

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*NATHAN DEAL
GOVERNOR*

*KEVIN HAGLER
COMMISSIONER*

*SPECIAL EDITION
IMPORTANT NOTICE
PROPOSED RULEMAKING*

October 31, 2013

**NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT**

**PROPOSED ENACTMENT OF RULES AND REGULATIONS
BY
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-9-3, 7-9-12, and other cited statutes, the Department of Banking and Finance hereby gives notice of its intent to adopt new rules.

The new rules are in response to the enactment of the Georgia Merchant Acquirer Limited Purpose Bank Act, O.C.G.A. § 7-9-1 et seq.

A synopsis and purpose precedes the proposed rules.

Comments to the Department of Banking and Finance must be received by the close of business on **Monday, December 2, 2013**. Please send all comments to:

Kevin Hagler, Commissioner
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565

Fax: (770) 986-1654 or 1655

Email: dbf@dbf.state.ga.us

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating the final rules. The Department will consider the proposed new rules for adoption at a meeting **at 2:00 p.m. on Tuesday, December 3, 2013**, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rule by contacting the Department at (770) 986-1633, after **Tuesday, December 3, 2013**.

Rules and Regulations

Synopsis, Purpose and Background of Proposed Rules

On March 28, 2012, Governor Nathan Deal signed into law the Georgia Merchant Acquirer Limited Purpose Bank Act (“Act”). The Act creates a new type of special purpose state-chartered bank, a merchant acquirer limited purpose bank (“MALPB”) for companies that provide merchant acquiring activities within payment card networks. The law is intended to allow merchant acquirers, who qualify for and receive the special purpose charter, to enter card networks directly rather than operating through a financial institution sponsor.

It is anticipated that the Department will be the sole regulator of these banks. The purpose of the proposed rules is to establish a framework for the meaningful regulation of these banks in order that the charter will be accepted and recognized by the payment card networks and other third parties. In developing these rules, the Department considered, among other items, the scope of the charter and extent of regulatory limits imposed on use of the charter, capital levels tailored to address risks presented by MALPB activities and operations, the appropriate examination and supervisory regime required to oversee MALPBs, and particular issues related to information technology risks and consumer protection.

On July 31, 2013, the Department issued proposed rules to implement the Act. Public comments on the proposed rules were due by September 9, 2013. The Department received a number of timely formal comments on the proposed rules. After evaluating the comments, the Department concluded that it wished to make a number of substantive changes to the proposed rules. In light of the scope of some of the changes, the Department determined that it would make these revisions and re-issue the proposed rules. A red-lined version of the proposed rules showing the changes between the proposed rules issued on July 31, 2013 and these proposed rules is available upon request.

Below is a synopsis of the Department’s proposed rules.

80-12-1-.01 Definitions.

This proposed rule sets forth definitions for certain terms found throughout the rules.

80-12-2-.01 Eligibility.

This proposed rule sets forth the type of entity that can apply for an MALPB charter.

80-12-2-.02 Applications Manual and Statement of Policies.

This proposed rule informs MALPB applicants where information related to the application process can be located by potential MALPB applicants.

80-12-2-.03 MALPB Applications.

This proposed rule sets forth certain information that must be submitted as part of the application process.

80-12-2-.04 Receipt of MALPB Charter Application.

This proposed rule sets forth when an MALPB application shall be deemed to be received by the Department.

80-12-2-.05 Certification of Articles of Incorporation.

The proposed rule provides for the issuance and the publication of the MALPB applicant's articles of incorporation.

80-12-2-.06 Notification of Filing.

The proposed rule requires an MALPB applicant to post notice of its application and the opportunity for public comment on the application.

80-12-2-.07 Public Comments.

The proposed rule sets forth a public comment process on pending MALPB applications.

80-12-2-.08 General Standards for Consideration of Applications.

The proposed rule discusses the general factors the Department will consider in evaluating an MALPB application.

80-12-2-.09 Special Examiners Assisting in Application Process.

The proposed rule establishes a framework whereby the Department can utilize special examiners to evaluate an MALPB charter application.

80-12-2-.10 Approval of Executive Officers, Directors, and Control Persons of MALPB Applicant and Proposed Holding Company of Applicant.

The proposed rule provides that the Department must approve the executive officers, directors, and control persons of an MALPB applicant and a proposed holding company and discusses some of the information the Department may require in order to issue such approval.

80-12-2-.11 Approval or Denial of Application.

The proposed rule discusses the ability of the Department to approve, conditionally or otherwise, or deny an MALPB application and the circumstances in which the Department can nullify a previous decision.

80-12-3-.01 Requirement to Begin Business.

The proposed rule provides that the MALPB must begin business within one year of the issuance of the charter with the statutorily required number of employees.

80-12-3-.02 Notification Requirements Prior to Operation.

The proposed rule sets forth certain notices and documents an MALPB must provide after its application has been approved but prior to beginning operations.

80-12-4-.01 Scope of Merchant Acquiring Activities.

The proposed rule discusses in general terms permissible and impermissible activities for an MALPB.

80-12-4-.02 Self-Acquiring Activities.

The proposed rule precludes self-acquiring activities and limits ownership of a merchant in an MALPB or an MALPB holding company.

80-12-4-.03 Deposits.

The proposed rule sets forth limits on the deposit taking ability of an MALPB.

80-12-4-.04 Minimum Number of MALPB Employees that Reside in Georgia.

The proposed rule provides for the minimum number of employees an MALPB must have that reside in the State of Georgia.

80-12-4-.05 Restrictions on Employment and Ownership.

The proposed rule restricts an MALPB and an MALPB's holding company from being affiliated with individuals that have been convicted of a felony involving a financial crime.

80-12-4-.06 Advertising Limitations.

This proposed rule sets forth general limitations on an MALPB's ability to advertise.

80-12-4-.07 Compliance with Other Requirements.

The proposed rule provides generally that an MALPB shall comply with all applicable laws and sets forth certain specific laws and industry standards that must be followed.

80-12-5-.01 General Requirements for Accounting Procedures.

The proposed rule provides in general terms that an MALPB's books must be maintained in accordance with generally accepted accounting principles.

80-12-5-.02 Independent Audits.

The proposed rule provides that an MALPB must have an annual independent audit and sets forth general parameters for such audits.

80-12-5-.03 Director Financial Statements.

The proposed rules provide that an MALPB must maintain financial statements on each of its directors.

80-12-5-.04 Reports.

The proposed rule provides that the Department may require reports from an MALPB and then details certain reports the Department will require.

80-12-5-.05 Minimum Requirements for Books and Records.

The proposed rule sets forth certain books and records an MALPB must maintain.

80-12-5-.06 Location and Access Requirements for Books and Records.

The proposed rule sets forth the location where the MALPB must maintain its books and records and provides that the Department shall have unlimited access to the MALPB's books and records.

80-12-5-.07 Minimum Records Retention Period.

The proposed rule sets forth the minimum retention period for an MALPB's books and records.

80-12-5-.08 Public Access to Records.

The proposed rule sets forth which records in the possession of the Department will be subject to public inspection and which records in the possession of the Department can be shared within the payment card network upon the request of an MALPB.

80-12-6-.01 Main Office.

The proposed rule provides that the location of the MALPB's main office must be approved by the Department in writing.

80-12-6-.02 Other Physical Locations.

The proposed rule provides that if an MALPB wishes to establish additional physical locations then it must submit a written request to the Department.

80-12-6-.03 Examinations and Investigations.

The proposed rule sets forth the frequency of examinations and investigations by the Department as well as provides for the utilization of a third-party expert to assist the Department with examinations or investigations.

80-12-6-.04 Third-Party Expert Agreement.

The proposed rule provides general terms and conditions that must be contained in the agreement between the MALPB and the third-party expert and provides for Department approval of the agreement prior to execution.

80-12-7-.01 Minimum Capital Requirements.

The proposed rule sets forth the minimum capital levels that must be maintained by an MALPB.

80-12-7-.02 Safeguarding Requirements.

The proposed rule provides that merchant funds must be deposited into a bank account for the benefit of the individual merchants.

80-12-7-.03 Fidelity Coverage.

The proposed rule provides that an MALPB must obtain fidelity insurance coverage and sets forth the method of calculating the required coverage.

80-12-7-.04 Data Breach Insurance Coverage

The proposed rule provides that an MALPB must obtain data breach insurance coverage in an amount approved by the Department

80-12-7-.05 Dissolution.

The proposed rule provides that an MALPB must provide an irrevocable letter of credit for the benefit of the Department to satisfy any costs and expenses related to a potential receivership.

80-12-8-.01 Eligible Organizations.

The proposed rule provides that the Department must approve a contract, as well as any amendments, with an eligible organization and sets forth certain documents the Department will review prior to approval.

80-12-8-.02 Support Organizations.

The proposed rule provides that an MALPB must provide the Department with notice of entering into a contract, as well as any amendments to the contract, with a support organization, which performs the same functions as an eligible organization but does not satisfy the statutory definition, and sets forth certain documents the MALPB must maintain from the support organization.

80-12-8-.03 Oversight of Eligible Organizations and Support Organizations.

The proposed rule provides that an MALPB must monitor compliance by eligible organizations and support organizations with the Act and Rules and utilize good faith efforts to monitor the financial condition and activities of eligible organizations and support organizations.

80-12-8-.04 Responsibility for Outsourced Services.

The proposed rule provides that an MALPB is responsible for services performed by a third party that are related to authorized merchant acquiring activities.

80-12-9-.01 Intercompany Dealings.

The proposed rule sets forth certain limits on business dealings between an MALPB and any affiliate.

80-12-9-.02 Subsidiaries.

The proposed rule provides that an MALPB may create a subsidiary to conduct authorized merchant acquiring activities subject to the approval of the Department.

80-12-9-.03 Investment of MALPB Funds.

The proposed rule sets forth the only types of permissible investments for an MALPB.

80-12-9-.04 Dividends.

The proposed rule provides that an MALPB may pay dividends subject to the approval of the Department.

80-12-10-.01 Change in Director, Executive Officer, or Control Person of MALPB.

The proposed rule provides that the MALPB must provide the Department with written notice of any change in director, executive officer, or control person and the Department must approve the change in writing prior to the change taking effect.

80-12-10-.02 Acquisition of MALPB

The proposed rule provides that it is unlawful to acquire control of an MALPB without the written approval of the Department.

80-12-11-.01 Books and Records of Holding Company.

The proposed rule provides that the holding company of an MALPB must provide the Department with certain documents within ten (10) days of issuance.

80-12-11-.02 Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company.

The proposed rule provides that the holding company of the MALPB must provide the Department with written notice of any change in director, executive officer, principal shareholder, or control person and the Department must approve the change in writing prior to the change taking effect.

80-12-11-.03 Lawful and Unlawful Acquisitions.

The proposed rule sets forth the parameters of when a holding company can lawfully acquire an MALPB.

80-12-11-.04 Source of Strength.

The proposed rule provides that a holding company shall serve as a source of strength to its MALPB and that a holding company will provide a capital maintenance guaranty at the request of the Department.

80-12-12-.01 Administrative Fines and Penalties.

The proposed rule sets forth the amount of fines the Department can impose for violations of the Act or these rules.

80-12-12-.02 Application, Examination, and Other Fees.

The proposed rule sets forth certain fees that are payable to the Department by MALPBs and their holding companies.

