22 items are not grouped or listed in any particular order, which can make it more difficult for an applicant to organize its application materials and for the Department to assess the submitted materials.

Rationale: Because an operating agreement can be oral, Section 80.4106(c) requires the limited liability company applicant to summarize the matters contained in the operating agreement and have it signed by all of the members to confirm its content. This enables the Department to obtain an accurate summary of an applicant's operating agreement.

Section 80.4106(b) is required by Financial Code Section 2032(c)(13). Thus, this amendment provides guidance to the applicant that this item should be grouped together with other information regarding the applicant's corporate matters.

Section 80.4106 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4107. Information Regarding Securities.**

Section 80.4107 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4108. Information Regarding Equity Security Owners.**

Section 80.4108 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4109. Information Regarding Affiliates.**

Specific purpose: Section 80.4109(c) adds an additional requirement to submit information regarding “other lines of business of the affiliate.”

Problem: The existing regulation only requires information regarding an affiliate’s principal line of business. In order to attain a more comprehensive understanding of an affiliate’s potential impact on the licensee applicant, the Department needs information about all of the lines of business of an affiliate.

Rationale: By requiring a description of “any other lines of business of the affiliate,” it will enable the Department to better assess an affiliate and its impact on the applicant.

Section 80.4109 is also amended to replace “payment instrument” with “money transmission.” See General Purpose Statement.

Section 80.4109 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4110. Information Regarding Controlling Persons.**

Section 80.4105 is repealed because the information called for this in section has been incorporated into Section 80.4105. The Department has determined that it is more efficient to request this information as part of “Information Regarding Directors, Executive Officers, Control Persons, and 10% Equity Security Owners.”

#### **80.4111. Information Regarding Financial Statements and Reports.**

Specific purpose: The amendments to Section 80.4111 clarify the types of information that must be included in the required financial statements and reports that are submitted as part of an application for a license.

Problem: The existing regulation only addresses financial statements related to the selling of payment instruments. Because the Money Transmission Act applies to the business of money transmission, defined to mean the selling or issuing of payment instruments or stored value and the receiving of money for transmission, the existing regulation does not provide adequate guidance regarding the necessary financial information to be submitted about an applicant’s business related to stored value or receiving money for

transmission.

Rationale: The amendment to Section 80.4111(a)(1)(A) adds the requirement that an applicant provide documentation to support the asset value for any asset that represents ten percent or more of total assets. The reason for this requirement is that an asset that represents such a large percentage of an applicant's balance sheet needs to be substantiated so that the Department can properly evaluate the applicant's financial standing, as required by Financial Code Section 2033(b)(2). The amendment also changes the date of the balance sheet to be within 60 days of the filing of the application, instead of 120 days. This ensures that the balance sheet will be more current and, therefore, provide the Department with more accurate information to evaluate.

Sections 80.4111(a)(1)(C) and 80.4111(b)(3) were amended in the initial Text of Proposed Changes to the regulations to require the submission of three fiscal years of the statement of income, statement of cash flows, and statement of shareholders' equity. The Department believed that an additional fiscal year of such information could provide further operational history to evaluate. Upon further consideration, however, the Department has determined that information for two fiscal years is sufficient to make the required finding in Financial Code Section 2033(b)(2).

Section 80.4111(a)(2) is amended to require the submission of a schedule of eliminating entries in addition to the consolidated financial statements of an applicant's subsidiaries. The existing regulation does not require the schedule of eliminating entries to be included with the consolidated financial statement. Without the schedule, the consolidated financial statement alone does not provide sufficient detail to accurately determine how a licensee's own balance sheet and capital accounts relate to its affiliates' financial statements. A comprehensive understanding of the licensee's financial condition is critical to making a determination of the safety and soundness of such condition. This information is necessary to ensure that the assets and liabilities of the parent and subsidiaries are accurately reflected in the balance sheets.

Section 80.4111(b)(1) is amended to change the date of the balance sheet to be within 60 days of the filing of the application, instead of 120 days. This ensures that the balance sheet will be more current and, therefore, provide the Department with more accurate information to evaluate.

Section 80.4111(c) is added to require, in the case where an applicant already transacts money transmission outside of California, statements showing the amount of outstanding money received for transmission, stored value, and payment instruments in the preceding fiscal year and as of 60 days before filing the application, from sales in the United States and outside of the United States. Separate statements corresponding to each type of money transmission are required to be filed. This information is necessary to evaluate the applicant's operating history. The information is also important to determine whether there will be any issues related to the applicant being able to meet the eligible security and bond requirements. Financial Code Section 2081 requires a licensee to own at all times eligible securities having an aggregate market value of not less than the aggregate amount of all its outstanding money transmission liabilities in the United States. Financial Code Section 2037 sets forth different bond requirements for stored value and payment instruments and money received for transmission. Therefore, requiring separate statements for each type

of money transmission enables the Department to evaluate the different bond requirements for each type.

Sections 80.4111(f) and (g) are required by Financial Code Sections 2032(c)(16), (17), and (19), respectively. Thus, this amendment provides guidance to the applicant that these items should be grouped together with other information regarding the applicant's financial statements. The amendment creates a checklist for the category of financial statements to enable an applicant to easily ascertain the required information for this category that must be submitted as part of an application.

Section 80.4111 is also amended to replace references to "payment instruments" with "money transmission." See General Purpose Statement.

Section 80.4111 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4112. Information Regarding Extensions of Credit.**

Section 80.4112 is repealed because the Department has determined that the information called for in this section is no longer material at this stage in the application process.

#### **80.4113. Information Regarding Legal Proceedings.**

Section 80.4113 is amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4114. Information Regarding Payment Instrument or Travelers Check Licenses.**

Section 80.4114 is repealed because the information called for in this section has been incorporated into Section 80.4104(g). The Department has determined that it is more logical to request this information as part of "Information Regarding History and Business."

#### **80.4115. Information Regarding Business Plan.**

Specific purpose: The purpose of the amendment to Section 80.4115 is to provide greater specificity regarding the aspects of the applicant's business plan that must be included in an application.

Problem: Existing Section 80.4115(a) requests a "Description of the market that the applicant proposes to serve." However, it does not specify what must be included in the description of the market.

Existing Section 80.4115(e) requests a "Description of how services and products of the applicant will be marketed in consideration of the existing and anticipated competition." This subsection could benefit from greater clarification regarding the information that the Department is seeking in an application.

