

D R A F T

FOR DISCUSSION ONLY

**REGULATION OF VIRTUAL CURRENCY
BUSINESSES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR
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**REGULATION OF VIRTUAL CURRENCY
BUSINESSES ACT**

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 3, 2016

REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

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1 **REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Regulation of Virtual
5 Currency Businesses Act.

6 **SECTION 102. SCOPE.** This [act] governs the operation of a person, wherever
7 located, that engages in or holds itself out as engaging in virtual currency business activity with a
8 resident of this [state].

9 **SECTION 103. DEFINITIONS.**

10 (1) “Applicant” means a person that applies for a license under this [act].

11 (2) “Bank” means a person engaged in the business of banking, including a savings bank,
12 savings and loan association, or credit union. The term does not include a trust company or a
13 limited purpose trust company chartered by this state or another state, or an industrial loan
14 company chartered by this state or another state.

15 (3) “Control” means possession of sufficient virtual currency credentials or authority on a
16 virtual currency network to execute unilaterally or prevent indefinitely virtual currency business
17 transactions. The term does not include possession, for a reasonably time-limited period, of
18 virtual currency credentials sufficient to prevent virtual currency transactions to provide a service
19 such as an escrow, provided that the user is able to regain unilateral rights to execute transactions
20 following the period in which the escrow was in effect.

21 (4) “Convertible virtual currency” means virtual currency that:

22 (A) has an equivalent value in legal tender and can be exchanged for legal tender;

23 or

1 (B) can be exchanged for a deposit denominated in legal tender.

2 (5) “Custody” means maintaining an account to which virtual currency is or may be
3 credited in accordance with an agreement under which the person maintaining the account
4 undertakes to treat the person for whom the account is maintained as entitled to the use and
5 benefit of that virtual currency. A person has custody of virtual currency when it:

6 (A) indicates by book entry that an amount of virtual currency has been credited
7 to a user’s virtual currency account with it;

8 (B) receives control of virtual currency from the user or acquires control of virtual
9 currency on behalf of the user and accepts control for credit to the user’s virtual currency
10 account; or

11 (C) becomes obligated under other law to credit virtual currency to a virtual
12 currency account of a person or user.

13 (6) “Department” means the [name of state agency].

14 (7) “Exchange” means the sale, trade, or other conversion of virtual currency for legal
15 tender or for one or more forms of virtual currency, or the sale, trade, or other conversion of
16 legal tender for one or more forms of virtual currency.

17 (8) “Executive officer” means a president, chair of the executive committee, chief
18 financial officer, responsible individual, or other individual, regardless of title, who performs or
19 has the authority to perform similar functions.

20 (9) “Law” means federal or state statutes, administrative actions, and case law that have
21 binding legal effect.

22 (10) “Legal tender” means the medium of exchange or unit of value, including the coin or
23 paper money of the United States, recognized by the United States government for the payment

1 of taxes and as a lawful means for the discharge of debts.

2 (11) “Licensee” means a person licensed under this [act].

3 (12) “Person” means an individual, estate, partnership, association, trust, business or
4 nonprofit entity, public corporation, estate, trust, joint venture, government, governmental
5 subdivision, agency or instrumentality, public corporation, or any other legal or commercial
6 entity.

7 (13) “Provisional registrant” means a person that has registered with this state to conduct
8 virtual currency business activity but whose volume of virtual currency business activity in this
9 state is below the threshold required for licensure under this [act].

10 [(14) “Qualified custodian” means a bank or other person that is approved by the
11 department to hold permissible investments on behalf of a licensee.]

12 (15) “Record” means information that is inscribed on a tangible medium or that is stored
13 in an electronic or other medium and is retrievable in perceivable form.

14 (16) “Reciprocity agreement” means an arrangement among two or more states that
15 permits a license to engage in virtual currency business activity granted by one state and
16 recognized by another state subject to any condition imposed by the arrangement if participation
17 in the reciprocity arrangement is approved by the department.

18 (17) “Registry” means the Nationwide Multistate Licensing System and Registry, a
19 system of record for non-depository, financial services licensing or registration:

20 (A) through which companies and individuals may apply for, amend, renew and
21 surrender licenses granted by participating states; and

22 (B) that is owned and operated by the State Regulatory Registry LLC (SRR)².

23 (18) “Resident” means a person that primarily resides, is physically located in for more

1 than one-half of the calendar year, or has a place of business in this state.

2 (19) “Responsible individual” means an individual who is employed by a licensee and
3 has managerial authority over the licensee’s virtual currency business activity in this state.

4 (20) “State” means a State of the United States, the District of Columbia, Puerto Rico, the
5 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
6 the United States. The term [does] [does not] include a federally recognized Indian tribe.

7 (21) “Storage” means maintenance of custody or control on behalf of a user other than for
8 one’s own account.

9 (22) “Transfer” means assuming custody or control of virtual currency or virtual currency
10 credentials from or on behalf of a user and

11 (A) crediting that virtual currency to the account of another user, moving the
12 virtual currency from one account of a user to another account of the same user, or changing the
13 location of virtual currency from one user to another or from one jurisdiction to another
14 regardless of whether the same user is the owner of the virtual currency; or

15 (B) relinquishing control of virtual currency to another user.

16 (23) “Trust company” means a person licensed or chartered as a trust company or a
17 limited purpose trust company by this state or any state with which this state has a reciprocity
18 agreement.

19 (24) “User” means a person who utilizes a service provided by a person engaged in
20 virtual currency business activity, including a person that obtains virtual currency to purchase
21 goods or services on the user’s own behalf.

22 (25) “Virtual currency” means a digital representation of value that is used as a medium
23 of exchange, a unit of account, or a store of value and that is not legal tender. The term does not

1 include (a) the software or protocols governing the transfer of the digital representation of value,
2 (b) stored value or digital units redeemable exclusively in goods or services limited to
3 transactions involving a defined merchant, such as an affinity or rewards program, (c) digital
4 units used within a game or game platform, or (d) digital units used within the same online
5 gaming platform to purchase intangible goods or services used within the same closed platform.

6 (26) “Virtual currency administration” means issuing a virtual currency and having
7 authority to redeem the currency or to withdraw the currency from circulation.

8 (27) “Virtual currency business activity” means engaging as a business in virtual
9 currency exchange, transfer, storage, or virtual currency administration, in the exchange, transfer
10 or storage of credentials that are sufficient to transact or prevent the exchange, transfer or storage
11 of virtual currency, whether by performing these activities alone or under an agreement with a
12 virtual currency control services vendor, in holding e-precious metals or e-certificates of
13 precious metals on behalf of other persons or issuing shares or e-certificates representing
14 interests in precious metals, or in making a market in digital, in-game units outside the game or
15 platform from which the original digital units were received or facilitating person-to-person or
16 user-to-user exchanges of digital, in-game units in exchange for legal tender. The term does not
17 include a person not otherwise engaged in virtual currency business activity on behalf of third
18 parties that contributes connectivity software or computing power to a decentralized virtual
19 currency, provides data storage or security services for a virtual currency business and is not
20 otherwise engaged in virtual currency business activity on other persons’ behalf; or
21 obtaining virtual currency solely to purchase goods or services for one’s own purposes or
22 receiving virtual currency from the purchase or sale of goods or services, obtaining virtual
23 currency for investment purposes, [storing, holding, or maintaining custody or control of virtual

1 currency by a trust company holding a charter from this state or a charter recognized by this state
2 to the extent that the state expressly authorizes a trust company generally or by virtue of specific
3 permission to engage in virtual currency business activity,] developing, marketing, and licensing
4 software to be used at an enterprise level by persons not exchanging, transferring, or storing
5 virtual currencies on their own behalf, possessing virtual currency credentials sufficient to
6 prevent virtual currency transfers or exchanges in order to provide a service such as an escrow,
7 transferring from one person to another effected without the services of any intermediary, or
8 engaging in activities with another person to the extent the person is exempt from this [act] under
9 Section 104.

10 (28) “Virtual Currency Control Services Vendor” means a person who has control of
11 virtual currency only pursuant to an agreement or agreements with a person that assumes virtual
12 currency custody or control on behalf of another.

13 **Reporter’s Notes**

14 The definitions are by far the most important and complex aspects of this drafting project.
15 A handful of definitions are of primary importance – the definitions of “virtual currency,”
16 “virtual currency business activity,” “custody” [of virtual currency], “control” [of virtual
17 currency], “transfer,” “exchange,” “store,” and “convertible virtual currency.” For the purposes
18 of this Annual Meeting draft, the following discussion proceeds with the most challenging
19 choices faced so far by the Drafting Committee and, accordingly, is not in alphabetical order as
20 the definitions themselves are.

21
22 The definition of “virtual currency” closely tracks the definition urged by Conference of
23 State Bank Supervisors (“CSBS”) in its September 15, 2015, Framework. This draft does not
24 define the term “money,” as is the norm in the Uniform Law Commission draft legislation
25 typically does. Rather, it defines “legal tender” in order to accommodate the revised definition
26 of the term “virtual currency” that more closely models the CSBS’ September 15, 2015
27 Framework. For more information, see Financial Action Task Force, VIRTUAL CURRENCIES –
28 KEY DEFINITIONS AND POTENTIAL AML/CFT RISKS 4 (July 2014), [http://www.fatf-
29 gafi.org/media/FATF/Documents/reports/Virtual-Currencies-key-definitions-and-potential-aml-
30 cft-risks.pdf](http://www.fatf-gafi.org/media/FATF/Documents/reports/Virtual-Currencies-key-definitions-and-potential-aml-cft-risks.pdf) (This reference work includes excellent explanations of key definitions and of the
31 concept of “convertible virtual currency.” It also offered the most prominent alternative
32 definition of the term “virtual currency.”) According to Observers, at this time, at least some
33 virtual currencies being offered in the United States are denominated in U.S. dollars.
34

1 The definition of “virtual currency business activity” has been debated extensively since
2 the first meeting of the Drafting Committee. The overall goal is to capture within the scope of
3 this draft activities that meeting the definition of “virtual currency business activity.” And to
4 restrict the activity to that performed with or on behalf of residents of the jurisdiction that seeks
5 to license the provision of such activities a jurisdiction in the United States, including persons in
6 or offering services that meet the definition in tribal jurisdictions. Questions arise including
7 whether the definition of “virtual currency” should include “e-precious metals” and e-certificates
8 for precious metals that can be transferred from one owner to another. FinCEN issued guidance
9 in August 2015 that extended its March 2013 guidance concerning what types of business
10 activity with virtual currency render the business a “money services business” for the purposes of
11 federal AML requirements under 31 C.F.R. Part X. The 2015 guidance included e-precious
12 metals and e-certificates for precious metals. This draft includes both in the definitions of
13 “virtual currency” and “virtual currency business activity.”
14

15 The definition of “virtual currency business activity” is not intended to create an
16 expansive exemption for what the virtual currency community refers to as “multi-sig” – that is,
17 arrangements that require more than one credential-equivalent to be used to affect transactions.
18 Inclusion of certain multi-sig arrangements in this draft is consistent with the notion of covering
19 any intermediary whose business activity includes the power to transact, convert or redeem, or
20 the power to prevent transactions, conversions or redemptions of virtual currency of others. But
21 a virtual currency business whose service does not include the ability to transact unilaterally or to
22 prevent transactions indefinitely is not covered in this draft.
23

24 Much discussion in Drafting Committee meetings and comments from Observers has
25 involved the “multi-sig” issue. An exclusion of multi-sig used for escrow-like services from this
26 act, however, opens the prospect that this type of business entity would require a license as an
27 escrow agent under the laws of those states that have general escrow-agent licensure
28 requirements. A conservative count of states that regulate escrow services and providers in one
29 or more segments of that market suggests that nearly all states have some licensure requirements
30 unless the provider is a lawyer licensed in that state. Thus, an exclusion from this act is not the
31 end of the game for the providers who in fact offer escrow-like services to members of the
32 general public, as at least some of the multi-sig providers are likely to seek to do. Readers
33 interested in this issue should review the draft definitions of the terms “control,” and “virtual
34 currency business activity.” The scope of the definition of the terms “custody” and “control” and
35 the treatment of multi-sig technologies remains an issue for further research and possible
36 consultation with FinCEN, and, we recommend, consideration by the Drafting Committee.
37