DEPARTMENT OF BANKING AND FINANCE

CHAPTER 80-12-1

DEFINITIONS

TABLE OF CONTENTS

80-12-1-.01 Definitions

80-12-1-.01 Definitions.

(1) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the terms that are defined in O.C.G.A. § 7-9-2 shall have the identical meaning.

(2) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:

(a) “Act” means the Georgia Merchant Acquirer Limited Purpose Bank Act promulgated at O.C.G.A. § 7-9-1 et seq.

(b) “Affiliate” means any corporation, business trust, association, or other similar organization:

1. Of which an MALPB, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

2. Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of an MALPB who own or control either a majority of the shares of such MALPB or more than 50 percent of the number of shares voted for the election of directors of such MALPB at the preceding election or by trustees for the benefit of the shareholders of any such MALPB;

3. Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one MALPB; or

4. Which owns or controls, directly or indirectly, either a majority of the shares of an MALPB or more than 50 percent of the number of shares of an MALPB voted for the election of directors of an MALPB at the preceding election or controls in any manner the election of a majority of the directors of an MALPB or for the benefit of whose shareholders or members all or substantially all the capital stock of an MALPB is held by trustees.

(c) “Annual Attestation Report” or “AAR” means the standard annual report filed by an MALPB that will disclose information required by the Department. This report will consist of information on specific matters of compliance with applicable laws, regulations, rules, policies, and charter conditions and contain affirmative attestations by the MALPB’s chief executive officer.

(d) “Average Total Assets” means an average of the MALPB’s end of day total assets, excluding goodwill and intangible assets, for the previous month. Average total assets is the denominator of the leverage capital ratio.

(e) “Capital Letter of Credit” means an irrevocable letter of credit made payable to the Department for the benefit of merchants in the event of the bankruptcy - either voluntary or involuntary - receivership, or insolvency of the MALPB, which can be treated as tier 1 capital. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.

(f) “Capital Maintenance Guaranty” means an unlimited, unconditional, continuous guaranty by the holding company to maintain in its MALPB subsidiary at least the minimum capital levels required by law, regulation, rule, or administrative order. The guaranty must have a minimum maturity of not less than twenty-four (24) months and be in a form acceptable to the Department.

(g) “Capital Stock” means the sum of the par value of the authorized shares which have been issued and remain outstanding of an MALPB.

(h) “Chargeback” means a transaction that is returned to an MALPB through the payment card network.

(i) “Dispute processing” means all activities associated with the dispute resolution process including exchange of information, reporting, and funding.

(j) “Executive Officer” means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or MALPB, whether or not: the officer has an official title; the title designates the officer as an assistant; or the officer is serving without salary or compensation. The chief executive officer, chief information officer, chief risk officer, president, every vice president and treasurer of a company or an MALPB are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the MALPB or company from participation (other than in the capacity of a director) in major policymaking functions of the MALPB or company, and the officer does not actually participate in major policymaking functions.

(k) “Financial Crime” means a crime involving conversion, theft, money laundering, bribery, dishonesty, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including, but not limited to check fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account

fraud, payment (point of sale) fraud, currency fraud, bank fraud, and securities fraud, or a felony directly related to the financial services business.

(l) “Incidental Activities” means other activities that may be necessary, convenient, or incidental to effecting transactions within a payment card network and are not specifically enumerated as “merchant acquiring activities” in O.C.G.A. § 7-9-2.

(m) “Leverage Capital Ratio” means the MALPB’s ratio of tier 1 capital to average total assets.

(n) “Main Office” means the single physical location in this State where the MALPB is authorized to take deposits permitted by O.C.G.A. § 7-9-12.

(o) “MALPB” means a merchant acquirer limited purpose bank as defined in O.C.G.A. § 7-9-2.

(p) “Membership” means any agreements between an MALPB and the payment card network that allows access and participation in the payment card network.

(q) “Merchant funds” means funds received by an MALPB as a result of its performance of clearing, settlement activities, or any other authorized activities which are ultimately payable to a merchant.

(r) “Monthly Activity Report” or “MAR” means the standard monthly report filed by an MALPB that will disclose information required by the Department. The information requested will include, but not be limited to, transaction volume levels and composition by dollar and number, chargeback and disputed transaction numbers, regulatory capital calculations, exception reporting, liquidity levels, funding sources, and merchant and/or industry concentrations.

(s) “Paid-in-Surplus” means the sum of the considerations received in the sale or exchange of shares of an MALPB in excess of the amount of the capital stock.

(t) “Payment Card” means a credit card, debit card, or any other payment device issued to a consumer that enables access to a consumer’s funding source and is used to make payments to merchants.

(u) “Payment Volume or “PV” means the greater of one twelfth of the total dollar amount of payment transactions executed by the MALPB in the preceding twelve (12) months or forecast for the next twelve (12) months.

(v) “Principal Shareholder” means a person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than ten (10) percent of any class of voting securities of an MALPB or holding company.

(w) “PV Capital” means the amount of tier 1 capital required to be maintained by the MALPB based on payment volume.

(x) “Public Company” means any company that is required to file reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has a market capitalization in excess of \$1,000,000,000.

(y) “Quarterly Financial Report” or “QFR” means the standard quarterly report filed by an MALPB that will contain financial statements, which shall include, but not be limited to, a balance sheet and an income statement, required by the Department.

(z) “Receivership Letter of Credit” means an irrevocable letter of credit made payable to the Department in order to cover the costs and expenses associated with a receivership of the MALPB. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.

(aa) “Risk Capital” means the amount of tier 1 capital required to be maintained by the MALPB based on the dollar volume of chargebacks.

(bb) “Standardized Regulatory Reports” or “SRRs” means the monthly activity report, the quarterly financial report, and the annual attestation report that must be filed with the Department by each MALPB.

(cc) “Statutory Capital” means the sum of capital stock and paid-in-surplus of the MALPB, which, at all times, must be no less than \$3 million.

(dd) “Support Organization” means a legal entity that is not an eligible organization but performs administrative support, information technology support, financial support, or tax and finance support for an MALPB pursuant to the terms of a contract.

(ee) “Tier 1 Capital” means the sum of statutory capital, retained earnings, noncumulative perpetual preferred stock, the secured portion of a capital maintenance guaranty and a capital letter of credit, less any loans or accounts payable by an affiliate or holding company to the MALPB, goodwill, and intangible assets. To be considered for inclusion in tier 1 capital, the collateral securing the capital maintenance guaranty must be of a type approved by the Department, subject to discounting as approved by the Department, and properly assigned.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-12-2

APPLICATION PROCESS

TABLE OF CONTENTS

80-12-2-.01 Eligibility

80-12-2-.02 Applications Manual and Statement of Policies

80-12-2-.03 MALPB Applications

80-12-2-.04 Receipt of MALPB Charter Application

80-12-2-.05 Certification of Articles of Incorporation

80-12-2-.06 Notification of Filing

80-12-2-.07 Public Comments

80-12-2-.08 General Standards for Consideration of Applications

80-12-2-.09 Special Examiners Assisting in Application Process

80-12-2-.10 Approval of Executive Officers, Directors, and Control Persons

80-12-2-.11 Approval or Denial of Application

80-12-2-.01 Eligibility.

A corporation, organized solely under the laws of Georgia, that performs or seeks to perform merchant acquiring activities or settlement activities may apply to the Department for an MALPB charter.

Authority O.C.G.A. §§ 7-9-3, 7-9-8, 7-9-13.

80-12-2-.02 Applications Manual and Statement of Policies.

Specific requirements for documents, meetings with the Department and publication of notices are contained in the Applications Manual and the Statement of Policies of the Department. The Department can amend its Applications Manual and Statement of Policies at any time. In the event the Department amends either its Applications Manual or Statement of Policies while an application is pending, the applicant will amend its application in order to submit any additional information or documentation that the amendment may require.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-2-.03 MALPB Applications.

(1) Prior to submitting an MALPB charter application, an organizing group must schedule an initial meeting with the Department to discuss the charter proposal and the chartering process, at which time an application form and package will be distributed.

(2) The requirements for an MALPB charter application submission and documentation include, but are not limited to, the following items:

(a) A completed application form and package for chartering an MALPB;

(b) The applicant's articles of incorporation that satisfies the requirements of O.C.G.A. § 7-9-5. The suffix "MALPB" must follow the legal name of the MALPB applicant and, in the event a charter is issued, the suffix "MALPB" must be at all times utilized in the legal name of the MALPB;

(c) After receipt of the completed application form and package, any additional information requested by the Department in order to fully evaluate the application for a charter;

(d) A certificate from the Secretary of State showing that the proposed name of the applicant has been reserved pursuant to O.C.G.A. § 7-1-131. The name can be reserved by filing with the Department a form application to reserve a specified name. If the Department concludes that the use of a proposed name complies with O.C.G.A. § 7-1-130, is consistent with the purposes of the Act, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, it shall approve the name and notify the Secretary of State to issue such name reservation;

(e) All applicable fees established by the Department in Rule 80-12-12-.02 or set forth in the Applications Manual and the Statement of Policies of the Department to defray the expense of the investigation of the application. Such fees shall be remitted to the Department via certified check contemporaneously with the receipt of the application; and

(f) A copy of the application for Federal Deposit Insurance, if the applicant has filed such an application.

Authority O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-12, 7-9-13.

80-12-2-.04 Receipt of MALPB Charter Application.

(1) An MALPB charter application will not be deemed to have been received by the Department until such time as all required fees have been paid, all portions of the application form and package have been completed and filed to the satisfaction of the Department, and all required documents have been provided.

(2) If the Department determines that the application form and package have not been satisfactorily completed, then the Department shall provide the applicant with notice of this fact. If the Department notifies the applicant of any deficiencies in the application or requests any additional information to evaluate the application, the applicant must complete the application by curing the deficiencies or providing the requested information within thirty (30) days after receipt of such notification from the Department. If the applicant fails to address and/or cure the deficiencies or provide the requested information to the Department within the thirty (30) day period, the application shall be denied. However, prior to the expiration of the thirty (30) day period, an applicant can make a written request for an extension of time to cure the deficiencies or provide the information requested by the Department and it shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for an extension of time.

(3) In order to properly evaluate an MALPB charter application, the Department may provide an applicant with multiple notices of deficiencies in the application or multiple requests for additional information.

(4) After the MALPB charter applicant pays all of the required fees, satisfactorily completes and files the application form and package, and provides all required documents, the Department

will issue an official acceptance letter of the application. The issuance of the official acceptance letter shall not be construed as evidence that the application will be approved.

(5) Within ninety (90) days after mailing the official acceptance letter, the Department will approve, conditionally or otherwise, or disapprove the MALPB charter application.

Authority O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-7, 7-9-13.

80-12-2-.05 Certification of Articles of Incorporation.

(1) Upon receipt of all required fees, an application form and package, and the articles of incorporation, the Department will certify one copy of the articles of incorporation and return it to the applicant in order for the applicant to comply with the provisions of O.C.G.A. § 7-9-5(c). The issuance of the certified articles of incorporation to the applicant shall not be construed as evidence that the application form and package has been completed to the satisfaction of the Department or that all required documentation has been provided to the Department to aid in its review of the MALPB charter application.

(2) The applicant shall provide the Department with an affidavit executed by the duly authorized agent or publisher of a newspaper attesting that the articles of incorporation or a summary statement was published once a week for two (2) consecutive weeks in the newspaper which is the official organ of the county where the applicant's main office is located.