Rationale: Section 80.4115(a) would be amended to replace “Description of the market that the applicant proposes to serve” with more specific questions geared toward achieving a comprehensive description of the proposed market. For example, 80.4115(a) requests the identification of the geographical area in California which the applicant proposes to serve. 80.4115(b) is added to request information regarding the number of branch offices outside of California. This information would provide a more comprehensive description of the applicant’s overall business plan.

Existing Section 80.4115(e) would be amended to replace the language with a specific request for information related to the applicant’s plan for establishing its money transmission business and achieving a share of the money transmission business in its proposed market areas. The amendment better describes the type of information regarding an applicant’s business plan that the Department needs in order to evaluate the application.

Section 80.4115 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4116. Information Regarding California Offices.**

Section 80.4116 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4117. Information Regarding Proposed California Agents.**

Specific purpose: The purpose of the amendment to Section 80.4117 is to require additional information about an applicant’s proposed agents in California and outside of California.

Problem: The existing regulation does not require an applicant to submit the name and address of proposed agents in California, and it does not require any information about agents outside of California. This results in the Department receiving inadequate information regarding the applicant’s overall agent structure.

Rationale: By amending Section 80.4117 to include such information, it will ensure that the Department receives comprehensive information about proposed agents to assist in the evaluation of an application for a license. This information is necessary to enable the Department to have a more comprehensive understanding of the applicant’s overall business plan and to determine a reasonable probability of successful operation, as required by Financial Code Section 2033(b)(4).

Section 80.4117 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4118. Information Regarding Operations.**

Specific purpose: Section 80.4118(a)(1) requires an applicant to describe its proposed procedures and policies for selecting, monitoring, and oversight of agents and paying agents. It also requires an applicant to describe how it will investigate into the character and financial condition of any proposed agents, paying agents, controlling persons of such agents, and how such persons will be screened through the Office of Foreign Assets Control.

Section 80.4118(a)(3) requires an applicant to describe its procedures for engaging in money transmission business (e.g., receiving and forwarding money received for transmission, issuing and selling stored value, and issuing and paying payment instruments).

Section 80.4118(a)(4) requires an applicant to describe its procedures for recordkeeping of all money received from money transmission.

Sections 80.4118(a)(5) and (6) require an applicant to describe its procedures for processing and resolving consumer complaints and requests for refunds.

Section 80.4118(a)(7) requires an applicant to describe its procedures for monitoring branch office activities.

Problem: Existing Section 80.4118(a)(1) does not include paying agents or a requirement for a description of the manner in which applicant will investigate its proposed agents. Financial Code Section 2061, however, prohibits a money transmitter licensee from appointing "any person as an agent unless it has conducted a review of the proposed agent's fitness to act as an agent and has determined that the proposed agent and any persons who control the proposed agent are of good character and sound financial standing."

Existing Section 80.4118(a)(3) does not require a description of procedures for engaging in money transmission. Financial Code Section 2032(c)(21), however, requires an applicant to submit its plan for engaging in money transmission business.

Existing Section 80.4118(a)(4) does not require a description of procedures for recordkeeping of money transmission. Financial Code Section 2039(d)(3) requires licensees to file a report with the Department detailing:

"The total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California under this division and in the United States in the calendar year quarter categorized by type of money transmission. For money received for transmission, a report of the average daily outstanding transmission liabilities in California, and, if applicable, a schedule of each foreign country to which money was sent, along with the total amount of money sent to that foreign country in that calendar year quarter. For payment instruments and stored value, a report of the average daily outstanding payment instruments and stored value liabilities in California in that calendar year quarter."

In addition, Financial Code Section 2124 requires that a licensee retain certain records, including records of payment instruments issued and paid, stored value issued and paid,

and receipts for money received for transmission.

Existing Sections 80.4118(a)(5) and (6) do not require a description of procedures for processing and resolving consumer complaints and requests for refunds. Chapter 6 (Consumer Disclosures) of Division 1.2 of the Money Transmission Act (Financial Code Section 2100 et seq.), however, requires certain disclosures to notify consumers of their right to a refund for money received for transmission, and establishes certain rights that a consumer has in order to obtain his or refund.

Existing Section 80.4118(a)(7) does not require a description of procedures for oversight of branch office activities. Financial Code Section 2032(c)(21), however, requires an applicant to submit its plan for engaging in money transmission business.

Rationale: By adding the requirement that an applicant investigate proposed agents in Section 80.4118(a)(1), it ensures that a licensee will be in compliance with Financial Code Section 2061.

By adding in Section 80.4118(a)(3), a detailed description of the type of information an applicant must submit regarding its procedures for receiving and forwarding money received for transmission, issuing and selling stored value, and issuing and paying payment instruments, it clarifies the requirement in FC Section 2032(c)(12) to submit a plan for engaging in the money transmission business.

By adding in Section 80.4118(a)(4), the requirement that an applicant submit its procedures for recordkeeping, it ensures that the Department can assess whether the applicant will be able to comply with the reporting requirements of Financial Code Sections 2039(d)(3) and 2124.

By adding in Sections 80.4118(a)(5) and (6), the requirement that an applicant submit its procedures for processing and resolving consumer complaints and requests for refunds, the Department can assess whether an applicant will have adequate procedures in place to satisfy its obligations under Chapter 6 (Consumer Disclosures) of the Money Transmission Act. In addition, with respect to consumer complaints and requests for refunds arising out of the sale of payment instruments and stored value, it is still good business practice for a licensee to have such procedures in place.

By adding in Section 80.4118(a)(7), the requirement that an applicant must submit regarding its procedures for monitoring branch office activities, it clarifies the requirement in FC Section 2032(c)(12) to submit a plan for engaging in the money transmission business. The manner in which an applicant will oversee activities in all of its locations is an integral part of any plan for engaging in the money transmission business.

Existing Section 80.4118(a)(8) is repealed because the information is now included in Section 80.4118(a)(3).

Section 80.4118 is also amended to replace references to “payment instruments” with “money transmission” and to delete provisions referencing the repealed Payment Instruments Law. See General Purpose Statement.

Section 80.4118 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4118.10. Information Regarding Office of Foreign Assets Control ("OFAC") Compliance.**

Specific purpose: Section 80.4118.10 is adopted to require an applicant to submit a description of how it proposes to comply with the laws administered by the Office of Foreign Assets Control (“OFAC”). OFAC of the United States Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches.

Problem: In order to approve an application for a license, Financial Code Section 2033(b)(3) requires the Commissioner to make a finding that the applicant is competent to engage in the business of money transmission. One of the factors to evaluate competency is whether the applicant can demonstrate its ability to comply with applicable laws and regulations. The existing regulations do not provide any guidance on how an applicant can show compliance with OFAC regulations.