38 For consistency with the “money services” and “consumer-facing scope of the Uniform
39 Money Services Act and other money transmitter statutes, the definition does not cover non-
40 currency uses of the technologies underlying virtual currencies today. A new class of
41 technologies at an enterprise level are not consumer-facing and are designed to perform
42 functions, such as “enabling existing currencies to be exchanged more efficiently.” *See* Comment
43 of Ripple, April 1, 2016, at 5.
44

45 The focus on using three active verbs – exchange, transfer, and store – as the core
46 concepts animating what constitutes “virtual currency business activity” allowed work towards a

1 definition that includes activities associated with each verb so long as the virtual currency
2 business holds sufficient credentials to affect or prevent the activity on a unilateral basis. The
3 Drafting Committee preliminarily concluded that the verb “exchange” would include any sale or
4 barter of virtual currency for, other virtual currency, or “real world” goods or services. It also
5 determined that use of the word “exchange” would preserve for miners under this act the same
6 exemption that they currently enjoy under FinCEN’s guidance issued in March 2013 and
7 subsequently so that the act of mining would not be included in the definition of “virtual
8 currency business activity” but the sale or barter of virtual currency by miners from their own
9 portfolios would be included. Observers were helpful in offering possible definitions of the
10 terms mentioned in this paragraph and in debating their parameters. A fourth term “virtual
11 currency administration” is included in Section 103.
12

13 This draft sets parameters for the terms “exchange, transfer, and store” used in the
14 definition of the term “virtual currency business activity” by defining each term and a few
15 additional terms such as “virtual currency control services vendor” and “virtual currency
16 administration” that were not in the February 2016 draft. These definitions have continued to
17 evolve with the assistance of the Observers to the versions included in this Draft
18

19 A significant question of whether to require dual licensure – a virtual currency business
20 license and a money services or money transmitter license – in the case of entities offering
21 exchange of virtual currency to fiat currency or vice versa remains to be decided by the Drafting
22 Committee between now and the time for submission for consideration at the Annual Meeting.
23 The only State currently requiring both (but also allowing trust companies to get special virtual
24 charters) is New York. For now, this issue is resolved in this draft with the key definitions
25 premised on virtual currency businesses who can handle virtual-to-virtual currency transactions
26 as well as virtual-to-fiat-or-fiat-to-virtual currency transactions. The sense of the Drafting
27 Committee was to facilitate cross-satisfaction of requirements for both licenses if the jurisdiction
28 elects to require both and to allow for easy on-boarding of virtual currency exchanges to licenses
29 under the Uniform Money Services Act or the money transmitter statutes.
30

31 The question of whether and how to include an “on-ramp” for new entrants to the virtual
32 currency business industry has been discussed. Activities of businesses in the “on-ramp” will
33 include those defined as “virtual currency business activity,” but these businesses will be allowed
34 to operate under “provisional registrations” until they reach the threshold prescribed by the act.
35 They will be expected to have registered with both the regulators in States and jurisdictions
36 offering this “on-ramp” and with FinCEN to the degree that their activities meet the tests for
37 “money service” businesses under FinCEN guidance.
38

39 The draft includes trust companies as entities subject to separate licensure under this act
40 if they engage in virtual currency business activities. New York State issued a trust company
41 charter to ItBit in 2015. ItBit’s ability to engage in transactions with residents of other States
42 was challenged by other States. ItBit’s April 2016 decision to withdraw from offering its
43 services to residents of Texas suggest that state regulators’ attitudes about licensure for trust
44 companies is far from settled.
45

46 This draft also excludes industrial loan companies from the definition of the term “bank.”

1 ILC's are regulated for many purposes as banks, but the scope of their activities are not the same
2 as banks and many states do not charter ILC's. Thus, exclusion of ILC's might complicate state
3 regulation of their activities and the reciprocity provisions in Article 2.
4

5 The definition of the term "qualified custodian" has been amended to allow use of any
6 bank acceptable to the State regulator in charge, regardless of the "home state" location of the
7 bank to facilitate interstate activity. This term is frequently defined in the regulation of non-
8 depository money services businesses, including in the Money Services Act.
9

10 The definition of the term "state" allows each state to decide whether to include federally
11 recognized Indian tribes as states for the purposes of this act, including reciprocity in licensure.
12

13 This draft does not define the terms "unfair and deceptive practices" and "unsafe and
14 unsound practices." Both terms have meanings articulated by federal regulatory agencies over
15 the course of many years. For example, the FDIC's standard for "unsafe or unsound practice"
16 means "any action, or lack of action, which is contrary to generally accepted standards of
17 prudent operation, the possible consequences of which, if continued, would result in abnormal
18 risk of loss or damage to an institution, its shareholders, or the insurance fund administered by
19 the FDIC." Observers noted that the definition of "unsafe or unsound practice" in the February
20 draft was unwise.
21

22 **SECTION 104. EXEMPTIONS.** This [act] does not apply the exchange, transfer, or
23 storage of virtual currency to the extent governed by the Electronic Fund Transfers Act of 1978,
24 15 U.S.C. Sections 1693-1693r, the Securities Exchange Act of 1934, 15 U.S.C. Section 78m, or
25 the Commodities Exchange Act of 1936, 7 U.S.C. Sections 1-27f, [as amended], or to activities
26 by any of the following:

27 (1) The United States or a state, county, city or other governmental agency, subdivision,
28 department, agency, or instrumentality.

29 (2) A bank.

30 (3) A person in a payment system to the extent that the person provides processing,
31 clearing, or settlement services solely for transactions excluded or between or among persons
32 otherwise exempted from this [act].

33 (4) A person engaged in the business of dealing in foreign exchange as defined in 31
34 C.F.R. 1010.605(f)(1)(iv) [as amended].

1 (5) A person that obtains convertible virtual currency to the extent that the person uses it
2 only to purchase real or virtual goods or services for personal purposes and not on behalf of
3 others.

4 (6) A person that mines or manufactures virtual currency and uses it solely for personal
5 purposes, such as to purchase goods and services for personal purposes, so long as the person
6 does not engage in any virtual currency business activity on another person's behalf other than
7 verification and recording of transfers of interests in virtual currency.

8 [(7) A person whose virtual currency business activity with residents of this state is
9 valued, in the aggregate, at less than [dollar amount to be specified by Drafting Committee],
10 according to a rolling 30-day average of outstanding balances as converted into a dollar amount
11 utilizing each day's prevailing exchange rate if the person makes a provisional registration with
12 this state, complies with the requirements of Section 210, and applies for a license under [article]
13 2 prior to the time its virtual currency business activity reaches the threshold established in this
14 section and if the department has not suspended or revoked the provisional registration, the
15 registration has not expired, and the department has not denied a license under Article 2 to the
16 person. A person that qualifies for the exemption under this paragraph must file an application
17 for a license with this state or use the reciprocity provisions of [article] 2 to retain the exemption
18 to remain exempt during the processing of its application. A person that qualifies for the
19 exemption but does not obtain a license from this state is no longer exempt and shall halt all
20 virtual currency business activity with residents of this state within 48 hours of being notified
21 that its application for license was denied and assist the department in the orderly winding down
22 of its virtual currency business activity in this state or otherwise affecting residents of this state.
23 A person that registered as a provisional registrant under Section 210 may declare themselves as

1 no longer doing business in this state or jurisdiction or as being inactive in all states in the United
2 States and no longer be subject to the requirements of this [act] by providing notice to the
3 department.] and,

4 (8) Lawyers and title insurance companies engaged in the provision of escrow services to
5 users.

6 **Reporter’s Notes**

7
8 The exemptions included in Section 104 – with one exception – are common in state
9 statutes requiring licensure of “money services” and “money transmitter” businesses. The
10 exception in subsection 7 is most challenging aspect of this section.
11

12 The Drafting Committee was charged with drafting a licensure and prudentially-“lite”
13 regulatory scheme for virtual currency businesses with an additional instruction to facilitate
14 innovation by virtual currency businesses. One of the most challenging tasks in this assignment
15 is to frame an “on-ramp” for virtual currency businesses, one that postpones full licensure to the
16 time at which the entity’s business in a State meets a threshold test. Legislation that was
17 proposed in Pennsylvania in 2015 with a \$1 million threshold and drafted with the assistance of
18 CoinCenter. The Pennsylvania bill allowed the exempt entity to remain exempt so long as the
19 entity took “reasonably timely steps to seek a license.” The version presented varies the effect
20 on the entity as the threshold dollar value is reached by requiring that it file as it approaches
21 whatever threshold may be prescribed, and orders a prompt halt and assistance in the unwinding
22 of the entity’s activity if its application is denied. Pennsylvania: House Bill No. 850, Printer’s
23 No. 1029 (2015) has been in the Commerce Committee of the House of Representatives since
24 March 26, 2015. *Bill Information*, Legislative Data Processing Website (2016).
25

26 The threshold test can be a dollar volume or it can be a test based on a number of
27 transactions (regardless of dollar amounts involved) in a period (day, week, month or year) or a
28 number of customers in a comparable time frame, but once the threshold it met, then the license
29 application should ensue and subsequent fluctuations in dollar volumes or numbers of
30 transactions in the period chosen would not affect the requirement to obtain and maintain the
31 license in the States or other jurisdictions involved, like a Hotel California” principle (you can
32 check in but not check out except by selling or winding down the business) the ULC should
33 publicize the need for on-ramp participants to register with FinCEN as money service businesses
34 to the extent to which they engage in activities of the types that FinCEN has defined as “money
35 services.” In addition, the on-ramp is – like the definition of “virtual currency business activity”
36 – a place where facts and circumstances approach is not wise. Without precise parameters that
37 state regulators, and law enforcement officials, can look to, the on-ramp will not achieve the
38 space for innovators that it is offered to achieve.
39

40 Besides encouraging innovators, the on-ramp is intended to protect start-up businesses
41 from inadvertently engaging in activity that should be licensed in order to avoid prosecution as

1 an unlicensed money transmitter under 18 U.S.C. Section 1960. As such, the on-ramp is central
2 to the goal of encouraging innovators in the virtual currency community whether the technology
3 underlying virtual currencies such as Bitcoin remains the most active aspect of the universe or
4 applications or launches future classes of distributed ledger business activity, as has been seen
5 recently.

6
7 The “on ramp” in this draft of the Act is in Section 210. The bracketed material in
8 subsection 7, above, is intended to protect provisional registrants who have met the requirements
9 of Section 210. The addition to subsection (7) was suggested in concept by an Observer. The
10 Observer strongly favored an inactive-status option, as opposed to the “Hotel California”
11 approach that the Drafting Committee previously discussed.

12
13 In addition to the new exemption for lawyers and title insurance companies engaged in
14 offering escrow services to their customers in subsection (8), one Commissioner suggested an
15 exemption from this act for judgment creditors and foreclosing secured parties. As the other
16 members of the Drafting Committee would not have had an opportunity to react to this
17 suggestion, it is not included in this draft.

18
19 FinCEN refined the definition of the term “currency dealer or exchanger” for purposes of
20 31 C.F.R. Part X in 2011 to “a dealer in foreign exchange” to capture the exchange of money
21 instruments as well as of other monetary instruments, funds, or other instruments denominated in
22 currency. *See* Bank Secrecy Act Regulations: Definitions and Other Regulations Relating to
23 Money Services Businesses, 76 Fed. Reg. 43585, 43589 & 43596 (July 21, 2011).

24
25 A state that considers allowing a subsequently amended statute to apply is an unlawful
26 delegation of state legislative power should delete the bracketed reference to “as amended” in
27 this section and elsewhere in this act.