Authority O.C.G.A. §§ 7-9-3, 7-9-5, 7-9-8, 7-9-13.

80-12-2-.06 Notification of Filing.

In addition to publishing the notice required by O.C.G.A. § 7-9-5(c) and Rule 80-12-2-.05, the applicant shall cause a notice, which notice must be approved by the Department, to be published informing any interested parties of the opportunity to provide written comments, whether favorable or unfavorable, to the Department regarding the MALPB charter application. The notice shall be published once a week for two (2) consecutive weeks in the newspaper which is the official organ of the county where the applicant's main office will be located as well as the newspaper of general circulation in the county where the applicant's main office will be located. The applicant shall provide the Department with an affidavit executed by the duly authorized agent or publisher of a newspaper attesting that the notice required by this rule was published in the newspapers once a week for two (2) consecutive weeks.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-2-.07 Public Comments.

(1) Upon issuance of the official acceptance letter required by Rule 80-12-2-.04, the Department shall publish on its website that an MALPB charter application has been received and that the Department will accept comments on the application. Any party desiring to comment upon an MALPB charter application must submit such comment to the Department in writing within thirty (30) days of the Department posting notice of the MALPB charter application.

(2) All comments filed on a timely basis shall be reviewed and considered by the Department in evaluating the MALPB charter application. If the Commissioner in his discretion determines that additional information is required in order to fully evaluate the comment, the Commissioner can request additional written information from the party providing the comment, require that the applicant provide a written response to the comment, or request that either the party providing the comment, the applicant, or both provide an oral presentation addressing the comment. Nothing herein shall be construed as providing any party with the right to make an oral presentation to the Commissioner.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-2-.08 General Standards for Consideration of Applications.

In evaluating the merits of an MALPB charter application, the Department shall consider, among other items: the financial history and condition of the applicant; adequacy of applicant capital, including, but not limited to, leverage capital ratio, PV capital, risk capital, and statutory capital; the capital maintenance guaranty; future earnings prospects for the applicant; character, capacity and ability of applicant management and principal shareholders; consistency of corporate powers; the existence and implementation of sound merchant approval processes and systems in order to closely monitor merchant activities; adequate number of knowledgeable staff, appropriate technology and information security systems, comprehensive and effective operating procedures, and effective contingency plans; sound internal control environment; formal reconciliation processes; adequacy of insurance coverage and letters of credit; robust risk management systems; adequate corporate governance structure; a structured compliance management program; whether there are sizable off-balance sheet or funding risks, chargeback risks, fraud risks, operational risks, technology or information security risks, compliance risks, or significant risks from concentrations of credit or nontraditional activities; the financial history and condition of the holding company; the adequacy of the holding company's capital; future earnings prospects for the holding company; character, capacity and ability of holding company management and principal shareholders; the activities of the holding company and MALPB affiliates; and the applicant's proposed relationship with eligible organizations and support organizations. Additional information regarding the Department's evaluations may be set forth in greater detail in the Department's Applications Manual or Statement of Policies or in the instructions accompanying the application.

Authority O.C.G.A. §§ 7-9-3, 7-9-7, 7-9-13.

80-12-2-.09 Special Examiners Assisting in Application Process.

(1) To aid it in evaluating an MALPB charter application, the Department, after consulting with the applicant, may determine that the applicant needs to retain a third-party expert, approved in writing by the Department, as a special examiner to assist the Department with the review and analysis of the charter application. The third-party expert will analyze the data or information requested by the Department and provide the results to the Department and the applicant simultaneously. Any fees or costs associated with a third-party expert retained to aid the Department with the review and analysis of the application will be paid directly by the MALPB charter applicant. The general provisions that must be contained in the agreement

between the third-party expert and the MALPB charter applicant are set forth in Rule 80-12-6-.04.

(2) An MALPB charter applicant is required to cooperate with and provide all information and documentation requested by a third-party expert retained to assist the Department with the review and analysis of the charter application. The failure to cooperate with the third-party expert will result in the denial of an application.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.

80-12-2-.10 Approval of Executive Officers, Directors, and Control Persons of MALPB Applicant and Proposed Holding Company of Applicant.

(1) As part of the MALPB charter application process, the Department must approve the ownership and/or control of the applicant and the character and fitness of the directors and proposed executive officers, which includes, but is not limited to, the required positions of chief executive officer, chief information officer, and chief risk officer of the applicant. In order to make these determinations, the owners, executive officers, directors, and control persons of the MALPB will provide the Department any information or documents requested by the Department including, but not limited to: an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); fingerprint cards for submission to the Federal Bureau of Investigation, the Georgia Crime Information Center, and/or any other government agency or entity authorized to receive such information in order to perform a state, national, and international criminal history background check along with the applicable fees and any other required information in order that the Department may submit the fingerprints; personal financial statements; and filed state, federal, and, if applicable, international income tax returns, including any amendments, for the previous two completed taxable years.

(2) As part of the MALPB charter application process, the Department must approve the ownership and/or control of the holding company and the character and fitness of the directors and proposed executive officers of the holding company. In order to make these determinations, the principal shareholders, executive officers, directors, and control persons of the MALPB's holding company, if any, will provide the Department any information or documents requested by the Department including, but not limited to: an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and fingerprint cards for submission to the Federal Bureau of Investigation, the Georgia Crime Information Center, and/or any other government agency or entity authorized to receive such information in order to perform a state, national, and international criminal history background check along with the applicable fees and any other required information in order that the Department may submit the fingerprints.

(3) Notwithstanding the requirements of Paragraph 2 of this Rule, the Department, in its discretion, may rely on publically available filings with the Securities Exchange Commission or other governmental agency that regulates a Public Company to satisfy the provisions of Paragraph 2 of this Rule.

Authority O.C.G.A. §§ 7-9-3, 7-9-6, 7-9-7, 7-9-13.

80-12-2-.11 Approval or Denial of Application.

(1) The determination to grant, conditionally or otherwise, or deny any application shall be in the sole discretion of the Department and such determination shall be a final action of the Department. The Department may impose conditions on any approval, including, but not limited to, conditions designed to address competitive, financial, managerial, safety and soundness, compliance and other concerns. Any conditions related to the approval of an application by the Department may be imposed on the MALPB, the holding company, and the MALPB's affiliates. If the Department disapproves an application for an MALPB charter, the Department shall notify the applicant of its denial and state generally the unfavorable factors influencing its decision. In the event the Department denies an application for an MALPB charter, the denial shall be without prejudice to the applicant to submit a new application at any time following the denial.

(2) The Department may nullify a decision on any application if: the Department becomes aware of any material misrepresentation or omission by the applicant; the Department becomes aware that circumstances are substantially different from those upon which the decision was based; the decision is contrary to law, regulation, or Department policy; or the decision was granted due to clerical or administrative error or was based on a material mistake of law or fact.

Authority O.C.G.A. §§ 7-9-3, 7-9-7, 7-9-13.

CHAPTER 80-12-3

IN ORGANIZATION PERIOD

TABLE OF CONTENTS

80-12-3-.01 Requirement to Begin Business

80-12-3-.02 Notification Requirements Prior to Operation

80-12-3-.01 Requirement to Begin Business.

If an application is approved and a charter is issued, then, within one (1) year after the issuance of the charter, the MALPB must be operating in this State with the number of resident employees required by Rule 80-12-4-.04 that are devoted to performing merchant acquiring activities for the MALPB. If the MALPB fails to begin operations within one (1) year after the date of issuance of the charter, the MALPB charter shall expire and a new application will be required for the issuance of a new charter. Prior to the expiration of the one (1) year period, the MALPB can make a written request for an extension of time to begin operations and it shall be in the Commissioner's sole discretion to approve or deny the request for an extension of time. However, notwithstanding the above, under no circumstances will the Department grant an extension of time if the MALPB does not have the minimum number of resident employees required by Rule 80-12-4-.04 within one (1) year after the issuance of the charter.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-3-.02 Notification Requirements Prior to Operation.

(1) After approval of a charter, but prior to engaging in any merchant acquiring activities, as set forth in Rule 80-12-4-.01, an MALPB shall, in addition to the requirements in O.C.G.A. § 7-9-9, provide the Department with: written notification of any material changes to any of the representations made in the approved application or supporting documentation; copies of the agreements in place with various payment card networks; a copy of a form engagement letter between the MALPB and a Department approved third-party expert to assist the Department in examinations or investigations as required by Rule 80-12-6-.04; a compliant receivership letter of credit and, if applicable, a compliant capital letter of credit; and a copy of the certificate of insurance or similar documentation establishing the existence of fidelity insurance coverage and data breach coverage as required by Rules 80-12-7-.03 and 80-12-7-.04.

(2) The MALPB shall provide the Department with written notice of the date it intends to begin engaging in merchant acquiring activities. This notice shall be provided to the Department no later than ten (10) business days prior to the proposed beginning date for operations. In addition, the MALPB shall also provide the Department with written notice when it begins engaging in merchant acquiring activities. This notice shall be provided to the Department on the date operations have begun.

Authority O.C.G.A. §§ 7-9-3, 7-9-9, 7-9-13.

CHAPTER 80-12-4

OPERATIONS OF MALPB

TABLE OF CONTENTS

80-12-4-.01 Scope of Merchant Acquiring Activities

80-12-4-.02 Self-Acquiring Activities

80-12-4-.03 Deposits

80-12-4-.04 Minimum Number of MALPB Employees that Reside in Georgia

80-12-4-.05 Restrictions on Employment and Ownership

80-12-4-.06 Advertising Limitations

80-12-4-.07 Compliance with Other Requirements

80-12-4-.01 Scope of Merchant Acquiring Activities.

(1) Unless otherwise limited by the terms of a conditional approval, an MALPB is authorized to carry out the following merchant acquiring functions: obtaining and maintaining membership in one or more payment card networks; signing up and underwriting merchants to accept payment card network branded payment cards; providing the means to authorize valid card transactions at client merchant locations; facilitating the clearing and settlement of the transactions through a payment card network; engaging in settlement activities which is the

processing of payment card transactions to send to a payment card network for processing, to make payments to a merchant and, ultimately, for card holder billing; providing access to one or more payment card networks to the MALPB's affiliates, customers, or customers of affiliates; sponsoring the participation of the MALPB affiliates, customers, or customers of its affiliates in one or more payment card networks; statement generation and other information reporting for client merchants; training and technical assistance for merchants; terminal support; encryption servicing; authorization and capture; and dispute processing.

(2) If an MALPB seeks to engage in incidental activities, then the MALPB must seek authorization from the Department to engage in the incidental activity. Such request for authorization shall set out the incidental activity desired, the reason for it, the safeguards or protections which will be employed to ensure the continuing sound operation of the MALPB, the need or convenience to customers which this activity would serve, any legal justification required under state law, and the financial ability of the MALPB to support the incidental activity. In order to evaluate the requested authorization, the Department may request additional information to aid in its review of the overall economic and managerial condition of the MALPB, the complexity and risks involved in the proposed activity, the factors set out in this Paragraph, and any other information deemed pertinent to the request. The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to engage in incidental activities within sixty (60) days after receipt of the request. In the event the Department does not take any of the above actions within sixty (60) days after receipt, then the request will be deemed approved. The timeframe for the Department to act on a request by an MALPB applicant to engage in incidental activities shall be when the Department is required to act on the application as set forth in Rule 80-12-2-.04.