Rationale: To understand the basics of OFAC compliance, it is helpful to refer to the description in the Federal Financial Institution Examination Council (FFIEC) in its InfoBase. The FFIEC is a formal interagency body empowered to promote uniformity in the supervision of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee (SLC) is also part of the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS).

The FFIEC maintains the FFIEC InfoBase, which provides reference and educational training material on specific topics of interest to field examiners from the FFIEC member agencies. The following is an excerpt from the FFIEC’s Bank Secrecy Act Anti-Money Laundering Examination Manual, Office of Foreign Asset Control Overview ([http://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/OLM\\_037.htm](http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_037.htm)):

“As a matter of sound banking practice and in order to ensure compliance, banks should establish and maintain an effective, written OFAC compliance program commensurate with their OFAC risk profile (based on products, services, customers, and geographic locations). The program should identify higher-risk

areas, provide for appropriate internal controls for screening and reporting, establish independent testing for compliance, designate a bank employee or employees as responsible for OFAC compliance, and create training programs for appropriate personnel in all relevant areas of the bank.”

While this excerpt references banks, its guidance is not limited to banks because all persons and entities within the United States must comply with OFAC regulations.

Section 80.4118.10(a) is added to require an applicant to describe the procedures for monitoring compliance with OFAC regulations. The information will enable the Department to evaluate whether an applicant’s procedures will be adequate to comply with OFAC regulations.

In general, Sections 80.4118.10(b)-(l) are added to require an applicant to specify whether the system to match names of persons on OFAC’s list of Specially Designated Nationals and Blocked Persons will be automated via software or will be performed manually, and to describe such system. In general, the OFAC regulations require the following: (1) Blocking accounts and other property of specified countries, entities, and individuals and (2) prohibiting or rejecting unlicensed trade and financial transactions with specified countries, entities, and individuals. Thus, the applicant’s policies, procedures, and processes should address how the applicant will identify and review transactions and accounts for possible matches with names of persons on OFAC’s list, whether conducted manually, through software, or a combination of both.

OFAC lists are periodically updated. Thus, an applicant must also describe its procedures for incorporating updated OFAC lists into the applicant’s matching system.

Section 80.4118.10(b) requires a description of the procedure for matching names against the OFAC list if an automated system is used. For example, subsection (b)(1) requires the name of the software. Subsection (b)(2) requires a description of the software’s capabilities for monitoring compliance with OFAC regulations. Subsection (b)(3) requires a description of whether the transactions will be rejected or blocked. The information required by Section 80.4118.10(b) is necessary to evaluate an applicant’s processes and procedures for ensuring OFAC compliance. As indicated above, the OFAC regulations require the following: (1) Blocking accounts and other property of specified countries, entities, and individuals and (2) prohibiting or rejecting unlicensed trade and financial transactions with specified countries, entities, and individuals. Thus, the applicant’s policies, procedures, and processes should address how the applicant will identify and review transactions and accounts for possible matches with names of persons on OFAC’s list.

Sections 80.4118.10(c) requires a description of the procedure for matching names against the OFAC list if it will be performed manually. Subsection (c)(1) requires a description of how matching will be accomplished, taking into account the daily volume of transactions and the number of persons on OFAC’s list. This information is necessary to evaluate whether the manual system will be adequate to perform matching, especially in situations where transaction volume is high, to ensure compliance with OFAC’s regulations. Similarly, Subsection (c)(2) requires disclosure of the identity of the employee who will be responsible for performing the matching. This

information is necessary to evaluate the qualifications of the employee to determine whether the applicant will be able to comply with OFAC's regulations.

Section 80.4118.10(d) seeks information regarding whether the applicant intends to match all of its transactions, including the transactions of its agents. This information is necessary to evaluate the scope of the applicant's compliance program with OFAC's regulations.

Section 80.4118.10(e) seeks information regarding the frequency of matching. This information is necessary to evaluate the scope of the applicant's compliance program with OFAC's regulations.

Section 80.4118.10(f) seeks information regarding the manner and frequency of incorporating updated OFAC lists into the applicant's matching system. OFAC lists are periodically updated. Thus, an applicant must describe its procedures for incorporating updated OFAC lists into the applicant's matching system. This information is necessary to evaluate an applicant's processes and procedures for ensuring OFAC compliance.

Section 80.4118.10(g) requires a description of the procedures to be followed if a match is found. This information is necessary to evaluate an applicant's processes and procedures for ensuring OFAC compliance.

Under OFAC regulations, transactions are either blocked or prohibited. If a transaction is prohibited, then the transaction is simply rejected (i.e., not processed). If a transaction is blocked, then the funds must be frozen. Section 80.4118.10(h) requires an applicant to describe how the blocked funds will be handled, e.g., whether they will be segregated from other funds or placed in a separate bank account.

In addition, there are recordkeeping requirements under the OFAC regulations. Sections 80.4118.10(k) and (l) require an applicant to describe its recordkeeping procedures.

#### **80.4118.11 Information Regarding Bank Secrecy Act ("BSA") Compliance.**

Specific purpose: Section 80.4118.11 is adopted to require an applicant to submit a description of how it proposes to comply with the United States Bank Secrecy Act and USA Patriot Act. The Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA") requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. It was passed by the Congress of the United States in 1970. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML." Several AML acts, including provisions in Title III of the USA PATRIOT Act of 2001, have been enacted up to the present to amend the BSA. (See 31 U.S.C. 5311-5330 and 31 C.F.R. Chapter X [formerly 31 CFR Part 103]).

Problem: In order to approve an application for a license, Financial Code Section 2033(b)(3) requires the Commissioner to make a finding that the applicant is competent to engage in the business of money transmission. One of the factors to evaluate competency is whether the applicant can demonstrate its ability to comply with applicable laws and regulations. Financial Code Section 2123 requires a licensee that is a money service business under the regulations adopted pursuant to the BSA to comply with those regulations. A money transmitter licensee would be a money service business because the term includes, among other things, any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities: (1) issuer or seller of traveler's checks, money orders or stored value and (2) money transmitter. (See 31 C.F.R 1010.100(ff).)

The existing regulations do not provide any guidance on how an applicant for a money transmitter license can show compliance with BSA regulations.

Rationale:

Section 80.4118.11(a) requires the applicant to provide a copy of its money service business registration with the Financial Crimes Enforcement Network. This item is necessary because it is based on a BSA requirement that each money services business register with the Department of the Treasury. (See 31 C.F.R 1022.380.)