28
29 The term “bank” is defined in Section 103. One comment in the most recent round called
30 for the reinsertion from a prior draft of the definition of “bank” found in the definition of the
31 term found in Treasury Department regulations, 31 C.F.R. Section 1010.100(d). The reporter
32 has no quarrel with this recommendation, but asks the Drafting Committee for instructions
33 particularly with respect to whether the definition should adhere to that definition or definitions
34 found in other banking statutes.

35
36 **[ARTICLE] 2**

37 **LICENSURE**

38 **SECTION 201. LICENSE.**

39 (a) A person may not engage in virtual currency business activity or otherwise hold itself
40 out as being able to engage in virtual currency business activity with a resident of this state,
41 unless the person:

1 (1) is licensed under this act;
2 (2) is licensed in a state under a law substantially similar to this act with adequate
3 enforcement as determined by the department [and with which this state has a reciprocity
4 agreement expressly for virtual currency business activity]; or
5 (3) is registered and operating in compliance with the provisions of Section 210
6 on provisional registration or has been operating under the provisions of Section 210 and has a
7 pending application for a license from this state.
8 (b) A license issued under subsection (a) (1) is not transferable or assignable and does not
9 represent a property right.

10 **Reporter's Notes**

11 A person engages in virtual currency business activity in this state if any part of the
12 transaction is with a resident of this state, whether by means of a physical location such as a
13 virtual currency "ATM" or of a virtual purposeful engagement with a resident of a state. An
14 advertisement, solicitation or other holding out that comes in by newspaper, telephone, email,
15 regular mail or otherwise, and whether or not seen by a resident or other person physically in this
16 state, is sufficient contact to generate the need for a license, either from this state or from the
17 state agency of the person doing the advertising or soliciting's jurisdiction that qualifies pursuant
18 to subsection (a)(2). Whether that jurisdiction should also have reciprocity is an issue to be
19 decided before the act is final. Reciprocity under § 203 is possible and beneficial.

20
21 No license issued by this state can be transferred or assigned except pursuant to law, and
22 then only as long as the Department or other relevant State or federal regulator does not
23 disapprove the transfer or assignment.

24
25 Some states' money transmitter statutes, including California, allow licenses to be
26 granted only if the applicant is organized under the laws of California. Others, such as Virginia,
27 do not require incorporation in that State or even a physical presence in Virginia for a license to
28 be issued.

29
30 Given the online nature of virtual currency business, Section 201 does not contain a
31 requirement for the applicant to have a corporate charter from a state in order to be licensed in
32 that state or to maintain a physical location in that state.

33 34 **SECTION 202. APPLICATION FOR LICENSE.**

35 (a) Applications for a license shall be made in such form and in a medium prescribed by

1 the department or in the form prescribed by the registry if this state utilizes the registry. Subject
2 to subsection (e), to the extent applicable, the application must provide:

3 (1) the legal name of the applicant, its current or proposed business address, and
4 any fictitious or trade name used by the applicant or planned to be used by the applicant in
5 conducting its business;

6 (2) the legal names of the executive officers of the applicant or persons that
7 exercise control over the applicant, their residential and business address, and any former names
8 or fictitious names used by those persons;

9 (3) a description of the proposed, current, and historical business of the applicant
10 for the past ten years, if applicable, including reasonable detail regarding the products and
11 services, all associated website addresses, the principal place of business, the projected user
12 base, specific marketing targets, and the location of each current or proposed database server;

13 (4) a list of any other states in which the applicant is licensed to conduct business
14 regulated by this [act] and of any license revocations, suspensions, or other disciplinary actions
15 taken against the applicant in the other [jurisdiction], regardless of the nature of the license;

16 (5) criminal convictions involving the applicant and persons exercising control
17 over applicant and of any deferred prosecution agreements between the applicant and any state or
18 the United States government;

19 (6) material litigation in which the applicant or any executive officer has been
20 involved in the [ten]-year period immediately preceding the submission of the application,
21 determined in accordance with generally accepted accounting principles and to the extent that it
22 would be required to be disclosed in the applicant's annual audited financial statements, reports
23 to shareholders, or similar records or reports;

1 (7) any bankruptcy or receivership proceedings affecting the applicant, the
2 executive officers, or any responsible individual employed by or in a control position in the past
3 [ten] years;

4 (8) the name and address of any bank in which the applicant plans to deposit any
5 [funds] belonging to its users or through which it may conduct any portion of its virtual currency
6 business;

7 (9) a description of the sources of funds and credit to be used by the applicant to
8 provide virtual currency business activity in this state and proof that the licensee has the
9 minimum net worth specified in Section 207;

10 (10) the physical locations of servers that applicant uses or proposes to use in the
11 conduct of its virtual currency business and the address to which communications from the
12 department may be sent;

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

14 (12) money services or money transmitter licenses that the applicant holds in any
15 other state and their dates of expiration;

16 (13) a description of other lines of business the applicant engages in, directly or
17 indirectly, or expects to engage in in this state;

18 (14) if applicable, a copy of any liability, casualty, or business interruption
19 insurance policy maintained by applicant for itself, its officers and directors, or its users;

20 (15) the date of the applicant's incorporation, charter or formation and the state in
21 which the applicant was incorporated, chartered or formed, and, if applicable, a copy of the most
22 recent certificate of good standing from the state in which the applicant was incorporated,
23 chartered or formed;

1 (16) if the applicant is a wholly-owned subsidiary of a corporation publicly traded
2 in the United States, a copy of the corporation's audited financial statement for the most recent
3 fiscal year; or a copy of the parent corporation's most recent report filed under Section 13 of the
4 Securities Exchange Act of 1934 [15 U.S.C. Section 78m] [as amended]; or

5 (17) if the applicant is a wholly-owned subsidiary of a corporation publicly traded
6 outside the United States, a copy of similar documentation similar to that required in paragraph
7 (16) filed with the regulator of the parent corporation's domicile outside the United States;

8 (18) if the applicant is a partnership, the names and addresses of all general
9 partners;

10 (19) proof that the applicant has registered with the Department of the Treasury's
11 Financial Crimes Enforcement Network as a "money service business" to the extent required by
12 guidance issued by that agency;

13 (20) a set of fingerprints for each executive officer of the applicant, together with
14 an employment history and history of any investigation or legal proceeding involving any
15 executive officer for each for the past ten years, if available, as well as any additional
16 information that the department reasonably may prescribe by regulation; and

17 (21) other information that the department reasonably may require by regulation.

18 (b) The applicant shall submit with the application a nonrefundable application fee of
19 [amount to be prescribed by legislature or determined by department by regulation].

20 (c) No license shall be issued until the applicant also has paid the initial license fee of
21 [amount prescribed by legislature or determined by department by regulation].

22 (d) The department, for good cause, may waive a requirement of subsection (a) or permit
23 the applicant to submit other information in lieu of the required information.

1 **Reporter’s Notes**

2
3 With respect to a possible or optional “on-ramp” provision, which are referred to as
4 provisional registrations in Section 201 below, it is important to note that the Conference of State
5 Bank Supervisors Task Force supports the idea in concept in its September 2015 Framework, but
6 has expressed concerns that any such provision not be phrased in such a manner as would convey
7 a form of property interest that would be subject to the due process requirements applicable to
8 license suspensions or revocations in many States.

9
10 The “on-ramp” or provisional registration in Section 210 does not give preferential status
11 to holders of Money Services Act or Money Transmitter Act licensees. It is exclusively for
12 virtual currency business activities whose providers’ estimates of transactions by dollar
13 equivalent, numbers of transactions for the quarter following the registration or number of users
14 for the same period do not exceed a threshold set by the Commission or individual States.
15 Provisional registrants would not be able to engage in the exchange, transfer or storage of legal
16 tender.

17
18 The text in Section 203’s Alternative A, subsection (b), below, allows “provisional
19 operation” by a person that has applied for reciprocal licensure under that section during the
20 pendency of the licensure process. The term “provisional operation” should be distinguished
21 from “provisional registration” under Section 201 or any comparable limited operating authority
22 granted by the Department under this act. “Provisional operation” under Section 203 and
23 “provisional registration” under Section 210 may be treated by the licensee or applicant as the
24 equivalent of a property interest or recognized by courts as such.

25
26 An applicant may use any common form application allowed by the department] under
27 the Section 203, including forms utilized by the registry.

28
29 **SECTION 203. RECIPROCAL LICENSING.**

30 **Alternative A**

31 [Note: Alternative A is applicable only if the Department has agreed to participate in the
32 Registry. This authority can be granted in the bracketed subsection (a) below, if needed. If the
33 jurisdiction already participates in the NMLSR, the bracketed subsection (a) would be deleted
34 from the legislation and the un-bracketed subsection (a) would begin this Alternative’s
35 provisions and, in either event, the subsections of this Section should be renumbered]

36
37 [(a)The department is authorized to use the registry for purposes of streamlining
38 applications for licenses to be issued under this [act].]

39 [(a) A person seeking a license to engage in virtual currency business activity with
40 residents of this state may file an application with the registry in lieu of the application that is

1 prescribed in Section 202 of this [act] and submit it together with the processing fee required by
2 the registry.]

3 (b) At the time the person files the application with the registry, it shall provide notice to
4 the department in a record that the person has submitted or intends to submit an application to
5 the registry and:

6 (1) a certification of license history from the [responsible agency] in each state
7 that has issued the person a license to conduct business governed by this [act],

8 (2) a reciprocal licensing application fee in an amount to be specified by the
9 department; and

10 (3) a certification signed by an executive officer of the person affirming that the
11 person will conduct its virtual currency business in this state in compliance with the requirements
12 of this [act].

13 (c) No person may engage in virtual currency business activity with residents of this state
14 until a license granted or, in the case of a provisional registration provided in Section 210, the
15 requirements of Section 210 have been met.

16 (d) The department may permit provisional operation by a person that has complied with
17 this section. Provisional operation permission under this subsection is separate from provisional
18 registration under Section 210. Provisional operation under this subsection does not convey the
19 equivalent of a property interest on the person engaged in provisional operation.

20 **Alternative B**

21 (a) A person engaged in virtual currency business activity that is currently licensed to
22 conduct activities that fall under that definition in Section 103 by at least one other state, may
23 engage in virtual currency business activity [and other activity as this [act] may allow] in this

1 state without applying for a license under Section 202 if:

2 (1) the state where the person is licensed has enacted this [act] or has virtual
3 currency business activity laws that are substantially similar to those imposed by the laws of this
4 state, as determined by the department;

5 (2) the person submits to the department at least 30 business days before the
6 person intends to commence virtual currency business activity in this state:

7 (A) notice to the department of its intention to rely on reciprocal licensing,
8 a certification of license history from the [responsible agency] in each state that has issued the
9 person a license to conduct business allowed by this [act];

10 (B) a reciprocal license fee in the amount of [no more than [dollar amount]
11 to be specified by the department] by regulation within 45 days following enactment of this [act];

12 (C) documentation demonstrating net worth and any security or bond(s)
13 maintained for the protection of users that are substantially similar to those required under this
14 [act], and

15 (D) a certification signed by an executive officer of the applicant
16 affirming that the applicant will conduct its virtual currency business in this state in compliance
17 with the requirements of this [act].

18 (3) the department] does not reject the applicant within 15 days following receipt
19 of the items specified in paragraph (2);

20 (4) the person does not commence virtual currency business activity in this state
21 until the 31st calendar day after complying with the requirements of paragraph (2).

22 (b) The department may permit provisional operation by a person that complies with
23 subsection (a)(2) prior to the expiration of the 30-day notice period described in subsection

1 (a)(2). Provisional operation under this subsection is not the equivalent of a property interest and
2 is not subject to Section 210.

3 (c) The department may waive the security and net worth requirements otherwise require
4 by this [act] for a license granted under this section if the state that granted the license on which
5 reciprocity is based requires bonding and net worth requirements that are substantially similar to
6 those required by this [act].