(3) An MALPB shall only engage in merchant acquiring activities originating in the United States and authorized by this rule with a merchant having a physical location in the United States. Similarly, for transactions over the internet or other similar electronic medium, an MALPB shall only engage in merchant acquiring activities authorized by this rule with a merchant who has a fixed place of business located in the United States where the economic activity is completed. For purposes of this rule, United States means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(4) An MALPB is precluded from performing functions not expressly authorized by rule or by the Department, which includes, but is not limited to: the business of banking; deposit taking other than as expressly authorized by O.C.G.A. § 7-9-12; the transmission of money; acting as a fiduciary as defined in O.C.G.A. § 7-1-242(b); sponsoring ATMs or cash dispensing machines; issuing payment card network branded payment cards; merchant receivables factoring; merchant receivables financing; advance funding activities; and soliciting, processing, or making loans pursuant to payment cards or otherwise.

Authority O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-13.

80-12-4-.02 Self-Acquiring Activities.

(1) An MALPB is prohibited from engaging in self-acquiring activities as defined by O.C.G.A. § 7-9-2. An MALPB performing authorized merchant acquiring activities shall not be deemed to be engaged in self-acquiring activities merely because it imposes fees or other charges to merchants related solely to the performance of authorized merchant acquiring activities.

(2) No merchant shall exercise control over an MALPB, the holding company of an MALPB, or the affiliate of an MALPB. For purposes of this rule, a merchant has control over an MALPB, an MALPB holding company, or an affiliate of an MALPB if the Department determines: the merchant directly or indirectly or acting through one (1) or more other persons owns, controls, or has the power to vote five (5) percent or more of any class of voting securities of the MALPB, holding company, or affiliate; the merchant controls in any manner the election of a majority of the directors or trustees of the MALPB, holding company, or affiliate; or the merchant exercises a controlling influence over the management or policies of the MALPB, holding company, or affiliate.

Authority O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-12, 7-9-13.

80-12-4-.03 Deposits.

The MALPB may only accept or hold deposits permitted under O.C.G.A. § 7-9-12 from a corporation that owns the majority of the shares of the MALPB and the corporation will be precluded from withdrawing its deposits by check or similar means for payment to third parties or to others. The MALPB can only take authorized deposits at its main office. Notwithstanding any provision in the Department's rules to the contrary, the records regarding the corporation's deposit account shall be maintained at the MALPB's main office.

Authority O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.

80-12-4-.04 Minimum Number of MALPB Employees that Reside in Georgia.

(1) Within one year of the Department approving a charter, the MALPB shall have, and must continuously employ, at least fifty (50) employees that reside in this State and are devoted to performing merchant acquiring activities for the MALPB. The MALPB must immediately notify the Department in writing when it has satisfied this requirement. The MALPB must also immediately notify the Department in writing if it has failed to employ at least fifty (50) employees that reside in this State and are devoted to performing merchant acquiring activities for the MALPB within one year of obtaining the charter or if the number of individuals that reside in this State and are devoted to performing merchant acquiring activities for the MALPB falls below fifty (50) employees at any time thereafter.

(2) If an MALPB contracts with an eligible organization that is an affiliate of the MALPB, then the employees of the eligible organization or its parent, affiliates, or subsidiaries that reside in this State and are devoted to performing merchant acquiring activities shall be considered employees of the MALPB for purposes of determining compliance with this rule.

(3) If an MALPB contracts with an eligible organization that is not an affiliate of the MALPB, the Commissioner has the discretion to determine the minimum number of employees that must continuously reside in this State in order to assure the continued and substantive presence of the MALPB in this State for the purpose of conducting its corporate affairs and operations. However, under no circumstances, shall the combined number of employees of the eligible organization and the MALPB that reside in the State and are devoted to performing merchant acquiring be less than fifty (50) employees. Further, under no circumstances, shall the eligible organization, its parent, affiliates, or subsidiaries, employ less than two hundred fifty (250) individuals residing in Georgia who are directly or indirectly engaged in merchant acquiring or settlement activities.

Authority O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-4, 7-9-13.

80-12-4-.05 Restrictions on Employment and Ownership.

(1) An MALPB shall not knowingly employ an individual that has been convicted of a felony in any jurisdiction that involves a financial crime. An MALPB shall not knowingly have a director or principal shareholder that has been convicted of a felony in any jurisdiction that involves a financial crime.

(2) A holding company of an MALPB or an affiliate of an MALPB shall not have an executive officer, director, control person, or principal shareholder that has been convicted of a felony in any jurisdiction that involves a financial crime.

(3) For the purposes of this rule, a person shall be deemed to have been convicted of a felony if such person shall have pleaded guilty or *nolo contendere* to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on the charge, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred or shall have received an official certification or pardon granted by the state's pardoning body in the jurisdiction where the conviction occurred.

(4) Every applicant and MALPB shall be authorized and required to obtain and maintain the results of background checks on employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to O.C.G.A. § 35-3-34 and the rules and regulations of the Georgia Crime Information Center or, if the employee is a resident of another state, the crime information center where the employee resides. Applicants and MALPBs shall be responsible for any applicable fees charged by the Georgia Crime Information Center or, if applicable, the crime information center where the employee resides. An applicant or MALPB may only employ a person whose background data has been checked and been found to be in

compliance with all lawful requirements prior to the later of the initial date of hire or the submission of an application for licensure. This provision does not apply to owners, executive officers, directors, and control persons of applicants or MALPBs whose background must have been investigated through the Department before taking office, beginning employment, or securing ownership. Upon receipt of information from the appropriate crime information center that is incomplete or that indicates an employee has a criminal record in any other state, the applicant or MALPB shall submit to the Department two complete sets of fingerprint cards for such person, together with the applicable fees and any other required information in order that the Department may submit the fingerprints.

(5) Every MALPB holding company shall be authorized and required to obtain and maintain the results of background checks on executive officers, directors, control persons, or principal shareholders. Such background checks shall be handled by the Georgia Crime Information Center pursuant to O.C.G.A. § 35-3-34 and the rules and regulations of the Georgia Crime Information Center or, if the executive officers, directors, control persons, or principal shareholders are residents of another state, the crime information center where they reside. MALPB holding companies shall be responsible for any applicable fees charged by the Georgia Crime Information Center or, if applicable, the crime information center where the executive officer, director, control person, or principal shareholder resides. A MALPB holding company may only have an executive officer, director, control person, or principal shareholder whose background data has been checked and been found to be in compliance with all lawful requirements prior to the later of the initial date of occupying one of the positions identified in this rule or the date of application for licensure by the holding company's MALPB. This provision does not apply to executive officers, directors, control persons, or principal shareholders whose background must have been investigated through the Department before taking office, beginning employment, or securing ownership. Upon receipt of information from the appropriate crime information center that is incomplete or that indicates an executive officer, director, control person, or principal shareholder has a criminal record in any other state, the MALPB holding company shall submit to the Department two complete sets of fingerprint cards for such person, together with the applicable fees and any other required information in order that the Department may submit the fingerprints.

(6) Notwithstanding the requirements of Paragraph 5 of this Rule, the Department, in its discretion, may rely on publically available filings with the Securities Exchange Commission or other governmental agency that regulates a Public Company to satisfy the provisions of Paragraph 5 of this Rule.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-4-.06 Advertising Limitations.

Any advertisement of an MALPB that is made, published, disseminated or circulated, shall not suggest that it can accept deposits from the general public or otherwise attract depositors from the general public. All advertisements, whether print or electronic, shall contain the suffix "MALPB" following the name of the MALPB. The MALPB must maintain a record of its advertisements for examination by the Department including, but not limited to, samples of all of its advertisements.

Authority O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.

80-12-4-.07 Compliance with Other Requirements.

(1) An MALPB shall comply with: the Unlawful Internet Gambling Enforcement Act of 2006, 31 U.S.C. § 5361 et seq., and the related rules and regulations found at 12 CFR Part 233 and 31 CFR Part 132; and all international, federal, and state laws, rules, and regulations that are applicable to the MALPB.

(2) Solely for purposes of the following laws, an MALPB shall be deemed to be a “financial institution” for purposes of complying with: information security requirements set forth in 12 CFR Part 364, including, but not limited to, Appendix B (Interagency Guidelines Establishing Information Security Standards) and Supplement A to Appendix B (Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice); the rules and regulations in 31 CFR Chapter X, including, but not limited to, customer identification standards set forth at 31 U.S.C. § 5318(l) and 31 CFR § 1020.220, suspicious transaction reporting as set forth in 31 U.S.C. § 5318(g) and 31 CFR § 1020.320, and anti-money laundering requirements set forth at 31 U.S.C. § 5318(h) and 31 CFR § 1020.210; and the regulations set forth in 31 CFR Chapter V by the Office of Foreign Asset Control.

(3) An MALPB filing a suspicious activity report (“SAR”) with a federal authority must provide a copy of such report to the Department at the same time the SAR is filed.

(4) An MALPB shall comply with payment card network data security standards, such as Payment Card Industry Data Security Standards (“PCI DSS”).

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-12-5

BOOKS AND RECORDS

TABLE OF CONTENTS

80-12-5-.01 General Requirements for Accounting Procedures

80-12-5-.02 Independent Audits

80-12-5-.03 Director Financial Statements

80-12-5-.04 Reports

80-12-5-.05 Minimum Requirements for Books and Records

80-12-5-.06 Location and Access Requirements for Books and Records

80-12-5-.07 Minimum Records Retention Period

80-12-5-.08 Public Access to Records

80-12-5-.01 General Requirements for Accounting Procedures.

An MALPB is required to maintain its books of account in accordance with generally accepted accounting principles, including, but not limited to, a complete and accurate account of: all of its assets, whether in its name or the name of another person or entity; all of its liabilities, its borrowings, and any security interests in its assets; and all of its income, expenses, capital gains, and losses.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.02 Independent Audits.

(1) Every MALPB shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the financial statements of the MALPB; provided, however, that, upon request by the MALPB, the Department may approve in writing the use of a consolidated holding company audit. The audit shall include a review of the MALPB's internal controls and such other tests and reviews of the MALPB records as deemed appropriate by the independent auditor, including, but not limited to, adequate testing and review of the MALPB's information technology activities as well as operations and risk management process reviews. The information technology audit shall include, but not be limited to, enhanced perimeter testing in the form of quarterly vulnerability scans of the entire enterprise and an annual penetration test of all external-facing systems, not just those utilized in the performance of merchant acquiring activities. The operations and risk management process reviews shall be in conformity with SSAE-16. The extent of audit work should be clearly defined in engagement letters. Such letters should discuss the scope of the audit, the objectives, resource requirements, audit timeframe and resulting reports. The engagement letter shall also provide that the accountants must make their audit work papers, policies, and procedures available to the Department upon its request.

(2) Reports of such audits shall be filed with the Department within thirty (30) days after receipt by the MALPB. The reports shall be accompanied by the engagement letter and, if applicable, the letter to management detailing any reportable conditions discovered during the audit engagement.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.03 Director Financial Statements.

The chief executive officer of each MALPB shall maintain on file a financial statement of each director on forms prescribed by the Department. Such financial statement shall be revised annually, but in no event shall the statement on file be more than eighteen (18) months old. At the discretion of the Board of Directors of the MALPB, such financial statements may be maintained in sealed envelopes available for inspection only by the Department.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.04 Reports.