Section 80.4118.11(b) requires the applicant to provide a copy of its latest risk assessment. This item is necessary because it is based on a BSA requirement that money services businesses have an anti-money laundering program that is commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business. (See 31 C.F.R. 1022.210(b).)

Section 80.4118.11(c) requires the applicant to provide a copy of its BSA compliance manual. This item is necessary because it is based on a BSA requirement that money services businesses have a written anti-money laundering program. (See 31 C.F.R. 1022.210(c).)

Section 80.4118.11(d) requires the applicant to provide a copy of written evidence of the designation of a BSA compliance officer. This item is necessary because it is based on a BSA requirement that money services businesses designate a person to assure day to day compliance with its anti-money laundering program. (See 31 C.F.R. 1022.210(d)(2).)

Section 80.4118.11(e) requires the applicant to provide a copy of training materials. This item is necessary because it is based on a BSA requirement that money services businesses provide education and/or training of appropriate personnel concerning their responsibilities under the anti-money laundering program. (See 31 C.F.R. 1022.210(d)(3).)

Section 80.4118.11(f) requires the applicant to provide a copy of the latest independent review of the applicant's BSA compliance program. This item is necessary because it is based on a BSA requirement that money services businesses establish anti-money

laundering programs that include an independent audit function to test programs. (See 31 C.F.R. 1022.210(d)(4).)

Section 80.4118.11(g) requires the applicant to identify any banks or banks services used by the applicant that may present a BSA risk and how the applicant will manage those identified risks. This item is necessary because it is based on a BSA requirement that money services businesses assess money laundering risks and develop an anti-money laundering program that is commensurate with those risks. (See 31 C.F.R. 1022.210(b).)

Therefore, Section 80.4118.11 seeks information that enables the Department to evaluate an applicant's ability to comply with BSA regulations.

#### **80.4119. Information Regarding Forms of Receipts and Payment Instruments.**

Specific purpose: Section 80.4119 is amended to add a requirement to submit a sample form of receipt for transactions that involve money received for transmission, a certification by an officer of the applicant, and a translator's certificate, if applicable.

Problem: Existing Section 80.4119 only provides for requirements for submission of a specimen copy of a form of payment instruments. Financial Code Section 2032(c)(8), however, requires the submission of "a sample form of receipt for transactions that involve money received for transmission." In addition, Financial Code Section 2100 requires a new licensee to file with the Commissioner "a certified copy of the receipt forms to be used by it or its agents for receiving money for transmission" before it issues its first receipt. Financial Code Section 2102(b) requires that the receipt be provided "in English and the language principally used by that licensee or that agent to advertise, solicit, or negotiate" at that branch office. Section 5.3007, Title 10, California Code of Regulations specifies the procedures for certifying a document. Section 5.3002, Title 10, California Code of Regulations specifies the procedures for certifying the translation of a document.

Rationale: By adding a requirement that an applicant submit a sample form of receipt for transactions that involve money received for transmission, a certification by an officer of the applicant, and a translator's certificate, if applicable, the amendment sets forth the requirements an applicant must satisfy to comply with the various Financial Code sections and accompanying regulations noted above.

Section 80.4119 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4120. Information Regarding Clearing Bank.**

Section 80.4120 is amended to replace references to add references to "stored value." See General Purpose Statement. Section 80.4120 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4121. Information Regarding Pro Forma Financial Statements.**

Specific purpose: Section 80.4121 is amended to clarify the information that must be included in pro forma financial statements.

Problem: Existing Section 80.4121(a) uses unnecessarily complex language to describe the types of pro forma financial statements required.

Existing Sections 80.4121(b) and (c) do not require that the pro forma statements include the total amount of money transmission conducted and amount of money transmission liabilities in the United States and worldwide. Financial Code Section 2039(d)(3), however, requires licensees to file a report with the Department detailing:

"The total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California under this division and in the United States in the calendar year quarter categorized by type of money transmission. For money received for transmission, a report of the average daily outstanding transmission liabilities in California, and, if applicable, a schedule of each foreign country to which money was sent, along with the total amount of money sent to that foreign country in that calendar year quarter. For payment instruments and stored value, a report of the average daily outstanding payment instruments and stored value liabilities in California in that calendar year quarter." (Emphasis added.)

In addition, Financial Code Section 2032(c)(21) requires an applicant to submit three years of pro forma financial statements. However, the law does not provide any greater specificity regarding the type of information that must be included in such statements.

Rationale: The amendment to Existing Section 80.4121(a) uses easily understandable language to describe the required pro forma financial statements.

With regard to Sections 80.4121(b) and (c), by adding the requirement that an applicant submit information relating to money transmission conducted and liabilities in the United States and worldwide, the Department can assess whether the applicant will be able to comply with the reporting requirements of Financial Code Sections 2039(d)(3). In addition, the amendment provides necessary detail to make specific the requirement in Financial Code Section 2032(c)(21). Furthermore, information regarding money transmission conducted and liabilities in the United States and worldwide is necessary to the Department's ability to assess an applicant's plan for engaging in money transmission business and whether such plan affords a reasonable promise of successful operation. Requiring financial statements regarding an applicant's worldwide business provides a more comprehensive view of the applicant's plan for engaging in money transmission business.

Section 80.4121 is also amended to replace references to "payment instruments" with "money transmission." See General Purpose Statement.

Section 80.4121 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4122. Information Regarding Reasonable Promise of Successful Operation.**

Section 80.4122 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4123. Information Regarding Compliance with Financial Code Section 2081.**

Section 80.4123 is amended to replace references to “payment instruments” with “money transmission.” See General Purpose Statement.

Section 80.4123 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4124. Information Regarding Authorization of Board.**

Section 80.4124 is amended to add reference to “a limited liability company” because Financial Code Section 2031 expressly authorizes corporations or limited liability companies organized under the laws of California to apply for a money transmitter license.

Section 80.4124 also adds reference to “money transmission.” See General Purpose Statement.

Section 80.4124 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4125. Signature, Acknowledgment, and Verification.**

Section 80.4125 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4126. Fee.**

Section 80.4126 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4127. Amendment.**

Section 80.4127 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

### **Subarticle 3. Administrative Standards and Procedures**

#### **80.4200. Scope.**

Section 80.4200 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.4201. Incomplete Application.**

Section 80.4201 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

### **Subarticle 4. Post-Approval Matters**

#### **80.4300. Scope.**

Section 80.4300 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.4301. Time for Filing Documents.**

Section 80.4301 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.4302. Reports.**

Section 80.4302 is amended to replace “Payment Instruments Law” with “Money Transmission Act” and to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See General Purpose Statement and Nonsubstantive Changes Statement.