7 **Alternative C**

8 (a) A person seeking a license to engage in virtual currency business activity with
9 residents of this state that holds a license issued by another state may submit a copy of its license
10 application to and current license issued by that state in lieu of submitting an application in the
11 form prescribed in Section 202. The department shall accept the application from the other state
12 as an application for license in this state if:

13 (1) the state that licensed the person has enacted this[act] or has virtual currency
14 business activity laws that are substantially similar to those imposed by the laws of this state, as
15 determined by the department;

16 (2) the application to the other state contains information substantially similar to
17 or is more comprehensive than that required in an application submitted to this state; and

18 (3) the applicant certifies that the information contained in the application to the
19 other state remains accurate and that no material litigation or loss of assets that would affect the
20 applicant's ability to perform its responsibilities under this [act] or its license in the other state
21 has arisen since the time the applicant filed in the other state.

22 (b) The department may permit provisional operation by any person who has complied
23 with subsection (a) or by any person that complies with Section 210. Provisional operation under

1 this subsection is not the equivalent of a property interest but is otherwise not governed by
2 Section 210.

3 (c) The department may waive the security or net worth requirements otherwise required
4 by this [act] for any license granted under this section if the state that granted the license on
5 which reciprocity it based requires bonding and net worth requirements that are substantially
6 similar to those required under this [act].

7 **End of Alternatives; each state or jurisdiction intending to authorize reciprocal licensure**
8 **should select one of the Alternatives set forth in this Section.**

9 **Reporter’s Notes**

10 Alternative A is the option that relies on use of the NMLSR to facilitate reciprocal
11 licensure or recognition of licensure by states other than the first state that licensed a virtual
12 currency business under this [act].

13
14 The reference to “provisional operation” in Alternative A is intended to be limited to
15 persons who have applied for reciprocal licenses under this section, and does not include any
16 person who is operating under the provisional registration authority provided in section 210. The
17 terms “provisional operation” and “provisional registration” are intended to be mutually
18 exclusive.

19
20 The order of the alternatives has been changed to make the NMLSR the first option.

21
22 **SECTION 204. SECURITY.**

23 (a) Except as otherwise provided in subsection (b), a letter of credit or other security
24 acceptable to the department, in an amount and type given the nature and extent of risks in the
25 applicant’s business model, must be provided to the department before any license may be
26 issued. The security need not be posted until a license has been approved.

27 (b) Security must be collectible by the state for the benefit of any claimant against the
28 licensee to secure the faithful performance of the obligations of the licensee with respect to its
29 virtual currency business activity. The department shall not require a surety bond to satisfy this

1 requirement.

2 (c) Security must cover claims for so long as the department specifies by regulation,
3 including a period designated by the department after the licensee ceases to engage in virtual
4 currency business activity in this state.

5 (d) The department may increase the amount of security required if the licensee's
6 financial condition requires, as evidenced by reduction in net worth, financial losses, or other
7 criteria to be prescribed by [regulation] by the department. Failure of the licensee to provide the
8 additional security required by the department within a reasonable time shall be grounds for
9 immediate suspension of a license or for commencement of a license revocation proceeding.

10 (e) The department may permit a licensee to substitute another form of security
11 acceptable to the department for the security initially provided under subsection (a) so long as
12 there is no time when the licensee's activity in this state is not covered by security acceptable to
13 the department.

14 (f) The department shall exercise rights under any letter of credit or other security
15 provided under subsection (a). Any recovery may be retained to assure that all claimants have
16 access to relief from the security.

17 (g) No claimant shall have a direct right against the security.

18 **Reporter's Notes**

19 Surety bonds are not available at this time for virtual currency start-ups and even longer-
20 lived virtual currency businesses have trouble finding a surety bond for their operations.
21 Accordingly, the security described in Section 204 does not and should not include surety bonds
22 because such a requirement effectively prevents most virtual currency businesses from being
23 licensed at this time. The market may improve as surety bond companies are more familiar with
24 the operations of virtual currency businesses and as states clarify their positions on licensure and
25 regulation of virtual currency businesses and the relationship of virtual currency businesses to
26 traditional money services and money transmission that states otherwise regulate. But, lacking a
27 market today for bonds to issue, this act does not require them as a form of security – no matter
28 how common or appropriate they may be for other forms of licensees to offer to regulators.
29

1 The amount of security required may be minimal depending on the scope of activities that
2 the applicant presents as its business model in a given state. The type of security may include a
3 guarantee or, possibly, even a letter asserting compliance based on submissions under Article 7.
4

5 In subsection (d), the regulators' ability to hold security after the licensee ceases to
6 engage in virtual currency business activity is common in non-depository financial services
7 regulation. Because of this need for security to be available during a winding-down period,
8 bonds – if available – would be problematic for licensees. Bonds, of course, run with the person
9 or entity that first acquired them. In the virtual currency community, one expects innovators to
10 merge or be acquired by others with more frequency than might have applied to other forms of
11 non-depository providers of financial services. One Observer explained that requiring the
12 security to survive a merger or acquisition necessarily requires a form of security that is not
13 entity-dependent.
14

15 **SECTION 205. ISSUANCE OF LICENSE.**

16 (a) When an application is filed under Section 202, the department shall investigate the
17 applicant's financial condition and responsibility, financial and business experience, character
18 and general fitness, and the competence, experience, character, and general fitness of the
19 executive officers, directors, managers, and persons in control of the applicant.

20 (b) The department may conduct an investigation of the applicant's business premises as
21 it deems necessary, including an investigation of facilities at and devices to store virtual currency
22 or credentials for use in virtual currency or for use in virtual currency business activity and the
23 protection of data associate with it. The applicant shall pay the reasonable costs of the
24 investigation.

25 (c) No original application under Section 202 shall be considered complete until the
26 department has all of the information required by this [act] or the registry, and has completed any
27 investigation allowed by subsection (b).

28 (d) When an original application under Section 202 is complete, the department shall
29 notify the applicant in a record within [30] business days of its decision to approve or deny the
30 application. If the department does not notify the applicant of approval or denial by the [31st]

1 business day after application was complete subject to subsection (c), the application is deemed
2 approved and the department shall issue the license. The license shall take effect on the first
3 business day following:

4 (1) the expiration of the [30] business-day period if the applicant by that time has
5 complied with the security requirements of Section 204; or

6 (2) the applicant's compliance with the security requirements of Section 204.

7 (e) Absent good cause, the department shall issue a license to an applicant if:

8 (1) the applicant has fulfilled all of the conditions set forth in Section 202 and
9 204;

10 (2) the applicant has complied with Section 203 and fulfilled the security
11 requirements of Section 204; or

12 (3) subsection (d) is applicable.

13 (f) An applicant whose application is denied may appeal the denial within [30] calendar
14 days following receipt of the notice of denial, and may request a hearing in conjunction with its
15 appeal in accordance with the [state administrative procedures act].

16 **Reporter's Notes**

17
18 The addition of the phrase "absent good cause shown" to subsection (e) grants discretion
19 to deny an application if the applicant has been allegedly engaged in violations of federal anti-
20 money-laundering or other regulations. Considering that there is a right to appeal denial of the
21 application, this power was suggested. This phrase is not included in subsection (d) because its
22 second sentence is intended to require prompt attention to applications.

23
24 The recommendation of 30 business days for the approval or rejection of an application
25 after the application is deemed complete is intended to address complaints from stakeholders in
26 the money services and virtual currency communities that approvals take far too long.

27
28 **SECTION 206. RENEWAL OF LICENSE.**

29 (a) At least [15] business days before the anniversary of license issuance, the licensee

1 shall pay a renewal fee set by the Department by regulation of:

2 (1) [decide amount or maximum percentage] of its [dollar or transaction] volume
3 in this state for the prior fiscal year measured as of its anniversary date if the [sum or number of
4 transactions] was less; or

5 (2) [decide higher amount of fee] if its volume in this state for the same period
6 was greater than [dollar amount or number of transactions].

7 (b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a
8 form and in a medium prescribed by the department. The renewal report must state or contain as
9 applicable:

10 (1) a copy of the licensee's most recent:

11 (A) reviewed annual financial statement if the licensee's virtual currency
12 business activity in this state amounted to [dollar amount or transaction number] or less in the
13 prior fiscal year measured as of its anniversary date;

14 (B) audited annual financial statement if the licensee's virtual currency
15 business activity in this state amounted to more than [dollar amount or number of transactions] in
16 the prior fiscal year measured as of its anniversary date; or

17 (C) if the licensee is a wholly owned subsidiary of a business person,
18 audited consolidated annual financial statement of the person;

19 (2) a description of any material change in the licensee's financial condition, any
20 material litigation involving the licensee, any license suspension or revocation proceeding
21 commenced or other action involving a license issued by another state on which reciprocal
22 licensing was based, any investigation by a federal, state or jurisdiction governmental unit or
23 agency involving the licensee, any data security breach, or any change in information since the

1 date of the reviewed or audited financial statement submitted under paragraph (1) that has not
2 been reported to the department] or reported on a required report or a copy of any report
3 submitted under Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m [as
4 amended];

5 (3) the number of virtual currency business transactions engaged in by the
6 licensee on behalf of persons in this state and the number of user's private keys or other
7 credentials received by the licensee for custody or control for the period since the license was
8 first issued or since the last renewal report if applicable;

9 (4) the dollar-equivalent of virtual currency in the custody or control of the
10 licensee as of the end of the month at least [30 calendar days] prior to the date of the renewal
11 report and the total number of users for whom the licensee had custody or control of virtual
12 currency on the same date;

13 (5) proof that the licensee continues to maintain the virtual currency necessary to
14 satisfy the mandate of Section 503, including permissible investments in accordance with any
15 regulation of the department issued under Section 208, a listing of each such investment and the
16 name of the qualified custodian holding the investment;

17 (6) proof that the licensee continues to meet the requirements of Section 207 for
18 minimum net worth;

19 (7) proof that the licensee continues to maintain adequate security as required by
20 Section 204; and

21 (8) A list of any locations in this state where the licensee operates its business or
22 where it operates any server related to its conduct of its virtual currency business activity.

23 (c) If a licensee does not pay its renewal fee or file its renewal report by the renewal date,

1 or by the end of any extension of time granted by the department, the license is suspended
2 automatically and the licensee’s authority to engage in virtual currency business activity in this
3 state shall cease. No notice or hearing shall be required for a license suspension for failure to
4 pay a renewal fee or to file a renewal report. The suspension shall be lifted if, within 20 calendar
5 days after the license was suspended, the licensee:

- 6 (1) files the renewal report and pays the renewal fee; and
- 7 (2) pays a fine not to exceed [\$500] for each day after suspension and prior to the
8 date that the licensee files the report and pays the renewal fee.

9 (d) The department shall provide prompt notice to the licensee of the lifting of any
10 suspension after the licensee has complied with subsection (c) (1) and (2). If the suspension is
11 lifted, all transfers made while the license was suspended remain valid.

12 (e) The department for good cause may grant an extension of the renewal date.

13 (f) Renewal of a license issued under the authority granted by Section 203 by this state
14 will be reviewed to ensure that the state that issued the original license has not revoked,
15 suspended or otherwise limited the license it granted.

16 **Reporter’s Notes**

17 This draft contains a new provision, recommended by a member of the Drafting
18 Committee, that is similar to U.C.C. §8-503 that provides that the virtual currency in a licensee’s
19 or provisional registrant’s custody or control is not subject to claims of the licensee’s or
20 registrant’s creditors. See Section 503 of this act.

21
22 In subparagraph (b)(1), the prospect arises that a small entity will not be required to have
23 or have an audited financial statement. In these cases, the entity may have a “reviewed” financial
24 statement and should provide it in lieu of a fully audited financial statement.

25
26 In subparagraph (b)(2), a clause has been added to clarify that any change in a license
27 issued by another state or jurisdiction that was the basis for reciprocal licensure under this act
28 needs to be disclosed in the renewal report, if not previously disclosed to the Department in this
29 state.