(1) Pursuant to O.C.G.A. § 7-1-68, the Department may require reports on the condition of or any particular facts concerning an MALPB at any time the Department deems it necessary or advisable. Each such report shall be on a form prescribed by the Department, for the timeframe required by the Department, attested to as provided on the form, and due on the date prescribed by the Department.

(2) Without limiting the foregoing, each MALPB shall submit standardized regulatory reports (“SRRs”), which may include both public and confidential supervisory information, on approved forms with instructions provided by the Department. These SRRs will include a monthly activity report (“MAR”) due within seven (7) days of month-end, a quarterly financial report (“QFR”) due within thirty (30) days of quarter-end, and an annual attestation report (“AAR”) due within forty-five (45) days of year-end.

Authority O.C.G.A. §§ 7-1-68, 7-9-3, 7-9-13.

80-12-5-.05 Minimum Requirements for Books and Records.

An MALPB must maintain the following books and records:

(a) All records required to be maintained by federal, state or, if applicable, international law, rules, or regulations, including, but not limited to, the rules enacted by the Department to carry out the provisions of the Act;

(b) All records required to be maintained by the applicable payment card networks;

(c) All contracts related to the MALPB’s provision of merchant acquiring activities, including, but not limited to, contracts with payment card networks, merchants, eligible organizations, and support organizations;

(d) All records related to compliance with payment card network data security standards, such as Payment Card Industry Data Security Standards (“PCI DSS”), including, but not limited to, records indicating data security deficiencies by the MALPB, eligible organizations, support organizations, and merchants;

(e) All records related to the clearing and settlement of transactions through the payment card networks including, but not limited to, remittances to payment card networks;

(f) All reports or other compilation of data provided to payment card networks and/or merchants related to transactions;

(g) All records related to chargebacks, and business format change;

(h) Daily account of merchant funds broken down by merchant;

(i) Copies of all trust or custodial account agreements;

(j) Records of all complaints and records of disposition;

(k) Copies of examination reports prepared by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;

(l) Copies of reports required to be prepared or submitted by the MALPB to any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;

(m) Copies of documents related to any adverse action taken by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country, including, but not limited to, a revocation or suspension of a license or charter or the imposition of a fine or civil monetary penalties;

(n) Copies of all payroll records, including, but not limited to, federal and state withholding tax forms such as W-2s filed with the Internal Revenue Service by the MALPB on behalf of individuals employed by the MALPB;

(o) Employee files for all employees which shall include a Georgia Crime Information Center criminal background check and National Crime Information Center background check;

(p) Subject to the limitations in O.C.G.A. § 7-9-12, a deposit record which contains a continuing itemized record of all activity in the deposit account;

(q) An income and expense register and all of the supporting documentation related to income and expenses;

(r) A daily statement for each business day properly supported by a general ledger showing daily activity to each asset, liability, and capital account;

(s) Minutes from all meetings of the MALPB's Board of Directors and the committees of the Board of Directors;

(t) A stockholder or shareholder list;

(u) An investment register and investment safekeeping report; and

(v) Information on transactions with holding companies, affiliates, and subsidiaries with respect to the terms and circumstances of such transactions and the basis of fees or other charges in order to determine compliance with Rules 80-12-9-.01 and 80-12-9-.02.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.06 Location and Access Requirements for Books and Records.

(1) An MALPB must maintain required books and records as set forth in Rule 80-12-5-.05 at its main office. In the event an MALPB wishes to maintain such records elsewhere in the State, it must notify the Department in writing prior to maintaining the books and records at any place other than its main office. Any books and records that are not maintained at the MALPB's main

office shall be made available to the Department within five (5) business days after the date of request by the Department and at a reasonable and convenient location acceptable to the Department.

(2) An MALPB shall provide the Department with unlimited access to all of its books and records. In the event any books or records in the MALPB's possession were obtained from another supervisory or regulatory agency, law enforcement, or payment card network and such entity mandates that the books or records not be disclosed to the Department, the MALPB shall make every reasonable effort with the supervisory or regulatory agency, law enforcement, or payment card network to obtain authorization for the books or records to be shared with the Department. At the Department's request, an MALPB shall provide documentation of the efforts it has taken to obtain authorization from the appropriate entity to authorize sharing of the applicable books or records with the Department.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.07 Minimum Records Retention Period.

Any records of the MALPB that fall within the scope of Rule 80-10-1-.01 shall be retained in accordance with the retention period set forth in the Rule. All other records required to be maintained by the MALPB pursuant to federal, state, or, if applicable, international law, rules, or regulations, including, but not limited to, Rules 80-12-5-.04 and 80-12-5-.05, shall be maintained for at least five (5) years.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-5-.08 Public Access to Records.

(1) The following records in the Department's possession shall be subject to inspection by members of the public: the portion of the SSRs, if any, that have been expressly designated as public on the Department's approved form; final orders; and the audited financial statement with the auditor's opinion from the annual audit prepared in conformity with Rule 80-12-5-.02.

(2) Upon receipt of a written request by an MALPB, the Department is authorized to disclose any records or information provided to it by the MALPB or by another entity on behalf of the MALPB with any entity related to the payment card network notwithstanding the fact that the records or information are otherwise confidential pursuant to Georgia law or the rules of the Department. These authorized disclosures of information, where appropriate, shall be made only if safeguards are in place that are designed to prevent further dissemination of confidential records or information. The Department retains complete discretion to grant or deny a request for the production of records and documents in whole or in part and nothing in this Rule shall be deemed to require that the Department produce any records or information.

(3) Any examination reports, reports of investigation or other information in the Department's possession that were obtained from another supervisory or regulatory agency, law enforcement, or the payment card networks shall be treated as the property of the provider. Requests for such information should be made to the provider directly.

CHAPTER 80-12-6

MALPB LOCATIONS AND EXAMINATIONS

TABLE OF CONTENTS

80-12-6-.01 Main Office

80-12-6-.02 Other Physical Locations

80-12-6-.03 Examinations and Investigations

80-12-6-.04 Third-Party Expert Agreement

80-12-6-.01 Main Office.

The location of the MALPB's main office shall be authorized in writing by the Department. In the event the MALPB wishes to relocate its main office, the MALPB shall submit a written request to the Department seeking approval of the proposed relocation. The Department shall request additional information, approve, conditionally or otherwise, or reject the relocation request within thirty (30) days after receipt of the request. In the event the Department does not take any of the above actions within thirty (30) days after receipt, then the request will be deemed approved.

Authority O.C.G.A. §§ 7-9-2, 7-9-12, 7-9-13.

80-12-6-.02 Other Physical Locations.

If the MALPB wishes to establish any additional physical locations outside of its main office, the MALPB shall submit a written request to the Department seeking approval of the proposed location. The written request must detail the MALPB's rationale for seeking to have an additional location and establish that the proposed location is consistent with the Act, the rules promulgated thereunder, and any other applicable law. The Department shall request additional information, approve, conditionally or otherwise, or deny the request to open an additional location within thirty (30) days after the receipt of the request. In the event the Department does not take any of the above actions within thirty (30) days after receipt, then the request will be deemed approved.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-6-.03 Examinations and Investigations.

(1) The Department shall examine or investigate all MALPBs at least once each year and may examine or investigate any MALPB more frequently at any time it deems such action necessary or desirable. At least once annually, the examination shall consist of a comprehensive review of the accounts, records, and affairs of the MALPB. To aid in its examination or investigation of an MALPB, the Department may conduct an examination or investigation of the MALPBs holding companies, affiliates, eligible organizations, or support organizations.

(2) Notwithstanding Paragraph 1, the Department may, consistent with the purposes of the Act and the rules enacted pursuant to the Act, alter the examination frequency and scope in order to: assure that appropriate time and attention are devoted to the supervision of troubled entities regulated by the Department; or minimize the examination burden on well-managed MALPBs which have consistently been operated with safe and sound practices.

(3) To aid the Department in examining or investigating an MALPB, its holding companies, affiliates, eligible organizations, or support organizations, the Department may determine that the MALPB needs to retain a third-party expert, approved by the Department in writing as a special examiner, to assist the Department with the examination or investigation. The third-party expert will analyze the accounts, records, affairs, systems, data, or information requested by the Department and provide the results to the Department and the MALPB simultaneously. Any fees or costs associated with a third-party expert retained to aid the Department with the examination or investigation of the MALPB will be paid by the MALPB. The general provisions that must be contained in the agreement between the third-party expert and the MALPB are set forth in Rule 80-12-6-.04.

(4) An MALPB is required to cooperate with and provide access to all accounts, records, affairs, systems, data or information requested by a third-party expert retained to assist the Department with the examination or investigation. The failure to cooperate with the third-party expert will result in an enforcement action.

Authority O.C.G.A. §§ 7-1-64, 7-1-66, 7-9-3, 7-9-13.

80-12-6-.04 Third-Party Expert Agreement.

(1) An MALPB shall enter into an agreement with a third-party expert for the purpose of aiding the Department in evaluating an MALPB charter application or examining or investigating an MALPB. The agreement with the third-party expert must, at a minimum, provide that:

- (a) All fees and costs incurred by the third-party expert will be paid by the MALPB;
- (b) The fees can vary depending on the service provided by the third-party expert but as set forth in a general fee schedule;
- (c) The purpose of the agreement is to aid the Department in determining if the MALPB, its holding companies, and affiliates have complied with the Act, the rules promulgated pursuant to the Act, and are operating in a safe and sound manner;
- (d) The Department can direct the focus and scope of the third-party expert's analysis including, but not limited to, the accounts, records, affairs, data, or information to be reviewed;
- (e) The third-party expert shall produce at least one detailed report to the Department and the MALPB which shall reach conclusions about its review and provide the support for the conclusions in the report;

(f) The third-party expert shall have access to all of the records of the MALPB, its holding companies and affiliates that the Department can review;

(g) All information reviewed by the third-party expert shall be confidential and not subject to disclosure other than to the Department or as may otherwise be required by law; and

(h) All services shall be performed in accordance with applicable professional standards.

(2) Prior to executing any agreement with a third-party expert, an MALPB shall make a written request to the Department seeking approval to enter into the agreement. The Department shall request additional information, approve, conditionally or otherwise, or reject the request to enter into the agreement within thirty (30) days after the receipt of the request. In the event the Department does not take any of the above actions within thirty (30) days after receipt, then the request will be deemed approved.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.

CHAPTER 80-12-7

SOLVENCY AND SAFEGUARDS

TABLE OF CONTENTS

80-12-7-.01 Minimum Capital Requirements

80-12-7-.02 Safeguarding Requirements

80-12-7-.03 Fidelity Coverage

80-12-7-.04 Data Breach Insurance Coverage

80-12-7-.05 Dissolution

80-12-7-.01 Minimum Capital Requirements.

(1) MALPBs must continuously maintain at least the minimum leverage capital ratio, PV capital, risk capital, and statutory capital requirements set forth in this rule. The capital standards in this part are the minimum acceptable for an MALPB whose overall financial condition is fundamentally sound, which is well-managed and which has no material or significant operational or financial weaknesses. Thus, the Department is not precluded from requiring an MALPB to maintain a higher leverage capital ratio, PV capital, risk capital, or statutory capital level based on the MALPB's particular risk profile. The Department will evaluate the factors set forth in Rule 80-12-2-.08 in analyzing the MALPB's capital adequacy and may determine that the minimum leverage capital ratio, PV capital, risk capital, or statutory capital for that MALPB is greater than the minimum standards stated in this Rule. These same criteria will apply to any MALPB seeking authorization from the Department to engage in any activity if the Department believes the adequacy of the MALPB's capital structure is relevant to the requested authorization.