#### **80.4303. Implementation of Proposals.**

Section 80.4303 is amended to replace “payment Instruments” with “money transmission” and to change the “authority” and “reference” citations to update them to correspond to the Money Transmission act and renumbered Financial Code. See General Purpose Statement and Nonsubstantive Changes Statement.

#### **80.4304. Certificate of Good Standing.**

Specific purpose: Section 80.4304 adds a requirement that a foreign limited liability company submit a Certificate of Good Standing.

Problem: Financial Code Section 2031 expressly authorizes corporations or limited liability companies organized under the laws of California to apply for a money transmitter license. Financial Code Section 2032(c)(12) requires an applicant to submit a certificate of good standing from the state or country in which the applicant is incorporated or formed. The

existing regulation, however, omits reference to limited liability companies.

Rationale: The amendment to Section 80.4304 mirrors the existing requirement that a foreign corporation submit a Certificate of Good Standing.

Section 80.4304 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and Corporations Code. See Nonsubstantive Changes Statement.

#### **80.4305. Report Regarding Directors, Executive Officers, and Balance Sheet.**

Specific purpose: Section 80.4305 is amended to require that an applicant file a report notifying the Department of any changes in the applicant's directors or executive officers since the filing of the application, within five days of such change.

Section 80.4305 also requires an applicant to file a balance sheet within 30 days before the license is issued.

Problem: The existing regulation does not require an applicant to notify the Department of any changes to directors or officers within any specified time period. Current information regarding directors and officers is a critical component of an application for a license. Such information is statutorily required to be included in an application pursuant to Financial Code Section 2032(c)(14), (15).

Rationale: The amendment to Section 80.4305(a) ensures that the Department will timely receive current information regarding an applicant's directors and officers and prescribes the timeframe within which an applicant must provide such notification to the Department.

The amendment to Section 80.4305(b) ensures that the Department will receive a current balance sheet to confirm the applicant's financial standing prior to issuance of a license. In order to approve an application for a license, Financial Code Section 2033(b)(1) requires the Commissioner to make a finding that the financial condition of the applicant is such that it will be safe and sound for the applicant to engage in the business of money transmission.

Section 80.4305 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4306. Policy Regarding Agents.**

Section 80.4306 is repealed because information relating to an applicant's policy regarding agents is now covered in Sections 80.4117 and 80.4118.

#### **80.4307. Agreement.**

Section 80.4037 is repealed because the law no longer requires an applicant to file with the Commissioner an Agreement of Applicant for License under Payment Instruments Law. See General Purpose Statement.

#### **80.4308. Appointment of Commissioner as Agent for Service of Process.**

Section 80.4308 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4309. Authorization for Release of Information.**

Section 80.4309 is amended to update a form number for an Authorization for Release of Information.

Section 80.4309 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4310. Report Regarding Differences from Application.**

Section 80.4310 is amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.4310 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4311. Expiration and Extension of Approval of Application for License.**

Section 80.4311 is amended to change the expiration of an approval of an application for a license to three months after the date of such approval. The time period of an approval was decreased to reduce the possibility of material changes in the applicant's business plan, control persons, or financial strength during the time period between approval and commencement of transacting business and corresponding issuance of a license. In order to approve an application for a license, Financial Code Section 2033(b)(1) requires the Commissioner to make a finding that the financial condition of the applicant is such that it will be safe and sound for the applicant to engage in the business of money transmission. Thus, the decrease in the time period of an approval reduces the possibility that the financial condition of the applicant would have deteriorated subsequent to the approval of an application for a license.

Section 80.4311 is also amended to replace “selling payment instrument issued by it” with “money transmission.” See General Purpose Statement.

Section 80.4311 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

#### **80.4312. License -Issuance and Expiration.**

Section 80.4312 was amended in the initial Text of Proposed Changes to the regulations

to change the expiration date of a license to sixty days after the issuance of a license to provide an applicant additional time to commence business after the issuance of a license. Upon further review, however, the Department has determined that it is necessary to repeal that portion of Section 80.4312(b) related to the expiration of a license because the Money Transmission Act does not provide for an expiration of a license.

Section 80.4312 is amended to replace “selling payment instrument issued by it” with “money transmission.” See General Purpose Statement.

Section 80.4312 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.4313. Reports Regarding Commencement of Business, California Offices, and California Agents.**

Specific purpose: Section 80.4313 eliminates the requirement that an applicant provide in the report called for in that section information regarding the “reporting/remitting office” of California agents.

Problem: The term “reporting/remitting office” is no longer used elsewhere in the proposed regulations or in the Money Transmission Act. The definition of “reporting/remitting office” in Section 80.171 is being repealed.

Rationale: Because “reporting/remitting office” is not a term used in the Money Transmission Act, it is longer necessary to require information regarding that term.

Section 80.4313 is also amended to replace “selling payment instrument issued by it” with “money transmission.” See General Purpose Statement. Section 80.4313 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act. See Nonsubstantive Changes Statement.

## **Article 6. Licensees**

### **Subarticle 1. General Provisions**

#### **80.5000. Scope.**

Section 80.5000 is amended to include a description of newly added Subarticle 2 concerning tangible shareholders’ equity. Section 80.5000 also updates the description of Subarticle 3 to reference consumer disclosures.

Section 80.5000 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **Subarticle 2. Tangible Shareholders’ Equity.**

#### **80.5100. Tangible Shareholders’ Equity.**

Specific purpose: Section 80.5100(a) is added to define, for purposes of this subarticle, “subject institution” to mean an applicant for a money transmitter license or a money transmitter licensee.

Section 80.5100(b) provides the administrative standard that the Commissioner can apply to determine the amount of tangible shareholders’ equity required of a subject institution.

Problem: Adequate tangible shareholders’ equity is a continuing requirement. Thus, a “subject institution” must be defined to include both money transmitter applicants and licensees.

Financial Code Section 2040 provides: “An applicant shall possess, and a licensee shall maintain at all times, tangible shareholders’ equity” in an amount determined by the Commissioner based on factors specified in subsection (c). Section 2040(f) also requires the Commissioner to adopt regulations to carry out and implement the factors described in subsection (c).

Rationale: In accordance with Financial Code Section 2040(f), Section 80.5100(b) adopts a standard for determining the required amount of tangible shareholders’ equity. This standard is based on safety and soundness standards. The main purpose of maintaining an adequate amount of tangible shareholders’ equity is to ensure the safety and soundness of a licensee in order to prevent insolvency, dissipation of assets or earnings, acts that weaken the condition of the institution, or otherwise prejudice the interests of its customers. Thus, Section 80.5100(b) introduces a standard which is directly related to the main purpose of tangible shareholders’ equity, i.e., to ensure the safety and soundness of an institution based on an analysis of the factors in Financial Code Section 2040(c), considered as a whole.