30

1 In subparagraph (b)(8), it may not be possible or practical to provide all addresses at
2 which the licensee or provisional registrant operates servers for its virtual currency business.
3 This draft retains this requirement for the purposes of eliciting comments on the practicality of
4 this requirement.

5
6 **SECTION 207. NET WORTH AND MINIMUM CAPITAL REQUIREMENTS;**
7 **PERMISSIBLE INVESTMENTS.**

8 [(a)] A licensee must provide proof of and maintain a minimum net worth of [\$35,000]
9 [or [2 to 5]] per cent of its proposed virtual currency business activity] for the purposes of
10 ensuring ongoing business operations and a sufficient reserve for winding down operations
11 without undue risk to users.

12 (1) The licensee may include in its calculation of net worth the type of virtual
13 currency that its virtual currency business activity involves but may not include in calculating its
14 net worth the virtual currency assets over which it has custody or control pursuant to the
15 principle set forth in Section 503.

16 (2) A licensee or an applicant may demonstrate that it has sufficient net worth to
17 continue to operate and wind down its operations if it provides the department with descriptions
18 of:

19 (A) any complex corporate structure and services of a corporate applicant,
20 with specific information about shared services and the extent to which capital is maintained on a
21 separate basis for one or more virtual currency businesses in the structure and the extent to which
22 it is blended;

23 (B) its anticipated flow of funds;

24 (C) its long-range flow of funds and plans for financial stability and
25 generation of revenues;

26 (D) its plans for making up funding gaps, including any commitments for

1 funding in hand; and

2 (E) its track record for raising funding in the past.

3 [(b) A provisional registrant under Section 210 must demonstrate to the department at the
4 time it registers that it has sufficient net worth to engage in the level of virtual currency business
5 activity it proposed to conduct as well as to wind down its operations. The department shall not
6 require the same level of net worth for a provisional registrant under Section 201 as it requires
7 for a licensee, but may require the provisional registrant demonstrate that it holds [2-5] percent
8 of estimated average amount of virtual currency business activity before the provisional
9 registrant commences virtual currency business activity in this state. The department may require
10 additional net worth to be demonstrated if it deems the provisional registrant's virtual currency
11 business activity to be growing at a rate faster than can be protected by the [2 to 5] percent
12 otherwise required by this subsection.]

13 **SECTION 208. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

14 (a) A licensee shall maintain, in addition to that amount of virtual currency to satisfy the
15 interests of all users that have given custody or control of virtual currency to the licensee
16 pursuant to Section 503, its permissible investments that have a value equal to at least ten and
17 one half per cent of the value of the virtual currency over which the licensee has custody or
18 control on behalf of users for the purposes of ensuring ongoing business operations and a
19 sufficient reserve for winding down operations without risk to users. The value shall be re-
20 computed at the end of each three calendar months.

21 (b) No virtual currency in the custody or control of a licensee on behalf of others may be
22 invested by the licensee.

23 (c) The department, by regulation, may:

1 (1) limit the extent to which a type of investment within a class of permissible
2 investments for licenses engaged in virtual currency business activities may be considered a
3 permissible investment, except for fiat money and certificates of deposit issued by a bank, but
4 shall allow the licensee to hold [percentage to be determined] of its permissible investments in
5 the type or types of virtual currency in which it deals in the ordinary course of business; and

6 (2) may prescribe or allow other types of investments the department determines
7 have safety substantially equivalent to permissible investments specified in any regulation
8 adopted under Section 209.

9 (d) The department may prescribed by regulation the requirements for entities to be
10 qualified custodians of investments required by this [act.]

11 **SECTION 209. TYPES OF PERMISSIBLE INVESTMENTS.** The Department by
12 regulation may specify the types of permissible investments that licensees and provisional
13 registrants shall hold so long as it permits licensees and provisional registrants to hold virtual
14 currency of the type or types over which they have custody or control on behalf of others or in
15 which they conduct virtual currency exchange activity under this [act]. The permissible
16 investments specified must include highly liquid investments.

17 **Reporter's Notes on Sections 207 to 209**

18
19 The rationale for requiring permissible investments and minimum net worth was
20 explained succinctly in commentary to the 2004 final version of the Uniform Money Services
21 Act:

22
23 1. Net worth requirements, in combination with bonding/security and permissible-
24 investment requirements, are a means of ensuring that a money transmitter has
25 sufficient resources to honor its obligations to customers. Only Article 2 licensees
26 are subject to net worth requirements. ... Net worth requirements are a means of
27 screening an applicant, at the time of their initial entry into the money-services
28 business, as to their ability to meet their obligations.

29 2. Only a minimal net worth requirement has been suggested because net worth is
30 used as an additional requirement to make sure that license applicants and

1 licensees have some resources for commencing and operating a money
2 transmission business. Section 207 has been bracketed because some States use
3 net worth as part of the safety and soundness mechanisms whereas other States
4 rely on bonding/security and permissible investment requirements instead.
5 This Act gives States the option of choosing between a combination of security, net
6 worth and permissible investment requirements as prudential measures for Article 2
7 licensees.
8

9 UNIFORM MONEY SERVICES ACT (LAST AMENDED OR REVISED 2004), 38, *available*
10 *at* http://www.uniformlaws.org/shared/docs/money%20services/umsa_final04.pdf. The
11 Uniform Money Services Act specified a minimum net worth of \$25,000, *id.* at 38, which may
12 need to be adjusted for the purposes of this act.
13

14 A virtual currency business may be expected to hold as part of its capital virtual currency
15 in the form in which it transacts business for its users, as well as other capital required for its
16 operations and the winding down of operations. Technology start-up companies often go
17 through more than one level of capital funding in their early years. This draft makes no
18 recommendation as to how the requirement to maintain a specific net worth should be managed
19 as a new entrant goes through its early capital. The Drafting Committee should discuss the pros
20 and cons of allowing a portion of net worth requirements in virtual currency, given the price
21 volatility to which virtual currency has been subject. A “mark-to-market” style requirement
22 could be particularly onerous for smaller virtual currency licensees and new entrants and appears
23 unnecessary for a regulated entity that holds its customers’ funds in trust and not subject to the
24 claims of its creditors.
25

26 The Drafting Committee considered a formula for minimum capital requirements is based
27 on the formula adopted for banks under Basel III, which requires at least 6 percent capital for
28 ongoing operations and 4.5 percent capital for winding down, based in part on the risk
29 assessment of the nature of the business activities of the licensee. The licensee will be required
30 to have this capital without regard to the value of the virtual currency over which it has custody
31 or control on behalf of users. For licensees and provisional registrants, an additional capital
32 requirement of 2 per cent of transaction value is specified to ensure that licensees have sufficient
33 means to meet obligations to their customers.
34

35 The issue of what is an appropriate minimum net worth for virtual currency businesses
36 may depend on many factors, including the nature of the services or products provided, and
37 relates to the recommendation in Section 503 of this draft that the virtual currency in the custody
38 or control of the licensee or provisional registrant is a bailment, not the property of the licensee
39 or provisional registrant and specifically is not subject to the claims of the creditors of the
40 licensee or provisional registrant pursuant to Section 503. As such, the Drafting Committee
41 heard discussion of what was suitable for this purpose, including a well-framed suggestion that a
42 Basel III approach of a specific percentage based on the dollar equivalent of the virtual currency
43 under custody or control for ongoing operations as well as a smaller percentage for winding
44 down operations. In the most recent round of comments, Observers questioned whether a Basel
45 III approach was suitable for businesses operating other than on a fractional reserve basis and
46 also whether the percentages suggested – respectively of 6 and 4.5 – were not too great to

1 encourage innovation in virtual currency businesses. As a result, a range of possible net worth
2 requirements is included in this Draft, including a 2% figure for provisional registrants and a
3 minimum of \$35,000 or a percentage for licensees.

4
5 **SECTION 210. PROVISIONAL REGISTRATION, REGISTRATION FEE, AND**
6 **REQUIREMENTS**

7 (a) A person may engage in virtual currency business activity in this state without first
8 obtaining a license under Section 201 if its volume of activity projected for the quarter that
9 follows does not exceed [dollar equivalence, number of transactions, or number of users to be
10 decided] and the person:

11 (1) files with the department a notice in the form prescribed by the department by
12 regulation of its intention to engage in virtual currency business activity in this state and reciting
13 the anticipated activity for its next fiscal quarter;

14 (2) pays a registration fee of [\$250] to the department;

15 (3) provides the department evidencing that it has registered with the Financial
16 Crimes Enforcement Network of the United States Department of the Treasury as a “money
17 services business” to the extent its virtual currency business activity is subject to that registration
18 requirement pursuant to that agency’s guidance, and that it has in place policies and procedures
19 to comply with the requirements of the Bank Secrecy Act and other applicable laws;

20 (4) agrees not to invest or pledge virtual currency in its custody or control on
21 behalf of others or to engage in the exchange or transfer of legal tender; and

22 (5) proves that it has policies and procedures in place to comply with [article]s 3,
23 5, and 6.

24 (b) When the virtual currency business activity of the provisional registrant under this
25 section exceeds [75] per cent of the [equivalent value, number of transactions, or number of

1 users] specified in its notice to the department under subsection (a)(1), the provisional registrant
2 must file an application for license with the department and may continue to operate past the
3 estimate provided under subsection (a)(1) so long as its application for license is pending.

4 (c) A provisional registration is not assignable or transferable and expires on the
5 occurrence of either of the following:

6 (i) an acquisition of the provisional registrant by any person or a merger of the
7 provisional registrant with another person; or

8 (ii) the [second] anniversary date of the provisional registration unless the virtual
9 currency of the provisional registrant remains below [75] percent of the estimated volume
10 declared in the original provisional registration under subsection (a)(1).

11 (d) The department may use any authority it has under the laws of this state or regulations
12 issued under the laws of this state, including the powers prescribed in [article] 4 to suspend or
13 revoke a provisional registration or to refuse to license a person that had filed a provisional
14 registration for cause shown.

15 (e) Provisional registration shall not be interpreted as a property right subject to due
16 process.

17 **Reporter's Note**

18 The proper threshold below which a “provisional registration” is appropriate has been the
19 subject of considerable discussion in the Drafting Committee and in comments from Observers.
20 Three alternatives have emerged that include using the value of the virtual currency business
21 activity in US dollar equivalent terms, the number of transactions, or the number of users. Each
22 has its proponents. Each is difficult to fix as a numerical proposition given the still relatively
23 small size of the market proposed to be regulated. In recent rounds of comments, Observers have
24 urged that a threshold of \$1 million be established for this purpose. Contrarians might observe
25 that that figure is significantly greater than would be tolerated under the Uniform Money
26 Services Act or state money transmitter statutes. To the extent that the goal of Section 210 is to
27 promote innovation and allow both academic research and beta testing to occur without the
28 necessity of full licensure or the risks of being prosecuted for engaging in unlicensed money
29 transmission or prepaid access activity under state laws or 18 U.S.C. Section 1960, a \$1 million

1 threshold seemed too high.

2
3 Some Observers also disagreed with the proposed dual licensure – separating for this
4 purpose licenses to engage in traditional money transmission and virtual currency business
5 activity – approach taken in this draft. Others supported it.

6
7 More Observers opposed using a facts and circumstances approach to determining
8 eligibility for “provisional registration” than supported it. For this reason, no facts and
9 circumstances approach is included in this Section.

10
11 Subsection (c) prohibits the assignment or transfer of a provisional registration, which
12 means that in advance of an acquisition or merger of a virtual currency business operating under
13 a provisional registration under this section, the acquiring or surviving entity must register as a
14 provisional registrant and meet the other requirements for such status under this act, or be a
15 person holding a license under this act, or be an applicant for a license under this act in a state
16 that permits provisional operation by persons who have applied for full licensure under this
17 article.

