COIN CENTER

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To: Sarah Jane Hughes, Members, and Observers; ULC Regulation of Virtual Currency Businesses Act Committee.

Coin Center proudly supports the Uniform Law Commission's Uniform Regulation of Virtual Currency Businesses Act (URVCBA), and believes its swift passage into law at the several states is the most pro-innovation policy change that states can take with respect to open blockchain technologies. We support the model law because it will **create regulatory certainty and appropriate safe harbors.**

Certainty

The model law is meticulously drafted, commensurate with the complexity of the subject. Careful parsing easily reveals who *does* need to get a license, who *does not*, and what a licensee must do to protect their customers. This certainty is lacking in most existing state money transmission laws and the New York BitLicense. There's a very real threat that existing money transmission law already applies to companies in this space, and the vagueness with which those statutes and regulations are drafted will likely leave many such determinations to a judge or a regulator (and therefore to as many as 53 or more judges and regulators, for every state and territory that regulates money transmission).

By providing more certain and justiciable legal language, this act could mean that fewer people will go to jail because they didn't understand the laws that made their activities illegal, fewer people might avoid starting a business or conducting research and experimentation in these fields for fear of the uncertain legal consequences, and fewer consumers might be left unprotected from careless custodians of their cryptocurrency.

Safe Harbors

The act does not explicitly create a "safe harbor," but by clearly and carefully carving several activities out of the scope of its reach, it guarantees that a vast area of innovation will not be treated as activities requiring a license.

The act only regulates Virtual Currency Business Activity, not personal uses of the technology, or the technology itself. This activity is defined narrowly to include only three things relevant to Bitcoin, Ethereum or similar cryptocurrencies: exchanging, storing, or transferring as a customer-facing intermediary. Because those three activities don't necessarily have a plain meaning they are fastidiously defined:

> (5) "Exchange," used as a verb, means to assume control of virtual currency from or on 15 behalf of a resident, at least momentarily, to sell, trade, or convert: (A) virtual currency for legal tender, bank credit, or one or more forms of virtual currency; or (B) legal tender or bank credit for one or more forms of virtual currency.

> (20) "Store," except in the phrase "store of value," means to maintain *control* of virtual currency on behalf of a resident by a person other than the resident. "Storage" and "storing" have corresponding meanings.

> (21) "Transfer" means to assume *control* of virtual currency from or on behalf of a resident and to: (A) credit the virtual currency to the account of another person; (B) move the virtual currency from one account of a resident to another account of the same resident; or (C) relinquish control of virtual currency to another person.

As emphasized above, a person will only be found to be engaged in these regulated activities if they have *control* of other people's virtual currency. Critically (and unlike the bitlicense or other extant money transmission statutes) The draft has a narrow, commonsense, and easily applied definition of "control."

> (3) "Control" means: (A) when used in reference to a transaction or relationship involving virtual currency, power to execute unilaterally or prevent indefinitely a virtual-currency transaction.

Simply put, only truly custodial companies who hold customer cryptocurrency private keys (all of them or enough to make or prevent a valid transaction) are regulated under this act.

Therefore, this act clearly excludes a variety of pro-innovation and low-consumer-risk cryptocurrency activities from regulation, while still ensuring that risk-generating custodians are regulated.

Regulated:

- **Hosted wallet providers,**
- **Custodial exchanges**

Not regulated:

- **Miners**
- **Nodes**
- **Core Developers**
- **Software and Hardware Wallet Developers**
- **Multi-sig Wallet Developers (who don't hold sufficient keys to transact)**
- **Key Recovery Service Providers**
- **Lightning Network or Payment Channel Nodes**
- **Signers in a Sidechain Federated Peg**
- **Anyone else without sufficient keys to transact on behalf of another person.**

Additionally the act doesn't regulate persons or businesses who are not acting as intermediaries, but who are rather are using cryptocurrencies on their own behalf. The following persons (both individuals and businesses as defined) are exempt under the model act:

> **(7) a person using virtual currency, including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services, solely: (A) on its own behalf; (B) for personal, family, or household purposes; or (C) for academic purposes;**

This exemption is critical because:

1. **It clearly indicates that a person (again, including a business) is not regulated under the act if they are doing any of the following:**
   - **Inventing a new cryptocurrency or decentralized token and selling it to interested buyers.**
   - **Selling or buying cryptocurrency over the counter in order to open or close investment positions that they hold.**
   - **Helping their friends or family members buy bitcoin or other cryptocurrency.**
2. **There is no similar, clearly drafted exemption in state money transmission regulation or the BitLicense. If the ULC act is adopted by the states it supplants existing money transmission regulation with respect to these technologies, bringing clarity where there was none and authoritatively carving a substantial amount of non-customer-facing activities out from unnecessary and uncertain regulations.**
3. **FinCEN at the Federal level has a body of interpretive guidance (several letters answering questions posed by companies) that would exempt the same persons from**

having to do KYC/AML and other Bank Secrecy Act compliance. Therefore the model act better creates parity between state and federal standards than existing approaches.

This act, if adopted, will be the single best policy change states can make with respect to cryptocurrencies and blockchain technology. It will save innocent innovators from unwarranted prosecution, promote innovation by exempting non-custodial actors who should never be regulated, and help consumers of custodial services with common sense protections. Coin Center proudly supports the URVCBA.

Sincerely,

Peter Van Valkenburgh
Research Director