(2) The minimum leverage capital ratio requirement for an MALPB shall not be less than ten (10) percent.

(3) The minimum PV capital requirement for an MALPB shall not be less than:

(a) 5.00 percent of the tier of PV up to \$10 million, plus

(b) 3.00 percent of the tier of PV above \$10 million up to \$25 million, plus

(c) 1.50 percent of the tier of PV above \$25 million up to \$100 million, plus

(d) 0.75 percent of the tier of PV above \$100 million up to \$250 million, plus

(e) 0.25 percent of the tier of PV above \$250 million up to \$1 billion, plus

(f) 0.15 percent of the tier of PV above \$1 billion up to \$5 billion, plus

(g) 0.08 percent of the tier of PV above \$5 billion up to \$20 billion, plus

(h) 0.05 percent of the tier of PV above \$20 billion.

(4) The minimum risk capital requirement for an MALPB shall not be less than the greater of the aggregate dollar volume of chargebacks for the previous six (6) months or the forecast dollar volume of chargebacks for the next six (6) months.

(5) The Department's MALPB charter approval will include a requirement to have and maintain minimum statutory capital, which in no event shall be less than \$3 million.

(6) An MALPB with less than the minimum leverage capital ratio, PV capital, risk capital, or statutory capital requirement:

(a) Is operating with inadequate capital and, therefore, has inadequate financial resources. Thus, at the discretion of the Department, such MALPB may be deemed to be operating in an unsafe or unsound or unauthorized manner and subject to the Department's enforcement powers, including, but not limited to, those set forth in O.C.G.A. § 7-1-91.

(b) Must file a written capital restoration plan with the Department within thirty (30) days of the date that the MALPB knows or should have known that the MALPB is operating with an inadequate capital structure, unless the Department notifies the MALPB in writing that the plan is to be filed within a different period.

Authority O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.

80-12-7-.02 Safeguarding Requirements.

(1) All merchant funds shall be deposited immediately by the MALPB and shall remain in an account at a financial institution that is federally insured and authorized to do business in this State until paid over to the individual merchant; provided, however, that nothing herein shall preclude an MALPB from making appropriate deductions for chargebacks, fees, reserves, and

other costs related to providing authorized merchant acquiring services owed by the individual merchant prior to remitting the net amount to the individual merchant. At the time of deposit into the account, the funds of the individual merchant in the account shall be deemed to be the property of the individual merchant. The MALPB shall maintain in good faith and in the ordinary course of business records with respect to the account that shall identify individual merchants in order that the total amount held in the account for each individual merchant can be readily ascertained.

(2) The agreement and related records for the account required to be maintained by Paragraph 1 of this Rule shall expressly provide that the account is maintained for the benefit of the MALPB's individual merchants.

(3) An MALPB and its officers shall have a fiduciary duty to preserve and account for proceeds ultimately payable to a merchant and shall be liable for all such proceeds.

(4) An MALPB shall not pledge or otherwise grant a security interest in funds in its possession that are ultimately payable to a merchant.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-7-.03 Fidelity Coverage.

(1) Every MALPB shall obtain fidelity insurance coverage, such as a fidelity bond, to provide protection and indemnity against theft, defalcation, or other similar actions by officers and employees of the MALPB as well as agents and independent contractors of the MALPB, which includes, but is not limited to, employees of eligible organizations, support organizations, holding companies, and affiliates, related to the merchant funds that are held by the MALPB pursuant to Rule 80-12-7-.02.

(2) The fidelity coverage shall contain a provision that coverage will not be canceled, or not renewed, or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given by the insurer to the Department. A certificate of insurance or similar documentation showing such fidelity coverage to be in force shall be provided to the Department prior to the MALPB engaging in any merchant acquiring activities. The fidelity coverage shall be obtained from an insurance company licensed to do business in Georgia that continuously maintains an A.M. Best Company rating of at least A: VII while the policy is in effect. Such fidelity coverage shall continuously remain in full force and effect subject to Department approved revisions to the amount of coverage.

(3) The amount of the required fidelity coverage shall be the highest dollar amount of merchant transactions occurring in one day over the previous twelve (12) months for the MALPB or, if the MALPB does not have a twelve (12) month operating history, the highest projected merchant transaction dollar volume for one day. The amount of the initial fidelity coverage obtained by the MALPB, as well as subsequent amendments to the amount, shall be approved by the Department in writing prior to the MALPB obtaining the fidelity coverage or revising the amount of coverage.

(4) An MALPB can make a written request to the Department for a reduction in the amount of fidelity coverage required under Paragraph 3. Such request shall set forth in detail the rationale for a reduction in the required coverage and the safeguards or protections which will be employed to ensure the continuing sound operation of the MALPB, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional failures in the MALPB's control environment and the sufficiency of the proposed fidelity coverage to mitigate such exposures. It shall be in the Commissioner's sole discretion to approve, conditionally or otherwise, or deny the request for a reduction in the amount of required fidelity coverage.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-7-.04 Data Breach Insurance Coverage.

(1) Every MALPB shall obtain data breach insurance coverage to provide protection and indemnity against the intentional or unintentional release of secure information to an untrusted or unauthorized environment or other similar action by officers and employees of the MALPB as well as agents and independent contractors of the MALPB, which includes, but is not limited to, employees of eligible organizations, support organizations, holding companies, and affiliates.

(2) The data breach insurance coverage shall contain a provision that coverage will not be canceled, or not renewed, or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given by the insurer to the Department. A certificate of insurance or similar documentation showing such data breach insurance coverage to be in force shall be provided to the Department prior to the MALPB engaging in any merchant acquiring activities. The data breach insurance coverage shall be obtained from an insurance company licensed to do business in Georgia that continuously maintains an A.M. Best Company rating of at least A: VII while the policy is in effect. Such data breach insurance coverage shall continuously remain in full force and effect subject to Department approved revisions to the amount of coverage.

(3) The amount of the initial data breach insurance coverage obtained by the MALPB, as well as any subsequent amendments to the amount, shall be approved by the Department in writing prior to the MALPB obtaining the data breach insurance coverage or revising the amount of coverage. It shall be in the Commissioner's sole discretion to determine the amount of required data breach insurance coverage.

(4) In order for the Department to make the determination in Paragraph 3 of this Rule related to the appropriate amount of data breach insurance coverage, an MALPB, upon request by the Department, shall provide the Department with a written justification setting forth the MALPB's rationale for the appropriate and necessary amount of data breach insurance coverage. Such justification shall set forth in detail the safeguards or protections which will be employed to mitigate the risks of an intentional or unintentional release of the data in the MALPB's possession or in the possession of agents and independent contractors of the MALPB, which shall include, but not be limited to, an evaluation of potential exposures under various stress scenarios that include intentional and unintentional releases of data in the MALPB's control environment and the sufficiency of the proposed data breach insurance coverage to mitigate such exposures. In addition, the MALPB's justification for the proposed proper amount of data

breach insurance coverage shall evaluate the potential costs to the MALPB as a result of a breach, which shall include, but not be limited to, forensic costs, legal fees, first party and third party liabilities, notification requirements, remediation costs, restoration costs, and business impact.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-7-.05 Dissolution.

(1) Every MALPB shall continuously maintain a receivership letter of credit issued in favor of the Department to satisfy costs and expenses associated with a receivership of the MALPB. The letter of credit shall be in the principal sum of \$100,000 or such greater amount as the Department may require based on its evaluation of the factors set forth in Rule 80-12-2-.08.

(2) In the event the Department takes possession of an MALPB pursuant to its enforcement powers, including, but not limited to O.C.G.A. §§ 7-1-92 or 7-1-150 et seq., the Department is authorized to utilize the receivership letter of credit provided to it by the MALPB to satisfy costs and expenses related to the receivership including, but not limited to, the costs and expenses incurred by the receiver or deputy receiver in administering the receivership.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-12-8

ELIGIBLE AND SUPPORT ORGANIZATIONS

TABLE OF CONTENTS

80-12-8-.01 Eligible Organizations

80-12-8-.02 Support Organizations

80-12-8-.03 Oversight of Eligible and Support Organizations

80-12-8-.04 Responsibility for Outsourced Services

80-12-8-.01 Eligible Organizations.

(1) Upon obtaining written approval from the Department, an MALPB may contract with an eligible organization to perform administrative support, information technology support, financial support, or tax and finance support. In the event the MALPB applicant has a contract with an eligible organization at the time of the submission of its application, then the information required by this Rule must be submitted as part of the application. However, if an MALPB seeks to enter into a contract with an eligible organization after obtaining its charter, then the MALPB must obtain written approval from the Department prior to entering into the contract. Additional detail regarding the Department's review of the MALPB's proposed contractual relationship with the eligible organization may be set forth in the Department's Applications Manual or Statement of Policies.

(2) In order for the Department to evaluate a request from an MALPB to approve a proposed contract with an eligible organization, the MALPB must provide, at a minimum, the following information:

(a) A copy of the contract under which the services are to be provided which contract shall expressly provide that:

1. The records of the MALPB in the eligible organization's possession are subject to examination and regulation by the Department as if the records were maintained by the MALPB on its own premises;

2. The records of the MALPB in the eligible organization's possession shall be made available to the Department immediately upon receipt of notice;

3. The Department has the authority to review the internal routine and controls of the eligible organization to ascertain that the operations are being conducted in a manner that will not adversely impact the character, reputation, financial stability, and technology and information security systems of the MALPB; and

4. The eligible organization shall comply with all requirements applicable to the MALPB as if the services were provided directly by the MALPB;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) A listing of all reports and printouts the eligible organization will provide the MALPB and that these reports and printouts will be provided to the Department upon request;

(d) Evidence of the eligible organization's financial stability which shall include a copy of its most recent audit and financial statement prepared within the last eighteen (18) months;

(e) Biographical information on the key officers of the eligible organization, which shall include, but not be limited to, chief executive officer, chief information officer, and, if applicable, chief risk officer; and

(f) Completion of all applicable forms and directions related to an eligible organization set forth in the Department's Applications Manual or Statement of Policies.

(3) The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to contract with an eligible organization within sixty (60) days after receipt of the written request. In the event the Department does not take any of the above actions within sixty (60) days, then the application will be deemed approved. The timeframe for the Department to act on a request by an MALPB applicant to approve a pre-existing contract shall be when the Department is required to act on the MALPB charter application as set forth in Rule 80-12-2-.04.

(4) In the event an MALPB wishes to amend an approved contract with an eligible organization, it must make a written request to the Department which shall include a copy of the proposed amendment along with a detailed rationale for the proposed amendment. The

Department shall approve, conditionally or otherwise, or deny a request to amend an approved contract with an eligible organization within sixty (60) days of receipt of the written request.

Authority O.C.G.A. §§ 7-9-2, 7-9-3, 7-9-13.

80-12-8-.02 Support Organizations.

(1) An MALPB that enters into a contract with a support organization shall provide the Department with written notice of the contract within thirty (30) days after execution of the contract.