18
19 **[ARTICLE] 3**

20 **EXAMINATIONS, REPORTS, RECORDS, COOPERATION AND DATA-SHARING,**
21 **INTERIM REPORTS, CHANGE IN CONTROL, MERGER AND ACQUISITION, AND**
22 **ADVANCE NOTICE OF OTHER PROPOSED CHANGES**

23 **SECTION 301. AUTHORITY TO CONDUCT EXAMINATIONS.**

24 (a) The department may conduct an annual examination of a licensee or of any of a
25 licensee’s facilities or servers wherever located upon [5] business days prior notice to the
26 licensee.

27 (b) The department may examine a licensee at any time, without advance notice.

28 (c) The licensee shall pay the reasonable costs of the examination.

29 (d) Information obtained during an examination under this [act] may be disclosed only as
30 provided in Section 305.

31 **SECTION 302. REPORTS AND RECORDS.**

32 (a) For purposes of this Section, the term “licensee” shall include licensees and

1 provisional registrants.

2 (b) A licensee shall maintain a record of every virtual currency business transaction in
3 which it has engaged for a period of [five] years following the date of their creation and in a
4 condition that will allow the department to determine whether the licensee is complying with all
5 applicable laws, regulations, and orders. The books and records maintained by each licensee
6 shall include:

7 (1) a record of each virtual currency transaction made by the licensee on behalf of
8 a user or for the licensee's own account, including identification of the user, form of the
9 transaction, amount, date, payment instructions given by the user, cryptographic credentials used
10 by the user to authorize the transaction, Internet Protocol (IP) address used by the user or person
11 authorizing the transaction, other information used to authorize the transaction and the account
12 numbers, names and physical addresses of each party to the transaction that are users of the
13 licensee, and to the extent practicable, the other parties to the transaction;

14 (2) a record of the aggregate number of transactions and aggregate dollar values
15 of transactions by the licensee on behalf of a user or for the licensee's own account in this state
16 for the time period when the licensee holds a license from this state.

17 (3) a record of each transaction in which one form of virtual currency is
18 exchanged for legal tender or for another form of virtual currency.

19 (4) a general ledger posted at least monthly containing all asset, liability, capital,
20 income, and expense accounts for the licensee;

21 (5) a copy of each business call report that the licensee may be required to create
22 or provide to the department under any requirement of this state or of the registry;

23 (6) bank statements and bank reconciliation records for the licensee and the name,

1 account number, and physical address of each bank used by the licensee in the conduct of its
2 virtual currency business, regardless of the physical location of the bank; and

3 (7) a record of any dispute with a user and of any transaction that the licensee was
4 unable to complete for any reason.

5 (c) The items specified in subsection (a) may be maintained in any form of record in
6 addition to, but not in lieu of, the form of record in which any record was originally made.

7 (d) If records are maintained outside this state, the licensee must make them available to
8 the department on [three] business-days' notice communicated in a record.

9 (e) All records maintained by the licensee that are required by this [act] shall be open to
10 inspection by the department under this [act] or a regulation or order adopted pursuant to it,
11 regardless of their location.

12 **SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY.**

13 (a) Subject to Section 305 and under terms consistent with applicable laws concerning
14 privacy, consumer financial privacy, data protection, privilege, and confidentiality of any
15 applicable state and of the United States, the department may cooperate, coordinate, jointly
16 examine, consult, and share records and information with the [regulatory agency] of another
17 state, a relevant self-regulatory organization, or a federal or state regulator of banking or non-
18 depository providers, concerning the affairs and conduct of any licensee or provisional registrant.
19 The non-public personally identifiable information contained in transaction records of consumer
20 users of the licensee or provisional registrant may not be shared unless the sharing would be
21 permissible under 15 U.S.C. Section 6802(e)(5) or (e)(8) or 18 U.S.C. Sections 3401 et seq. [as
22 amended], or the consumer expressly consents.

23 (b) The department, absent good cause shown to the contrary, shall establish or

1 participate with other states in a central depository for filings required; cooperate in the
2 development and implementation of uniform forms for applications and renewal reports and the
3 conduct of joint administrative hearings or proceedings and civil actions; formulate joint
4 regulations, statements of policy, guidance and interpretative opinions and releases, and common
5 systems and procedures; and engage in joint notices of proposed regulations, forms, statements
6 of policy or guidance. The department shall not establish or participate in, directly or indirectly,
7 any central depository of consumer users' non-public personally identifiable information that
8 would be eligible for protection under 15 U.S.C. Section 6802(e)(5) or (e)(8) or 18 U.S.C.
9 Sections 3401 et seq. [as amended].

10 (c) In deciding whether and how to cooperate, coordinate, jointly examine, consult, or
11 share records and information under this section, the department may consider:

12 (1) maximizing effectiveness and uniformity of regulation and examination and
13 their implementation and enforcement for the benefit of users and licensees; and

14 (2) minimizing burdens on licensees without adversely affecting user protection
15 goals.

16 **Reporter's Notes**

17 References to 15 U.S.C. § 6802(e)(5),(e)(8), and to 18 U.S.C. §§3401 et seq. were added
18 at the suggestion of attendees at the April 2016 Drafting Committee meeting. They are intended
19 to provide financial privacy protection equal to what consumer and non-consumer customers of
20 other depository and non-depository providers of financial services enjoy.

21
22 The scope of Section 303 may be broader than comparable provisions applicable to
23 depository and other non-depository providers and thus may require further revisions.

24
25 **SECTION 304. CONFIDENTIALITY.**

26 (a) Except as otherwise provided in subsection (b), all information or reports obtained by
27 the department from an applicant or licensee and all information contained in or related to an

1 examination, investigation, operating or condition report prepared by, on behalf of, or for the use
2 of the department, trade secrets, and other financial and operational information not contained in
3 a report not otherwise available to the public, are confidential and are not subject to disclosure
4 under this state's [open records] law or the [open records] laws of a reciprocal licensing state. If
5 the department determines that a reciprocal licensing state cannot provide this protection, then, to
6 that extent, the records may not be released.

7 (b) This section does not prohibit publication of general information about virtual
8 currency business activity, a list of persons licensed under this [act], or of the aggregated
9 financial data concerning licensees in this state.

10 **SECTION 305. INTERIM REPORTS AND ADVANCE NOTICE OF OTHER**
11 **PROPOSED CHANGES.**

12 (a) A licensee shall file with the department within 15 business days a report detailing
13 any material change in information provided in the licensee's application or most recent renewal
14 report to the department, consistent with the requirements of Section 13 of the Securities
15 Exchange Act of 1934, 15 U.S.C. Section 78m [as amended].

16 (b) A licensee shall file with the department a report within 15 business days of any of:

17 (1) a change in physical location or the physical location of a server or of the
18 entity providing cloud computing or software as a service used in the licensee's virtual currency
19 business;

20 (2) an additional persons providing cloud computing or software as a service to
21 the licensee entity's physical location and server location;

22 (3) a material change in the licensee's business model to conduct its virtual
23 currency business;

1 (4) a change in the officers, directors, responsible individuals or principal
2 shareholders of the licensee’s virtual currency business activity ;and

3 (5) the name, physical address, and fingerprints of each new individual in the
4 capacity under paragraph (4).

5 **SECTION 306. CHANGE IN CONTROL.**

6 (a) In this section, “control” means the possession, directly or indirectly, of the power to
7 direct or cause the direction of the management and policies of a licensee, whether through the
8 ownership of stock of the licensee, the stock of any person that possesses the power, or
9 otherwise, and including a consolidation or entity conversion. Control shall be presumed to exist
10 if a person, directly or indirectly, owns, or holds with power to vote at least [ten] percent of the
11 voting stock of a licensee or of a person that owns, or holds with power to vote at least ten
12 percent of the voting stock of the licensee, except in the case of a licensee whose total volume of
13 virtual currency business activity does not exceed [specify a threshold] the power to vote at least
14 [30 to 50] per cent of the voting stock of the licensee. A person shall not be deemed to control
15 another person solely by reason of being an officer or director of the other person.

16 (b) A licensee shall notify the department of any proposed change of control of or merger
17 or acquisition of a substantial portion of the assets of the licensee’s virtual currency business
18 activity not less than 30 days prior to the proposed change. Prior to a change of control, the
19 person seeking to acquire control of a licensee shall submit an application to the department in a
20 record that meets the form acceptable to and provides the information required by this [act] or
21 regulations adopted pursuant to this [act], including detailed information about the applicant and
22 all directors, principal officers, principal stockholders, and principal beneficiaries of the
23 applicant.

1 (c) The department may determine upon application that a person does not, or will not
2 upon the taking of some proposed action, control another person. The determination shall be
3 made within 30 calendar days or such further period as the department may prescribe.

4 (d) The filing of an application under this section in good faith by any person shall relieve
5 the applicant from any obligation or liability imposed by this Section with respect to the subject
6 of the application until the department has acted upon the application. The department may
7 revoke or modify the determination under subsection (c), after notice and opportunity to be
8 heard, whenever in its judgment revocation or modification is consistent with this [article].

9 (e) In making the determination under subsection (c), the department may consider
10 whether:

11 (i) the person's purchase of common stock is made solely for investment purposes
12 and not to acquire control over the Licensee;

13 (ii) the person could direct, or cause the direction of, the management or policies
14 of the licensee;

15 (iii) the person could propose directors in opposition to nominees proposed by the
16 management or board of directors of the licensee;

17 (iv) the person could seek or accept representation on the board of directors of the
18 licensee;

19 (v) the person could solicit or participate in soliciting proxy votes with respect to
20 a matter presented to the shareholders of the licensee;

21 (vi) any other factor indicates that the person would or would not exercise
22 control; and

23 (vii) the public interest and the convenience and needs of the public would be

1 served if the person had control of the licensee.

2 (f) The department shall approve or deny every application for a change of control of a
3 licensee within [30] calendar days from the filing of an application deemed by the department to
4 be complete. The time period may be extended by the department, for good cause shown, for
5 additional reasonable time to enable compliance with the requirements and conditions of this
6 [act].

7 **Reporter's Note**

8 The percentage of voting power required to trigger this provision has been the subject of
9 comments from Observers. Although 10 per cent is a recognized trigger for other purposes, it
10 has been suggested that a threshold of 30 to 50 per cent is more appropriate for smaller
11 companies. For these reasons, all thresholds in this section are bracketed.

12

13 **SECTION 307. MERGERS AND ACQUISITIONS.**

14 (a) Except with the prior approval of the department evidenced in a record, no action
15 shall be taken that may result in a merger or acquisition of all or a substantial part of the assets of
16 a licensee or in a consolidation or entity conversion of a licensee.

17 (b) Prior to a merger or acquisition and unless waived for cause by the department after
18 receiving requested relevant information, an application containing a plan of merger or
19 acquisition shall be submitted to the department by the persons that are to merge or by the
20 acquiring or resulting person, as applicable. The plan must:

21 (1) be in form and substance satisfactory to the department;

22 (2) specify each person to be merged, acquired, consolidated, or converted, the
23 surviving person, and, if applicable, the person acquiring all or substantially all of the assets of
24 the licensee; and

25 (3) describe the terms and conditions of the merger or acquisition and the mode of
26 carrying it into effect, including any necessary changes to the cybersecurity programs of the

1 persons.

2 (c) The department shall approve or deny a proposed merger or a proposed acquisition of
3 all or a substantial part of the assets of a licensee, or consolidation or conversion as promptly as
4 possible, but no later than [30] calendar days after the application that is deemed by the
5 department to be complete. The time period may be extended by the department, for good cause
6 shown, for additional reasonable time to enable compliance with the requirements and conditions
7 of this [act].

8 (d) In determining whether to approve a proposed merger or acquisition, consolidation or
9 conversion, the department shall consider whether:

10 (1) the person's purchase of common stock is made solely for investment
11 purposes and not to acquire control over the licensee;

12 (2) the person could direct, or cause the direction of, the management or policies
13 of the licensee;

14 (3) the person could propose directors in opposition to nominees proposed by the
15 management or board of directors of the licensee;

16 (4) the person could seek or accept representation on the board of directors of the
17 licensee;

18 (5) the person could solicit or participate in soliciting proxy votes with respect to
19 any matter presented to the shareholders of the licensee;

20 (6) any other factor indicates that the person would or would not exercise control
21 of the licensee; and

22 (7) the public interest and the convenience and needs of the public are met.