### **Subarticle 3. Consumer Disclosures.**

#### **80.5200. Scope.**

Section 80.5200 is amended to add references to “receiving money transmission” and “other required disclosures.” See General Purpose Statement.

Section 80.5200 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.5200.1. Forms of Receipt for Receiving Money for Transmission.**

Specific purpose: Section 80.5200.1 is amended to add the application requirements to submit a sample form of receipt for transactions that involve money received for transmission, a certification by an officer of the applicant, and a translator’s certificate, if applicable.

Problem: The existing regulation does not provide for requirements for submission of a form of receipt. Financial Code Section 2100, however, requires a licensee to file with the Commissioner “a certified copy of the receipt forms to be used by it or its agents for

receiving money for transmission prior to its first use.” Financial Code Section 2103(a)(3) requires that the receipt be provided “in English and the language principally used by that licensee or that agent to advertise, solicit, or negotiate” at that branch office. Section 5.3007, Title 10, California Code of Regulations specifies the procedures for certifying a document. Section 5.3002, Title 10, California Code of Regulations specifies the procedures for certifying the translation of a document.

Rationale: By adding application requirements for submission of licensee’s sample form of receipt for transactions that involve money received for transmission, the amendment sets forth the requirements a licensee must satisfy to comply with the various Financial Code sections and accompanying regulations noted above.

### **80.5201. Forms of Payment Instruments.**

Section 80.5201 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.5202. Clearing Banks.**

Section 80.5202 is repealed because it concerns application requirements for approval of a clearing bank under the Payment Instruments Law. The Money Transmission Act does not require such an application.

### **80.5210. Notices.**

Specific purpose: Section 80.5210 is added to clarify that the required notices in Financial Code Sections 2104 and 2105 apply only to branch offices where money transmission is conducted with customers physically on the premises of the branch offices.

Problem: Financial Code Section 2104 provides, in relevant part:

“Each licensee or agent shall prominently post on the premises of each branch office that issues or sells payment instruments, and at machines located in this state and operated by the licensee or agent that issues or sells payment instruments, a notice clearly stating that payment instruments are not insured by the federal government, the state government, or any other public or private entity. . . . The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises.”

Financial Code Section 2105 provides, in relevant part:

“Each licensee or agent shall prominently post on the premises of each branch office that conducts money transmission a notice stating that: “If you have complaints with respect to any aspect of the money transmission activities conducted at this location, you may contact the California Department of Business Oversight at its toll-free telephone number, 1-800-622-0620, by e-mail at [consumer.services@dbo.ca.gov](mailto:consumer.services@dbo.ca.gov), or by mail at Department of Business Oversight, Consumer Services, 1515 K Street, Suite 200, Sacramento, CA 95814.

. . .

The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises.”

Financial Code Section 2003(e) defines “branch office” to mean “any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.”

The Department has received questions from our licensees regarding whether the notices required in Financial Code Sections 2104 and 2105 must be posted in branch offices where customers are not physically present. For example, a licensee with an Internet-only money transmission business may have a branch office at which it receives money to provide transmission, but that branch office is not open to the general public and no customers are ever physically on the premises of that branch office.

Financial Code Section 2104 is clearly intended to warn customers that the payment instruments that they are purchasing are not insured. The intent of the notice required by Financial Code Section 2105 is equally clear – to provide customers with information about the complaint process available to them at the California Department of Business Oversight. Financial Code Sections 2104 and 2105 require that the notice be “posted in a conspicuous location in the unobstructed view of the public within the premises.” Therefore, the notices required by Financial Code Sections 2104 and 2105 will only serve their intended purpose if they are posted where there are customers to see them.

Rationale: By clarifying that the required notices in Financial Code Sections 2104 and 2105 apply only to branch offices where money transmission is conducted with customers physically on the premises of the branch offices, it ensures that the notices serve their intended purpose. In other words, notices are only required in branch offices where customers are physically on the premises of the branch office.

#### **Subarticle 4. Eligible Securities**

##### **80.5300. Scope.**

Section 80.5300 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

##### **80.5301. Ownership - Ability to Transfer.**

Section 80.5301 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

##### **80.5302. Ownership - Documented Nominee.**

Section 80.5302 is amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See

Nonsubstantive Changes Statement.

### **80.5303. Eligible Securities Rating Services.**

Specific purpose: Section 80.5303 is amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.5303(c) was also amended in the initial Text of Proposed Changes to the regulations to add "Fitch Ratings" as one of the eligible securities rating services for purposes of the Money Transmission Act. Subsequently, however, the Department became aware that the correct name is “Fitch, Inc.” Thus, 80.5303(c) is amended to reflect the correct name.

Similarly, with regard to Section 80.5303(b) the Department became aware that the correct name for “Standard and Poor’s Corporation” should be “Standard & Poor’s Rating Services.” The Section has been amended accordingly.

Problem: "Fitch, Inc." is not currently included in the existing regulation. However, Financial Code Section 2088 authorizes the Commissioner to declare a securities rating service to be an eligible securities rating service if the Commissioner finds the following with respect to the securities rating service:

- (1) It has been continuously engaged in the business of rating securities for a period of not less than three years.
- (2) It is competent to rate securities and is nationally recognized for rating securities in a competent manner.
- (3) It publishes its ratings of securities on a nationwide basis.

Rationale: The Commissioner has determined that Fitch, Inc. satisfies the criteria in Financial Code Section 2088. Therefore, by amending Section 80.5303, the Commissioner declares Fitch, Inc. to be an eligible securities rating service.

Section 80.5303 is also amended to change the “authority” and “reference” citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

### **80.5304. Eligible Ratings.**

Section 80.5304 is amended to replace “Payment Instruments Law” with “Money Transmission Act.” See General Purpose Statement.

Section 80.5304 is also amended to update all terminology and ratings to reflect current terms used by the respective securities rating services. For example, "corporate, state, and municipal bonds and railroad equipment trust certificates" is replaced with "long-term obligations." It also replaces "preferred stock" with "short-term obligations." It replaces "commercial paper" with "municipal short-term obligations" for Moody's and "municipal short-term notes" for Standard and Poor's.

It also adds "Fitch, Inc." and corrects the name "Standard & Poor's Rating Services" for the reasons discussed in Section 85.5303.