(2) An MALPB shall not execute a contract with a support organization unless the following information has been obtained:

(a) A copy of the contract, as well as any amendments to the contract, under which the services are to be provided which contract shall expressly provide that:

1. The records of the MALPB in the support organization's possession are subject to examination and regulation by the Department as if the records were maintained by the MALPB on its own premises;

2. The records of the MALPB in the support organization's possession shall be made available to the Department immediately upon receipt of notice;

3. The Department has the authority to review the internal routine and controls of the support organization to ascertain that the operations are being conducted in a manner that will not adversely impact the character, reputation, financial stability, and technology and information security systems of the MALPB; and

4. The support organization shall comply with all requirements applicable to the MALPB as if the services were provided directly by the MALPB;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) A listing of all reports and printouts the support organization will provide the MALPB and that these reports and printouts will be provided to the Department upon request;

(d) Evidence of the support organization's financial stability which shall include a copy of its most recent audit and financial statement prepared within the last eighteen (18) months; and

(e) Biographical information on the key officers of the support organization, which shall include, but not be limited to, chief executive officer, chief information officer, and, if applicable, chief risk officer.

(3) An MALPB contracting with a support organization must maintain the information set forth in Paragraph 2 at its main office.

(4) In the event an MALPB amends an approved contract with a support organization, the MALPB shall provide the Department with written notice of the amendment within thirty (30) days of execution of the amendment.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-8-.03 Oversight of Eligible Organizations and Support Organizations.

An MALPB contracting with an eligible organization or a support organization must have sufficient controls in place to monitor and ensure that the services provided by the eligible organization or support organization on behalf of the MALPB comply with the Act and the Rules. The MALPB must also employ good faith efforts to monitor the financial condition of the eligible organization or the support organization and must notify the Department immediately when it discovers or suspects that the eligible organization or support organization has experienced a net operating loss, is insolvent, or is engaged in illegal activity.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-8-.04 Responsibility for Outsourced Services.

An MALPB has the ability to enter into contracts with third parties, which includes, but is not limited to, eligible organizations, support organizations, independent contractors, and agents, to perform services related to the MALPB's authorized merchant acquiring activities. In the event an MALPB has a third party perform services related to its authorized merchant acquiring activities, the MALPB will remain responsible for these services being performed in compliance with the Act and the Rules.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-12-9

RELATIONSHIPS WITH AFFILIATES AND INVESTMENTS AND DISTRIBUTIONS

TABLE OF CONTENTS

80-12-9-.01 Intercompany Dealings

80-12-9-.02 Subsidiaries

80-12-9-.03 Investment of MALPB Funds

80-12-9-.04 Dividends

80-12-9-.01 Intercompany Dealings.

(1) All transactions engaged in by an MALPB with its holding company or an affiliate must be on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the MALPB as those prevailing at the time for comparable transactions with or involving nonaffiliated companies, or in the absence of a comparable transaction, on terms and under circumstances that in good faith would be offered to or would apply to

nonaffiliated companies. For purposes of this Paragraph, a “transaction” includes, but is not limited to, the payment of money or the furnishing of services to or receipt from a holding company or affiliate under contract, lease or otherwise, or loans from a holding company or affiliate of the MALPB. A transaction by an MALPB with any person shall be deemed to be a transaction with an affiliate or holding company of the MALPB if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate or holding company. Methods for determining the propriety of a transaction shall be subject to Department oversight and review.

(2) All contracts and agreements between an MALPB and a holding company or an affiliate must be in writing and formally approved by the Board of Directors of the MALPB prior to any performance under the contract or agreement. The MALPB must maintain at its main office copies of all contracts and agreements as well as documentation evidencing their formal approval.

(3) Tax payments by an MALPB to a holding company shall generally be consistent with the payment of tax liabilities which would have been made had it filed tax returns as a separate entity, eliminating any benefit arising from surtax exemptions. Timing of such payments should generally be in concert with tax payment dates prescribed by tax regulations for estimated tax payments and the rendering of final returns.

(4) Management fees and other charges:

(a) Management fees and other charges, other than specific charges for reimbursement of tax payments or for the purchase or lease of assets or services, payable to a holding company or an affiliate of a holding company may be paid by the MALPB provided such fees and charges do not exceed the MALPB's pro rata share of the administrative overhead of the holding company plus any direct expenses attributable to the MALPB and it is clearly demonstrated that the MALPB has received direct benefit from its relationship with the holding company. Such pro rata share shall be determined through an equitable proration of such administrative overhead among all holding company subsidiaries and activities. The proration may be based on any reasonable formula provided such formula is justified by appropriate memorandum in the files of the MALPB and approved by the Board of Directors of the MALPB. Such formula shall be subject to Department oversight and review.

(b) Administrative overhead shall include only those expenses incurred in general support of all holding company activities and not specifically allocable to a particular subsidiary or activity.

(c) Administrative overhead shall not include net losses incurred in any holding company activity, subsidiary, or investment; nor shall the term include any closing costs, interest, service charge or other expense incurred in connection with any debt owed by the holding company. Administrative overhead shall also not include any salary or other compensation of officers, directors or shareholders which is not commensurate with duties and responsibilities performed in some official capacity with the holding company. Time devoted to performance of duties and fulfilling responsibilities at the holding company level and compensation in connection with such activity shall be considered in establishing reasonable levels of compensation from the MALPB

for persons who are employed by both entities. Each entity shall pay only that portion of the total compensation as is commensurate with the duties performed on behalf of that entity.

(5) Fees and charges contemplated under this Rule may be paid after the liability therefor is incurred. Administrative overhead may be accrued or paid monthly based upon a reasonable projection of actual charges, provided such accrual or payment is adjusted to actual expenses at least annually. No such fee or charge may be paid in advance. Appropriate documentation and justification must be maintained at the MALPB for any disbursement governed by this Rule.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-13.

80-12-9-.02 Subsidiaries.

(1) An MALPB can create a separate subsidiary to only carry out such activities that fall within the authorized scope of merchant acquiring activities as set forth in Rule 80-12-4-.01. Prior to utilizing the subsidiary, the MALPB must submit an application for approval describing the activity that the subsidiary will perform, how the proposed activity relates to the MALPB, and what protections will be in place to deal with any associated risks. The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to utilize a subsidiary within sixty (60) days after receipt of the application. In the event the Department does not take any of the above actions within sixty (60) days of receipt of the application, then the application will be deemed approved.

(2) Subsidiaries of an MALPB are subject to the same limitations and requirements that apply to an MALPB including, but not limited to, Rule 80-12-9-.01.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-9-.03 Investment of MALPB Funds.

(1) Except as expressly authorized by this Rule, an MALPB shall be precluded from making any investments. An MALPB may invest in the following investments:

(a) General obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued and fully guaranteed by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association;

(b) Tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government;

(c) Prime bankers' acceptances, or the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described in this rule provided that at the time of investment such obligations or the obligations held by any such unit investment trust are limited to obligations which are rated within one of the top two rating categories of any nationally recognized statistical rating organization;

(d) The shares of any mutual fund the investments of which are limited to securities of the type described in this Rule and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service;

(e) Securities lending transactions involving securities of the type described in this Rule; or

(f) Obligations of corporations organized under the laws of this state or any other state but only if the corporation has a market capitalization equivalent of \$500 million and the obligation is rated in the highest ratings category by at least one nationally recognized statistical rating organization.

(2) The MALPB shall provide the Department with written notice within ten (10) days of each investment and, upon request by the Department, provide it with any supporting documentation related to the investment.

(3) Securities must be held in book entry form and maintained:

(a) In safekeeping at any: federally insured correspondent bank or trust company; Federal Home Loan Bank; or broker-dealer insured under the Securities Investor Protection Act provided the market value of such securities does not exceed \$500,000; or

(b) As otherwise approved by the Department in writing.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-9-.04 Dividends.

The Board of Directors of any MALPB may declare and the MALPB may pay cash dividends as long as the Department has approved the proposed dividend in writing prior to the declaration and payment of the dividend. In evaluating any request for the payment of a dividend, the Department will consider, among other things, whether the MALPB will have an adequate capital structure after payment of the proposed dividend. Notwithstanding the above, the Department will not approve a proposed dividend under any circumstances if payment of the dividend would cause the MALPB to fall below the minimum leverage capital ratio requirement, PV capital, risk capital, or statutory capital requirement as set forth in Rule 80-12-7-.01.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

CHAPTER 80-12-10

CONTROL OVER MALPB

TABLE OF CONTENTS

80-12-10-.01 Change in Director, Executive Officer, or Control Person

80-12-10-.01 Change in Director, Executive Officer, or Control Person of MALPB.

(1) The MALPB must provide the Department with written notice of any new director, control person or executive officer, which includes, but is not limited to a chief executive officer, a chief information officer, and a chief risk officer, prior to any such appointment or change taking effect, so that the Department can consider the character and fitness of the proposed director, executive officer, or control person. After receipt of the notice, the proposed executive officers, directors, and control persons will provide the Department with any information or documents the Department may request including, but not limited to: an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); fingerprint cards for submission to the Federal Bureau of Investigation, the Georgia Crime Information Center, and/or any other government agency or entity authorized to receive such information in order to perform a state, national, and international criminal history background check along with the applicable fees and any other required information in order that the Department may submit the fingerprints; personal financial statements; and filed state, federal, and, if applicable, international income tax returns, including any amendments, for the previous two (2) completed taxable years.

(2) The Department shall be given at least sixty (60) days written notice prior to the proposed appointment or change of director, executive officer, or control person taking effect. If the Department does not issue a notice disapproving the proposed director, executive officer, or control person within sixty (60) days after receipt of the required written notice or extend the period during which a disapproval may be issued for another thirty (30) days, the proposed appointment or change of director, executive officer, or control person shall take effect. The period for disapproval may be further extended if the Department determines that the MALPB or proposed director, executive officer, or control person has not furnished all the information required by this Rule or, in the Department's judgment, inaccurate information has been submitted. An appointment or proposed change may be made prior to expiration of the disapproval period if the Department issues a written notice of its intent not to disapprove the proposed director, executive officer, or control person.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-10-.02 Acquisition of MALPB

(1) It shall be unlawful for a person, as defined in O.C.G.A. § 7-1-230, acting directly or indirectly or in concert with one or more persons, to acquire control of any MALPB through a purchase, assignment, pledge, or other disposition of voting stock of such MALPB, except with the approval of the Department.

(2) The Department shall be given at least ninety (90) days prior written notice of any such proposed acquisition. If the Department does not issue a notice disapproving the proposed acquisition within ninety (90) days of receipt of the required written notice or extend the period during which a disapproval may be issued for another sixty (60) days, the proposed acquisition shall stand approved. The period for disapproval may be further extended if the Department determines that the MALPB or proposed acquiring party has not furnished all the information

required by this rule or, in the Department's judgment, inaccurate information has been submitted. An acquisition may be made prior to the expiration of the disapproval period if the Department issues a written notice of its intent not to disapprove the acquisition.

(3) For every person the written notice of acquisition shall contain the following information:

(a) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the persons material business activities and affiliations during the past five (5) years, a description of any material pending legal or administrative proceedings in which the person is or was a party, and any criminal indictment or conviction as defined in Rule 80-12-4-.05 of such person by a state, federal, or international court;

(b) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five (5) fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied or such other standard acceptable to the Department, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety (90) days prior to the date of the filing of the notice;

(c) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(d) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the MALPB, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party or by any person on his behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(g) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(h) Any additional relevant information in such forms as the Department may require by specific request in connection with any particular notice.