1 **Reporter’s Notes**

2
3 This provision is closely modeled after, but is not a verbatim adoption of, Section 200.11
4 of the New York State Department of Financial Services’ June 2015 Virtual Currencies
5 regulation.

6
7 The “convenience and needs” factor is a common means of approving mergers under the
8 Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., because it allows regulators to
9 approve a combination that otherwise may exceed standards articulated first by the Supreme
10 Court in *Philadelphia National Bank* (1963) and the horizontal merger guidelines first adopted
11 by the Department of Justice roughly 30 years ago.

12
13 Given the tendency of new entrants in the technology industry to be acquired by other,
14 more established market participants, we have included changes of control and merger or
15 acquisitions of provisional registrants in the scope of Article 3.

16 **[ARTICLE] 4**

17 **ENFORCEMENT**

18
19 **SECTION 401. SUSPENSION AND REVOCATION AND POWER TO APPOINT**
20 **RECEIVER FOR LICENSEES.**

21 (a) The department may suspend or revoke a license or place a licensee in receivership on
22 an emergency basis if warranted, after prior notice and an opportunity to be heard, if the licensee:

23 (1) violates a material provision of this [act], a regulation or rule adopted or an
24 order issued under this [act] or other law applicable to virtual currency business activity;

25 (2) does not cooperate when legally required and after notice with an examination
26 or investigation by the department;

27 (3) engages in any [material] unsafe or unsound act or practice in the conduct of
28 its business affairs with residents of this state;

29 (4) engages in fraud, intentional misrepresentation or deception, or an unfair or
30 deceptive act or practice with residents of this state;

31 (5) suffers the suspension or revocation of its license in one or more other states;

1 (6) is convicted in this state or another state for felonious conduct related to its
2 virtual currency business activity or other payment or trust activity with residents of this state;

3 (7) is determined to have engaged in or does not contest a determination that it
4 engaged in unsafe or unsound practices with residents of this state; or

5 (8) becomes insolvent, suspends payments of its obligations otherwise than due to
6 a natural disaster and only for so long as is necessary to restore operations, makes a general
7 assignment for the benefit of its creditors, or files for protection under the federal bankruptcy or
8 state insolvency statute.

9 (b) The department shall by regulation specify what conduct or legal regulation is
10 material for the purposes of this [act].

11 (c) In determining whether a licensee is engaging in an unsafe or unsound act or practice
12 with resident of this state, the department may consider the size and condition of the licensee's
13 virtual currency business activity with residents of this state, the magnitude of any loss
14 experienced, the gravity of the act or practice or other violation of this [act], and the previous
15 conduct of the person involved.

16 (d) Except as set forth in subsection (e), an order revoking a license to engage in virtual
17 currency business activity shall be effective [one business day] after the order is served on the
18 licensee.

19 (e) An order to suspend virtual currency business activity shall be effective upon issuance
20 if the department finds a threat of imminent or irreparable harm to the public or the licensee.

21 (f) A license suspension or revocation, or a receivership, is subject to appeal to a court of
22 appropriate jurisdiction.

1 **Reporter's Note**

2
3 In subsection 401(d), this draft reduces the time that an order to suspend activity takes
4 effective from 10 business days to 1 business day. If the Department has grounds to suspend
5 activity under a license, there is no reason not to make the suspension effective quickly.
6

7 **[SECTION 402. SUSPENSION AND POWER TO APPOINT RECEIVER FOR**
8 **PROVISIONAL REGISTRANTS.** The department may suspend a provisional registrant's
9 operation to do business with residents of this state or place a provisional registrant in
10 receivership on an emergency basis if warranted, after prior notice and an opportunity to be
11 heard, on the same basis and subject to the same conditions and rights as are provided in Section
12 401.]

13 **Reporter's Note**

14 If a state enacts bracketed section 402, above, the remaining section of article 4 should be
15 renumbered.

16 **SECTION [403] [402]. ORDERS TO CEASE AND DESIST.**

17
18 (a) If the department determines that a person is engaging in virtual currency business
19 activity with residents of this state without holding a license from this state or is otherwise
20 operating illegally, or is engaging in unfair or deceptive acts or practices in its virtual currency
21 business activities, or in unsafe or unsound acts or practices in its virtual currency business
22 activities with residents of this state, the department may issue an order requiring the person to
23 cease and desist from engaging in virtual currency business activity in this state. The order
24 becomes effective upon service of it on the person. A person that is served with a cease and
25 desist order under this subsection may petition the [appropriate court], for a judicial order setting
26 aside, limiting or suspending the enforcement, operation or effectiveness of the order.

27 (b) An order to cease and desist issued under this section remains effective and
28 enforceable pending the completion of an administrative proceeding under the [citation to state

1 administrative procedure statute] or judicial order setting aside, limiting or suspending the
2 enforcement, operation or effectiveness of the order.

3 (c) An order to cease and desist expires unless the department commences an
4 administrative proceeding under the [citation to state administrative procedure statute] within
5 [ten business days] after the order is issued.

6 (d) A licensee or provisional registrant that is served with an order to cease and desist
7 may petition the [appropriate court] for a judicial order setting aside, limiting or suspending the
8 enforcement, operation, or effectiveness of the order pending completing of an administrative
9 proceeding under the [citation to state administrative procedure statute].

10 **SECTION [404] [403]. HEARINGS.** Except as otherwise provided in this [act], the
11 department may not suspend or revoke a license, place a licensee in receivership, issue an order
12 to cease and desist, or assess a civil penalty without notice and an opportunity to be heard.

13 **SECTION [405] [404]. CONSENT ORDERS.**

14 (a) The department may enter into a consent order at any time with a person to resolve a
15 matter arising under this [act], a regulation or rule adopted or an order issued under this [act]. A
16 consent order must be signed by the person to whom it is issued or by the person's authorized
17 representative, and must indicate agreement with the terms contained in the order.

18 (b) A consent order may provide that it does not constitute an admission by a person of a
19 violation of this [act] or a regulation adopted or an order issued under this [act].

20 **SECTION [406] [405]. CIVIL PENALTIES.**

21 (a) The department may assess a civil penalty, in an amount not to exceed [the amount it
22 deems suitable] [\$10,000] [per calendar day] [per violation] for [each calendar day] [each
23 violation] the violation is outstanding, against a person that:

1 (1) violates this [act] or a regulation or rule adopted or an order issued under this
2 [act];

3 (2) engages in unfair or deceptive acts or practices in its virtual currency activities
4 with residents of this state; or

5 (3) engages in unsafe or unsound acts or practices in its virtual currency business
6 activities with residents of this state.

7 (b) In a proceeding under subsection (a), the department may assess against the person
8 the costs and expenses for the investigation and prosecution and reasonable attorney's fees.

9 (c) The department may assess a civil penalty, in an amount [it deems suitable] [not to
10 exceed [\$50,000] per day] for each calendar day a person engages in virtual currency business
11 activity with residents of this state without holding a license from this state or being registered as
12 a provisional registrant in this state under Section 210.

13 **SECTION 406. NO PRIVATE RIGHT OF ACTION. THERE IS NO**
14 **INDIVIDUAL RIGHT OF ACTION FOR VIOLATIONS OF THIS [ACT].**

15 **Reporter's Notes**

16
17 The provisions of Article 4 are closely modeled after the 2004 amendments to the
18 Uniform Money Services Act ("UMSA"). The order of presentation has been changed slightly
19 from the UMSA. However, there is no provision for criminal penalties or on authority to remove
20 officers and directors in this Draft.

21
22 **[ARTICLE] 5**

23 **DISCLOSURES AND OTHER USER PROTECTIONS**

24 **SECTION 501. REQUIRED DISCLOSURES.**

25 (a) Each licensee and provisional registrant shall provide to any person seeking to use the
26 licensee's products or services the disclosures required by subsection (b) and any additional
27 disclosures that the department deems reasonably necessary for user protection and prescribe by

1 regulation under this section as to the times and the form required. Disclosures required by this
2 [Article] shall be made separately from any other information provided by the licensee and in a
3 clear and conspicuous manner in a record. Licensees may propose alternate disclosures more
4 appropriate for the licensee’s virtual currency business activity for the department’s approval.

5 (b) Prior to establishing a relationship with a resident of this state or a person located in
6 this state, the licensee and provisional registrant shall make at least the following disclosures to
7 the extent that they are applicable to the virtual currency business activity being undertaken by
8 the licensee or provisional registrant and the resident in this state:

9 (1) A schedule of all fees and charges that the licensee may assess against users,
10 the manner that fees and charges will be calculated if not set in advance and disclosed, and, if
11 relevant, the timing of such fees and charges.

12 (2) Whether the product or service provided by the licensee or provisional
13 registrant is covered by a form of insurance or otherwise guaranteed against loss by an agency of
14 the United States, including the Federal Deposit insurance Corporation or the Securities Investor
15 Protection Corporation, up to the full equivalent in United States dollars of the virtual currency
16 placed under the custody or control of or purchased from the licensee on the date of the
17 placement or purchase or by private insurance against theft or loss, including cyber theft or theft
18 by other means.

19 (3) A notice that transfer of virtual currency or digital units is irrevocable and any
20 exception to the irrevocability of transfer.

21 (4) A notice describing the licensee’s liability for unauthorized, mistaken, or
22 accidental transfers and, for the purposes of enabling users to obtain relief, describing the user’s
23 responsibility for providing notice to the licensee of transfer together with a description of the

1 basis for any recovery by the user from the licensee and of general error-resolution rights
2 applicable to any transaction.

3 (5) A notice that the date on which a transfer is made and the user's account is
4 debited may differ from the date or time that the user initiates the instruction to transfer or makes
5 a transfer of virtual currency from one account to another, or from one person to another.

6 (6) Whether the user has a right to stop a pre-authorized transfer of virtual
7 currency transfer and the procedure to initiate a stop-payment order or to revoke the
8 authorization for subsequent transfers.

9 (7) The user's right to receive a receipt, trade ticket, or other evidence of a
10 transfer or transaction.

11 (8) The user's right to at least 30 calendar days prior notice of a change in the
12 licensee's or provisional registrant's fee schedule, other terms and conditions of operating, or the
13 policies on the user's account. And,

14 (9) A disclosure of the fact that virtual currency is not legal tender.

15 (c) At the conclusion of a virtual currency or digital unit transfer or transaction involving
16 a resident of this state or a person located in this state, the licensee or provisional registrant shall
17 furnish to the user a confirmation in a record that contains:

18 (1) the name and contact information of the licensee or provisional registrant,
19 including information a user may need to file a complaint or ask a question;

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

21 and

22 (3) The fee charged to the user, including any charge for conversion of virtual
23 currency to another virtual currency or to money.

1 A licensee or provisional registrant may elect to furnish a single, daily confirmation for all
2 transactions on that day in lieu of a per-transaction confirmation if the licensee or provisional
3 registrant discloses its decision to furnish a daily confirmation to the user in the initial
4 disclosures provided under this section.

5 **SECTION 502. USER PROTECTION POLICIES AND PROCEDURES.**

6 (a) A licensee and provisional registrant shall establish and maintain user protection
7 policies and procedures in a record available to users and the department] and shall implement
8 the user protection and disclosure requirements of Section 501. The policies and procedures
9 required by this section shall include:

10 (1) any action or system of records required to comply with the provisions of this
11 [act] or applicable material provision of a law applicable to the licensee or provisional registrant
12 or the virtual currency business activity with residents of this state in which the licensee engages;

13 (2) procedures for resolving disputes between the licensee and users;

14 (3) procedures for detecting and deterring fraud that comply with subsection (b);

15 and

16 (4) procedures for users to report unauthorized, mistaken, or accidental transfers
17 or transactions.