The Department has further amended Section 80.5304 of the Initial Text of Proposed Changes to add references to the "issuer of the securities." The Department has added issuers because short- term ratings are also typically ratings of the obligors and issuers, not just securities.

The Department has also amended Section 80.5304 of the Initial Text of Proposed Changes to add reference to "subdivisions (4), (6) and (7) of Financial Code section 2082." This was added to clarify that the eligible ratings are for purposes of subdivisions (4), (6) and (7) of Financial Code section 2082 because those subsections expressly refer to securities that have been assigned an eligible rating.

Section 80.5304 is also amended to change the "authority" and "reference" citations to update them to correspond to the Money Transmission Act and renumbered Financial Code. See Nonsubstantive Changes Statement.

#### **80.5304.1. Eligible Securities.**

Specific purpose: Section 80.5304.1 is adopted to add "Debit Card Receivables" as an eligible security. It also introduces the terms "ACH Receivables" and "Credit Card Receivables" to indicate other types of eligible securities.

Problem: Effective January 1, 2014, Assembly Bill No. 786 amended Financial Code Section 2082(b)(12) to add to the list of eligible securities: "Any receivable owed by a bank and resulting from an automated clearinghouse or credit-funded transmission." Because credit card receivables are now an eligible security, debit card receivables should also be included in the list of eligible securities because they have the equivalent liquidity and quality as credit card receivables. Debit cards, just like credit cards, are issued by financial institutions. Merchants accept debit cards as means for payment in a similar manner to credit cards. Signature-based debit card and credit card transactions are processed and settled in the same manner through the card association networks (e.g., Visa and Mastercard networks). Pin-based debit card transactions are authorized in real time at the Point of Sale using the same electronic funds transfer (EFT) networks that handle ATM transactions and are typically settled at the end of the day using the ACH network. Other than the fact that debit cards are tied to a customer's bank account, whereas credit cards represent a line of credit to the cardholder, in terms of a receivable to the merchant, they are indistinguishable. Thus, for the sake of consistency, debit card receivables should be added to the list of eligible securities.

During this rulemaking process, Assembly Bill No. 2209 was passed and became effective January 1, 2015. Assembly Bill No. 2209 amended Financial Code Section 2082(b)(12) to add to the list of eligible securities any receivable owed by a bank and resulting from a debit funded transmission. Therefore, the Department is amending Section 80.5304.1 of the initial Text of Proposed Changes to the regulations to reflect this law change.

None of these new types of receivables have been defined.

Rationale: Prior to Assembly Bill No. 2209, debit card receivables were not included in the statutory list of eligible securities. Thus, in the initial Text of Proposed Changes, Section 80.5304.1 was adopted to declare debit card receivables as an eligible security, in order to treat them consistently with a similar eligible security, credit card receivables. With the passage of Assembly Bill No. 2209, this is no longer necessary. Thus, Section 80.5304.1 has been revised to reflect the law change.

Section 80.5304.1 also introduces the terms "ACH Receivables," "Credit Card Receivables," and "Debit Card Receivables" to describe the new categories of Financial Code Section 2082(b)(12). It also establishes terminology to be defined in Section 80.5305.

### **80.5305. Computation of Aggregate Value of Eligible Securities.**

Specific purpose: Section 80.5305 is adopted to define the terms, "Automated Clearing House (ACH) Receivables," "Credit Card Receivables," "Debit Card Receivables" (collectively, Receivables), and "Merchant Acquirer." Section 80.5305 also establishes which portion of the value of the Receivables must be excluded in computing for purposes of Financial Code Section 2082, the aggregate value of such Receivables. Section 80.5305 also specifies that the Receivables must be current and not past due or otherwise doubtful of collection. In addition, ACH Receivables must be due from U.S. national or state-chartered depository institutions. Lastly, Section 80.5305 clarifies how Receivables may be reported on a licensee's balance sheet: (1) as cash, cash items, or cash in transit; (2) as ACH, Credit Card, or Debit Card Receivables; or (3) in any other manner approved by the Commissioner.

Problem: Financial Code Section 2082(a) defines "eligible security" to mean "any United States currency eligible security or foreign currency eligible security." Financial Code Section 2082(b)(12) provides: "Any receivable owed by a bank and resulting from an automated clearinghouse, debit, or credit-funded transmission" is a United States currency eligible security. These three types of Receivables, however, are not defined. Definitions are necessary to identify the criteria that a receivable must satisfy in order to qualify as an eligible security.

Rationale:

#### Section 80.5305(a)(1) – ACH Receivables

Section 80.5305(a)(1) defines ACH Receivables as "amounts debited from a customer's depository account or ACH credits initiated by the customer through the ACH, which are for the purchase or payment of money transmission products and services." It is necessary to specify that ACH Receivables are related to amounts coming directly from a "customer's" depository account in order to distinguish them from "agent receivables" listed in Financial Code Section 2082(b)(10). Agent receivables are also United States currency eligible securities.

Financial Code Section 2082(b)(10) defines agent receivables as "Any account due to any licensee from any agent in the United States on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection." Thus, there is potential for confusion that an agent receivable that is owed and transmitted to the licensee via ACH could satisfy the language in Financial Code Section 2082(b)(12): "Any receivable owed by a bank and resulting from an automated clearinghouse . . . transmission." It is important to maintain the distinction between an ACH Receivable and an agent receivable. Pursuant to Financial Code Section 2083(a)(2), a certain portion of agent receivables are statutorily excluded from the computation of value of eligible securities. ACH Receivables, however, do not have any portion of their value excluded. Because agent receivables and ACH Receivables are treated differently in terms of their computation of value, it is critical that an agent receivable cannot be converted to an ACH Receivable simply by transmitting the agent receivable to the licensee via ACH. Thus, an ACH Receivable is specifically limited to ACH Receivables coming from a customer (not an agent).

Lastly, Section 80.5305(a)(1) requires that an ACH Receivable be "for the purchase or payment of money transmission products and services." This ensures that only those ACH Receivables which are the result of a licensee's money transmission business are included as eligible securities for its money transmission obligations.

#### Sections 80.5305(a)(2) and (4) – Credit Card Receivables and Merchant Acquirer

Section 80.5305(a)(2) defines Credit Card Receivables as "amounts owed by a licensee's merchant acquirer and arising from the licensee's submission of credit card transactions for settlement by the merchant acquirer for the purchase or payment of money transmission products and services."

Section 80.5305(a)(4) defines merchant acquirer as "an acquiring bank or its designated processor who forwards the transaction information to the respective credit card associations for authorization, clearing, and settlement. The acquiring bank must remain fully liable for payment to the licensee if the designated processor fails to settle with the licensee."