Authority O.C.G.A. §§ 7-9-3, 7-9-6, 7-9-13.

CHAPTER 80-12-11

HOLDING COMPANY

TABLE OF CONTENTS

80-12-11-.01 Books and Records of Holding Company

80-12-11-.02 Change in Director, Executive Officer, Principal Shareholder, or Control Person

80-12-11-.03 Lawful and Unlawful Acquisitions

80-12-11-.04 Source of Strength

80-12-11-.01 Books and Records of Holding Company.

(1) A holding company shall provide the Department with the following books and records within ten (10) days after issuance of the underlying document: copies of examination reports prepared by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB; copies of reports required to be prepared or submitted by the MALPB to any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB; and copies of all orders, memoranda of understanding, or similar documents, including, but not limited to, resolutions of the Board of Directors intended as informal enforcement actions, issued by or entered into with any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB.

(2) Failure to provide the documentation set forth in Paragraph 1 of this Rule, may result in the Department taking enforcement action against the holding company as well as the MALPB controlled by the holding company.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-13.

80-12-11-.02 Change in Director, Executive Officer, Principal Shareholder, or Control Person of Holding Company.

(1) The Department must approve in writing any new director, executive officer, principal shareholder, or control person of the holding company, prior to any such appointments or change taking effect, for the purpose of considering the character and fitness of the proposed director, executive officer, principal shareholder, or control person. In order to make these determinations, the proposed director, executive officer, principal shareholder, and control person will provide the Department any information or documents requested by the Department including, but not limited to: an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and fingerprint cards for submission to the Federal Bureau of Investigation, the Georgia Crime Information Center, and/or any other government agency or entity authorized to receive such information in order to perform a state, national, and international criminal history background

check along with the applicable fees and any other required information in order that the Department may submit the fingerprints.

(2) The Department shall be given at least sixty (60) days written notice prior to the proposed appointment or change of director, principal shareholder, or control person taking effect. If the Department does not issue a notice disapproving the proposed director, principal shareholder, or control person within sixty (60) days of receipt of the required written notice or extend the period during which a disapproval may be issued for another thirty (30) days, the proposed director, principal shareholder, or control person shall stand approved. The period for disapproval may be further extended if the Department determines that the holding company or proposed director, principal shareholder, or control person has not furnished all the information required by this Rule or, in the Department's judgment, inaccurate information has been submitted. An appointment or proposed change may be made prior to expiration of the disapproval period if the Department issues a written notice of its intent not to disapprove the proposed director, principal shareholder, or control person.

(3) Notwithstanding the requirements of Paragraphs 1 and 2 of this Rule, the Department, in its discretion, may rely on publically available filings with the Securities Exchange Commission or other governmental agency that regulates a Public Company to satisfy the provisions of this Rule.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.

80-12-11-.03 Lawful and Unlawful Acquisitions.

(1) It shall be unlawful for a holding company to acquire direct or indirect ownership or control of any voting shares of any MALPB, if, after such acquisition, such holding company will directly or indirectly own or control five (5) percent or more of the voting shares of such MALPB, or for any company to become a holding company as a result of the acquisition or control of such MALPB, unless: the MALPB has been in existence and continuously operating as an MALPB for a period of three (3) years or more prior to the date of acquisition; and the holding company has sought approval from the Department prior to acquiring or controlling the MALPB and the Department has approved such proposed acquisition or control in writing.

(2) Notwithstanding the express provisions of Paragraph 1, a holding company is authorized to acquire or control an MALPB through formation or chartering of an MALPB in Georgia.

(3) The Department has the discretion to waive the three (3) year minimum age requirement set forth in Paragraph 1, if it has determined that the MALPB is insolvent or in an unsafe or unsound condition to conduct business.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.

80-12-11-.04 Source of Strength

A holding company shall serve as a source of strength to its MALPB subsidiary and shall, upon request by the Department, provide a capital maintenance guaranty.

CHAPTER 80-12-12

FINES AND FEES

TABLE OF CONTENTS

80-12-12-.01 Administrative Fines and Penalties

80-12-12-.02 Application, Examination, and Other Fees

80-12-12-.01 Administrative Fines and Penalties.

(1) In addition to all other enforcement actions available to it, the Department establishes the following fines and penalties for violation of the Act or its rules:

(a) Deposit taking. An MALPB that takes or holds a deposit from an individual or entity other than a corporation that owns a majority of the shares of the MALPB in violation of O.C.G.A. § 7-9-12 shall be subject to a fine of \$10,000 for each day that a prohibited deposit is held.

(b) Unapproved incidental activities. An MALPB that engages in incidental activities without prior written approval from the Department in violation of Rule 80-12-4-.01(2) shall be subject to a fine of \$5,000 for each day the unapproved incidental activity is engaged in by the MALPB.

(c) Unauthorized activities. An MALPB that engages in unauthorized activities in violation of Rule 80-12-4-.01(3) or 80-12-4-.01(4) shall be subject to a fine of \$10,000 for each individual occasion the MALPB engaged in the unauthorized activity.

(d) Self-acquiring activities. An MALPB that engages in self-acquiring activities in violation of O.C.G.A. § 7-9-12 or Rule 80-12-4-.02(1) shall be subject to a fine of \$1,000 for each impermissible transaction.

(e) Control by a merchant. An MALPB or MALPB holding company that is controlled by a merchant in violation of Rule 80-12-4-.02 shall be subject to a fine of \$10,000 per day until the merchant no longer exercises control over the MALPB or the MALPB holding company.

(f) Minimum number of employees. An MALPB that fails to continuously employ the number of required employees that reside in Georgia in violation of Rule 80-12-4-.04 shall be subject to a fine of \$10,000 per day that the MALPB fails to satisfy this requirement.

(g) Hiring a felon. An MALPB that hires or retains an employee that has been convicted of a felony involving a financial crime, as set forth in Rule 80-12-4-.05, shall be subject to a fine of \$10,000 per employee or former employee found to be convicted of a financial crime.

(h) Advertising. An MALPB that fails to comply with the advertising limitations in violation of Rule 80-12-4-.06 shall be subject to a fine of \$1,000 for each violation.

(i) Untimely SRRs. An MALPB that fails to make or file its SRRs within the appropriate period of time in violation of Rule 80-12-5-.04 shall be subject to a fine of \$1,000 per day that each SRR is not filed.

(j) Untimely reports. An MALPB that fails to make or file a report within the appropriate period of time in violation of Rule 80-12-5-.04, other than an SRR, shall be subject to a fine of \$500 per day that the report is not filed.

(k) Books and records violations. If the Department finds that an MALPB has failed to maintain its books and records as required by Rules 80-12-5-.05 or 80-12-5-.06, the MALPB shall be subject to a fine of \$5,000 for each violation of the books and records requirements set forth in the Department's rules.

(l) Relocation of main office. An MALPB that relocates its main office without the Department's prior written approval in violation of Rule 80-12-6-.01 shall be subject to a fine of \$5,000.

(m) Unapproved office. An MALPB that operates an unapproved location in violation of Rule 80-12-6-.02 shall be subject to a fine of \$5,000 per unapproved location.

(n) Refusal to submit to examination. An MALPB that refuses to permit an investigation or examination of its books and records by the Department or a third-party expert shall be subject to a fine of \$20,000 for each day the refusal continues.

(o) False statements. An MALPB that makes false statements or material misrepresentations to the Department or any of its agents, including, but not limited to any third-party expert retained to assist the Department, in connection with any examination, investigation, or records or reports made available to the Department shall be subject to a fine of \$10,000 for each false statement or material misrepresentation.

(p) Minimum capital requirements. An MALPB that fails to continuously maintain the minimum leverage capital ratio, PV capital, risk capital, or statutory capital requirement in violation of Rule 80-12-7-.01 shall be subject to a fine of \$10,000 for each day it is below the minimum capital requirement.

(q) Eligible organization. An MALPB that enters into a contract or amends a contract with an eligible organization without obtaining prior written approval from the Department in violation of Rule 80-12-8-.01 shall be subject to a fine of \$1,000 for each day the contract is in effect.

(r) Support organization. An MALPB that enters into a contract or amends a contract with a support organization and fails to provide the Department with timely notice in violation of Rule 80-12-8-.02 shall be subject to a fine of 5,000.

(s) Intercompany dealings. An MALPB that engages in unauthorized intercompany dealings in violation of Rule 80-12-9-.01 shall be subject to a fine of \$5,000 per each unauthorized transaction.

(t) Control person. An MALPB or MALPB holding company that has a new control person without complying with the notice provisions set forth in Rules 80-12-10-.01 or 80-12-11-.02, shall be subject to a fine of \$25,000.

(u) Directors and executive officers of MALPB. An MALPB that appoints a new director or employs a new executive officer without complying with the notice provisions set forth in Rule 80-12-10-.01, shall be subject to a fine of \$5,000.

(v) Directors and principal shareholders of holding company. An MALPB holding company that appoints a new director or has a new principal shareholder without complying with the notice provisions set forth in Rule 80-12-11-.02 shall be subject to a fine of \$5,000.

(w) Acquisition. An MALPB that is acquired without first obtaining the Department's prior written approval in violation of Rules 80-12-10-.02 or 80-12-11-.03 shall be subject to a fine of \$100,000 each day until the transaction is unwound.

(x) Unapproved activities. Unless otherwise addressed in this regulation, an MALPB that takes any action that requires Department approval without first obtaining the Department's prior written approval shall be subject to a fine of \$5,000 for each such occurrence.

(y) Merchant funds. An MALPB that fails to deposit and account for merchant funds as required by Rule 80-12-7-.02 shall be subject to a fine of \$50,000 for each day that merchant funds are not properly accounted for or deposited.

(2) The Department, in its sole discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, willfulness of the violation, and the facts and circumstances of the violation.

(3) All fines levied by the Department are due within thirty (30) days after the date of assessment.

(4) All fines paid to the Department are nonrefundable.

Authority O.C.G.A. §§ 7-9-3, 7-9-13.

80-12-12-.02 Application, Examination, and Other Fees.

(1) The Department establishes the following fees related to the regulation of MALPBs, their holding companies, their affiliates, and their subsidiaries:

(a) An application fee of \$50,000 will be remitted to the Department at the time of delivery of the MALPB application.

(b) In addition to any fees imposed by third-party experts acting as special examiners, an MALPB, its holding company, affiliates, or subsidiaries shall pay an examination fee to the Department at the rate of \$100 per examiner hour.

(c) A holding company of an MALPB shall pay on or before January 31 of each year an annual registration fee of \$5,000.

(d) A holding company of an MALPB shall pay on or before January 31 of each year an additional \$1,000 for each non-MALPB subsidiary of the holding company but, in no event, shall this annual fee exceed \$20,000.

(e) An MALPB shall pay on or before January 31 of each year an annual supervision fee of \$10,000.

(f) An MALPB seeking approval for additional physical locations pursuant to Rule 80-12-6-.02 shall pay an investigation fee of \$1,250 for each additional proposed location it seeks to have approved.

(g) An MALPB seeking approval for the creation of a separate subsidiary pursuant to Rule 80-12-9-.02 shall pay an investigative fee of \$1,000 to the Department.

(h) An application seeking approval of the acquisition of an MALPB pursuant to Rules 80-12-10-.02 or 80-12-11-.03 shall pay an investigative fee of \$10,000 to the Department.

(2) All fees paid to the Department are nonrefundable.

Authority O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-13.