18 (b) A license and provisional registrant shall provide not less than 30 calendar days'
19 notice to users of any proposed change in its user protection policies required by this [Article]
20 that pertain to dispute resolution, complaint filing, or reports of unauthorized, mistaken, or
21 accidental transfers or transactions.

22 (c) A licensee and a provisional registrant shall establish and maintain policies and
23 procedures to resolve complaints in a fair and timely manner and shall provide a notice of

1 resolution and the reasons for it to the complainant.

2 (d) A licensee and a provisional registrant shall make policies and procedures under
3 subsection (d) available in a clear and conspicuous manner separately from other disclosures
4 made to users and in the medium through which the user contacted the licensee or provisional
5 registrant. At a minimum, these disclosures shall include:

6 (1) the licensee's or provisional registrant's mailing address, the telephone
7 number that users may employ to contact the licensee or provisional registrant, and the physical
8 and electronic addresses to which users may send complaints;

9 (2) a statement that users may bring complaints to the attention of the department;

10 (3) the department's mailing address, website, and telephone number; and

11 (4) other information the department reasonably requires for an effective
12 complaint system, such as information about what statements of complaint should cover.

13 (e) For [five] years from the date of the resolution of a complaint, a licensee shall retain a
14 record of the complaint, resolution of the complaint, and notice to the user regarding the
15 resolution of the complaint. For three years from the date of resolution of a complaint, a
16 provisional registrant shall retain a record of the complaint, resolution of the complaint, and
17 notice to the user regarding the resolution of the complaint.

18 (f) A licensee and a provisional registrants shall maintain records so that user's virtual
19 currency or virtual currency credentials are separately identifiable from the virtual currency or
20 credentials of the licensee or provisional registrant.

21 **SECTION 503. VIRTUAL CURRENCY IN CUSTODY OR CONTROL OF**
22 **LICENSEES AND PROVISIONAL REGISTRANTS.** Except as otherwise provided in this
23 [act], an interest in virtual currency in the custody or control of a licensee or provisional

1 registrant on behalf of a user:

2 (1) is held for the entitlement of the user;

3 (2) is not the property of the licensee or provisional registrant; and

4 (3) is not subject to the claims of creditors of the licensee or provisional registrant.

5 **Reporter’s Note**

6 This provision was recommended by a member of the Drafting Committee and was
7 closely modeled after U.C.C. §8-503. Unlike demand deposits, the virtual currency in the
8 custody or control on behalf of users is not the property of the licensee or provisional registrant.
9 The proposed treatment of virtual currency in the custody or control of the entity subject to this
10 act should allow some reduction in the net worth requirements for those entities under this act. A
11 separate rationale for this treatment of the virtual currency relates to the declarations by agencies
12 of the United States Government, and some judges, that virtual currency is “property” and not
13 “currency.”
14

15 In the most recent round of comments, one Observer suggested the addition of a
16 provision parallel to U.C.C. § 8-511, which deals with priority disputes between the owner of the
17 virtual currency and the licensee’s creditors. This Draft does not include a provision parallel to
18 U.C.C. § 8-511 because Section 503 makes it clear that virtual currency held in the custody or
19 control of the licensee or provisional resident is not subject to the claims of the creditors of the
20 licensee or provisional registrant. Because a licensee has no title to the virtual currency in their
21 custody or control, purchasers, secured parties, and lienors can take nothing and, accordingly,
22 must take steps to protect themselves with guarantees, warranties and the like.
23

24 **[ARTICLE] 6**

25 **COMPLIANCE PROGRAMS AND POLICIES AND MONITORING**

26 **SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES**

27 **AND MONITORING.**

28 (a) A licensee and a provisional registrant shall create and maintain at the times,
29 respectively, prior to the issuance of a license or the filing of the registration, the following
30 programs, policies, and monitoring procedures: a cybersecurity program, a business continuity
31 program, a disaster recovery program, an anti-fraud program as required by Section 703, and an
32 anti-money laundering and prevention of terrorist activity funding program, and shall maintain

1 records containing each program, policy, and monitoring procedures at all times. Each program
2 must be designed to be adequate for the licensee's or provisional registrant's contemplated
3 virtual currency business activity with residents of this state, considering all the circumstances of
4 the participants, including users, that may be involved and the safe operation of the businesses
5 involved. The programs must be compatible with each other and not conflict with regulations
6 applicable to the licensee or provisional registrant under other applicable law. A program, if
7 adequate, may be a program already in existence at the licensee's or provisional registrant's
8 business, whether adopted by the licensee or provisional registrant on its own or under another
9 law.

10 (b) After the programs in subsection (a) are created and approved by the appropriate
11 authority and officers of the licensee or provisional registrant, a program director with adequate
12 authority and experience shall be employed to monitor each program, publicize it as appropriate,
13 recommend changes as desirable, and enforce it.

14 (c) A licensee or provisional registrant may:

15 (1) request advice as to compliance with this section;

16 (2) acquire advice from appropriate other sources; and

17 (3) with department approval, outsource, except for enforcement, the functions in
18 subsection (b).

19 (d) The fact that a particular program fails in a given instance or instances to meet its
20 goals is not a ground for liability if it was properly created and operated. Repeated failures are
21 evidence of a failure to properly monitor operation.

1 **SECTION 602. MANDATED COMPLIANCE POLICY.**

2 (a) A licensee prior to submitting its application for license and a provisional registrant at
3 the time of its registration, must establish and maintain a compliance policy in record form
4 designed to ensure, to the extent reasonable, compliance with:

5 (1) this act; and

6 (2) another state law if:

7 (i) the other law is relevant to the virtual currency business activity
8 contemplated by the licensee, or are relevant to the scope of this act; or

9 (ii) this act could assist in the purpose of the other law because violation
10 of that other law has a remedy under this act.

11 (b) A policy under subsection (a) must be compatible and not conflict with requirements
12 applicable to the licensee or provisional registrant under other applicable state or federal law.
13 The policy, if adequate, may be a policy already in existence at the licensee's or provisional
14 registrant's business, whether adopted by the licensee or provisional registrant on its own or
15 under other law.

16 (c) A licensee or provisional registrant may:

17 (1) request advice as to compliance with this section;

18 (2) acquire advice from appropriate other sources; and

19 (3) with department approval, outsource, except for enforcement, the functions in
20 subsection (d).

21 (d) After the policy in subsection (a) is created and approved by the directors of the
22 licensee, a policy director, who also may be the program director under section 801, with

1 adequate authority and experience shall be employed to monitor the policy, publicize it as
2 appropriate, recommend changes as desirable, and enforce it.

3 (e) The fact that the policy fails in a given instance or instances to meet its goals is not a
4 ground for liability if it was properly created and observed. Repeated failures are evidence of a
5 failure to properly monitor operation.

6 **SECTION 603. POLICIES AND PROCEDURES TO DETECT AND DETER**

7 **FRAUD.** Each licensee's or provisional registrant's policies for detecting and deterring fraud, at
8 a minimum, shall include:

9 (1) The identification and assessment of the material risks of its business operations
10 related to fraud;

11 (2) Procedures and controls to protect against other identified material risks; and,

12 (3) Procedures for periodic evaluation and revision of the anti-fraud procedures, controls,
13 and monitoring mechanisms.

14 **SECTION 604. POLICIES AND PROCEDURES TO DETECT AND DETER USE**
15 **OF ITS BUSINESS OPERATIONS FOR MONEY LAUNDERING AND TERRORIST**
16 **FINANCING PURPOSES.**

17 (a) Each licensee's or provisional registrant's policies for detecting and deterring money
18 laundering and terrorist financing, at a minimum, shall include:

19 (1) The identification and assessment of the risks of its business operations related
20 to money laundering and terrorist financing;

21 (2) Procedures and controls to ensure that, to the extent mandated by federal law
22 or guidance published by federal agencies responsible for enforcing such law, all reports
23 specified by federal currency reporting, record keeping, and suspicious transaction reporting

1 requirements as set forth in 31 U.S.C. Section 5311 [as amended], or 31 C.F.R. Part X [as
2 amended}, and any other federal or state laws pertaining to deterrence or detection of money
3 laundering or terrorist financing are filed on a timely basis.

4 (b) No licensee or provisional registrant shall be required to file copies of reports it may
5 make to federal authorities unless specifically required to do so by a regulation adopted or order
6 issued by the department.

7 **Reporter’s Notes**

8 The substance of Section 604, added to article 7 in this Annual Meeting Draft, was
9 derived from Article 6 of the previous Draft. The previous requirement to file all reports
10 required by federal law or regulations with the Attorney General of the state for anti-money-
11 laundering or prevention-of-terrorist-financing purposes was deleted in favor of a standard that
12 requires duplicate report filing only when the licensee or provisional registrant is required to file
13 duplicates after a specific regulation or order mandates the duplicate filing. The goal is to require
14 full compliance with these important requirements without adding to the compliance burdens of
15 licensees and provisional registrants.

16 **[ARTICLE] 7**

17 **MISCELLANEOUS PROVISIONS**

18 **SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
19 applying and construing this [act], consideration shall be given to the need to promote uniformity
20 of the law with respect to its subject matter among the [jurisdictions] that enact it.

21 **SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
22 AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the
23 Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001, et seq.)
24 [as amended] but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.
25 Section 7001(c)) or authorize electronic delivery of any of the notices described in Section
26 103(b) of that act (15 U.S.C. Section 103(b)) [as amended].
27

1 **SECTION 703. SAVING AND TRANSITIONAL PROVISIONS.**

2 (a) A license issued under [name of state’s existing Money Services Act or Money
3 Transmitter Act] that is in effect immediately before the effective date of this [act] remains in
4 effect as a license for its original purposes for its original duration unless revoked or suspended
5 by the department. A licensee under [name of state’s existing Money Services or Money
6 Transmitter Act] that does not intend to engage in virtual currency business activity under this
7 [act] is not required to inform the department of its intention. The department may deny a license
8 under this [act] to conduct virtual currency business activity if it finds that the licensee cannot
9 meet the requirements of this [act] but may not use the denial as grounds for suspension or
10 revocation of a license granted under the [Money Services Act or Money Transmitter Act] unless
11 the grounds independently provide a basis for action against that license. If the department
12 denies a license, it must notify a licensee within 30 business days of the department’s receipt of
13 the licensee’s notice of intent to engage in virtual currency business activity. The licensee is
14 entitled to appeal a denial to a court of appropriate jurisdiction within 60 calendar days after
15 receipt of the notice of denial.

16 (b) This [act] applies to virtual currency business activity on or after the effective date of
17 the [act]. A person engaged in virtual currency business activity after the effective date of this
18 [act] that does not hold a license issued under this [act], that is not is not exempt from this [act]
19 under Section 104], and that has not applied for a license or filed a provisional registration under
20 this [act], including a person that has obtained a license under the [Money Services Act or
21 Money Transmitter Act] [and a person that holds a charter as a trust company from this state] is
22 deemed to be conducting unlicensed virtual currency business activity in violation of this [act].

1 **Reporter’s Note**

2 If the jurisdiction enacting this act allows chartered trust companies or limited purpose
3 trust companies to engage in activities that would be governed by this act, a separate savings or
4 transitional subsection should be added to this [article]. Such a new subsection should specify
5 any limitations on the powers of the trust company or limited purpose trust company as well as
6 its preference on reciprocal licensing of trust companies or limited purpose trust companies, or of
7 recognizing cross-border activities of chartered trust companies or limited purpose trust
8 companies not domiciled in this jurisdiction.
9

10 **SECTION 704. SEVERABILITY CLAUSE.** If any provision of this [act] or its
11 application to any person or circumstance is held invalid, the invalidity does not affect other
12 provisions or applicability of this [act], which can be given effect without the invalid provision
13 or application, and to this end the provisions of this [act] are severable.

14 **SECTION 705. REPEALS.** The following Acts and parts of Acts are repealed:

15 (1)

16 (2)

17 (3)

18 **SECTION 706. EFFECTIVE DATE.** This [act] takes effect....