To understand the basis of these definitions, it is helpful to explain basic credit card processing. The following explanation of this process is based on the description given by the Federal Financial Institution Examination Council (FFIEC) in its InfoBase. The FFIEC is a formal interagency body empowered to promote uniformity in the supervision of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee (SLC) is also part of the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS).

The FFIEC maintains the FFIEC InfoBase, which provides reference and educational

training material on specific topics of interest to field examiners from the FFIEC member agencies. The following description of basic credit card processing is adapted from the FFIEC InfoBase in its discussion of “Merchant Acquiring.” (<http://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/retail-payment-systems-risk-management/retail-payment-instrument-specific-risk-management-controls/merchant-acquiring.aspx>.)

Basic credit card processing participants include the cardholder, cardholder's issuing bank, merchant, merchant's acquiring bank, and the credit card association (e.g., Visa, MasterCard, Discover, AMEX, Diners Club). The definition of a merchant acquirer may include service providers, ISOs, and other agents. Regardless of the term used, all merchant acquirer participants require sponsorship by a member financial institution also known as the acquiring bank.

Merchants who want to accept card association-branded credit card sales payments must be sponsored by an acquiring bank that is a member of the credit card association. Merchants may maintain a settlement account with their acquiring bank, or settle via ACH transactions between the acquiring bank and the merchant's bank. Acquiring banks typically do not process their merchants' transactions directly so this function may be outsourced to a third-party service provider (merchant acquirer) that performs the data processing functions of authorization and clearing and settlement. Some merchant banks may also engage the services of an ISO or Member Service Provider (MSP) to solicit and sign up merchants and merchant transaction processing services. Regardless of the presence of such third parties, the credit card networks expect the acquiring bank to be the risk-controlling entity throughout the credit card process.

The credit card transaction process is initiated when the consumer or merchant swipes the customer's credit card through a POS terminal. The credit approval and payment transaction processing is the same for card-not-present (mail order, telephone order, Internet sales) as they are for card-present transactions. Card-not-present retailers have additional authentication requirements. The terminal reads and electronically transmits the card number, purchase amount, and merchant ID via the appropriate credit card association network. The credit card association forwards the electronic transaction to the issuing bank or its designated processor to verify that the account is valid and that the customer has adequate credit to cover the purchase. The issuing bank responds back through the network with either an authorization or rejection. Once the merchant receives acknowledgement through the POS terminal, the sale is completed or rejected.

Generally, at the end of each business day, a merchant sends his or her daily charge activity in batch form to his or her acquiring bank or its designated processor who forwards the transaction information to respective credit card associations for clearing. Settlement occurs through the card association with the transfer of funds from the issuing banks to the respective merchant's bank. The merchant's acquiring bank posts a credit of the net sales proceeds less interchange and charge-backs to the individual merchant account.

Thus, based on the credit card processing description above, Section 80.5305(a)(4) defines “merchant acquirer” to mean an acquiring bank or its designated processor who

forwards transaction information for authorization, clearing, and settlement. In addition, the acquiring bank must ensure that settlement is made to the merchant licensee even if settlement is conducted by the acquiring bank's designated processor.

Moreover, because it is the merchant's acquiring bank that posts the credit to the merchant's account, Section 80.5305 defines Credit Card Receivables as "amounts owed by a licensee's merchant acquirer and arising from the licensee's submission of credit card transactions for settlement by the merchant acquirer." In addition, Section 80.5305(a)(4) requires that a Credit Card Receivable be "for the purchase or payment of money transmission products and services." This ensures that only those Credit Card Receivables which are the result of a licensee's money transmission business are included as eligible securities for its money transmission obligations.

#### Section 80.5305(a)(3) – Debit Card Receivables

Section 80.5305(a)(3) defines Debit Card Receivables as "amounts owed by a licensee's merchant acquirer and arising from the licensee's submission of debit or pre-paid card transactions for settlement by the merchant acquirer for the purchase or payment of money transmission products and services."

By way of background, the FFIEC InfoBase describes debit card and pre-paid cards as follows: Signature-based debit card are processed in batch mode through the same bankcard networks as credit card transactions and typically settle at the end of the business day. Pin-based debit card transactions are authorized in real time at the Point of Sale using the same electronic funds transfer (EFT) networks that handle ATM transactions and are typically settled at the end of the day using the ACH network. Open-loop prepaid cards are processed using the same systems as the branded network cards – e.g., MasterCard, Visa, American Express, and Discover.

Because of the similarity to credit card processing, Section 80.5305(a)(3) adopts a similar definition for Debit Card Receivables.

#### Section 80.5305(b), (c), (d), (e) – Computation of value of Receivables and other restrictions

Section 80.5305(b) requires the exclusion of that portion of the aggregate value of ACH Receivables, Credit Card Receivables, and Debit Card Receivables that have been outstanding for more than 10 business days. The reasoning for this exclusion is that the likelihood of the licensee ever collecting a Receivable after 10 business days is remote given that such Receivables are typically settled within 1 to 3 business days, depending on the type of Receivable. Thus, Section 80.5305(b) ensures that only those Receivables which are likely to be collected are counted for purposes of the eligible security computation.

Similarly, Sections 80.5305(c), (d), and (e) require that ACH Receivables, Credit Card Receivables, and Debit Card Receivables "must be current and not past due or otherwise doubtful of collection." This mirrors language used in another type of eligible security, i.e., agent receivables. Financial Code Section 2082(b)(10) defines agent receivables to be "an account due to any licensee from any agent . . . if the account is

current and not past due or otherwise doubtful of collection.” Again, this ensures that only those Receivables which are likely to be collected are counted for purposes of the eligible security computation.

Section 80.5305(c) further requires that ACH Receivables be “due from U.S. national or state-chartered depository institutions.” This is because the Department has determined that ACH Receivables that are due from a receiving depository institution based in the United States are of sufficient liquidity and quality to qualify as an eligible security.

#### Section 80.5305(f) – Reporting of Receivables on balance sheet

Section 80.5305(f) permits a licensee to report Receivables as “(A) cash, cash items, or cash in transit or (B) as ACH, Credit, or Debit Receivables or due from banks on the licensee’s balance sheet, or in any other manner approved by the Commissioner.” The Department has determined that these types of Receivables can be reported as cash, cash items, or cash in transit because the timing to clear and settle these types of Receivables is short, typically two days or so. In addition, there is a high degree of collectability of these Receivables because they are due from a bank. These Receivables are of high liquidity and quality, and therefore, they can be reported on a licensee’s balance sheet as cash, cash items, or cash in transit.