

D R A F T  
FOR DISCUSSION ONLY

# REGULATION OF VIRTUAL CURRENCIES ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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October 9 – 11, 2015 Drafting Committee Meeting

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*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

October 1, 2015

## **REGULATION OF VIRTUAL CURRENCIES ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

FRED MILLER, 80 S. 8th Street, 4200 IDS Center, Minneapolis, MN 55402-2274, *Chair*

BORIS AUERBACH, 5715 E. 56th St., Indianapolis, IN 46226

THOMAS J. BUIREWEG, 3025 Boardwalk St., Suite 120, Ann Arbor, MI 48108

WILLIAM H. CLARK, One Logan Square, 18th and Cherry St., Philadelphia, PA 19103-2757

THOMAS E. HEMMENDINGER, 362 Broadway, Providence, RI 02909-1434

KIERAN MARION, 430 W. Allegan St., 4th Floor, Lansing, MI 48933

H. KATHLEEN PATCHEL, 5715 E. 56th St., Indianapolis, IN 46226

KEITH ROWLEY, University of Nevada Las Vegas, William S. Boyd School of Law, 4505 S. Maryland Pkwy., Box 451003, Las Vegas, NV 89154-1003

EDWIN E. SMITH, 1 Federal St., Boston, MA 02110-1726

CHARLES A. TROST, 511 Union St., Suite 2700, Nashville, TN 37219-1760

SUZANNE B. WALSH, 185 Asylum St., Hartford, CT 06103-3469

V. DAVID ZVENYACH, 707 10th St. NE, Washington, DC 20002

SARAH JANE HUGHES, Indiana University Bloomington, Maurer School of Law, Baier Hall, 211 S. Indiana Ave., Bloomington, IN 47405, *Reporter*

### **EX OFFICIO**

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *President*

LANE SHETTERLY, 189 S.W. Academy St., Dallas, OR 97338, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

STEPHEN MIDDLEBROOK, 6410 Southpoint Pkwy., Suite 200, Jacksonville, FL 32216-8022, *ABA Advisor*

### **EXECUTIVE DIRECTOR**

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
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Chicago, Illinois 60602  
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<sup>1</sup> Reporter’s Note: the 2004 Amendments to the UMSA do not provide for removal of officers and directors; however, that authority is contained in the Final BitLicense Regulation and is typical in other financial services regulatory schemes and so it is included here for discussion.

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1 **REPORTER’S PRELIMINARY NOTE**

2  
3 Formatting: In this initial working draft legislation, reporter’s notes and questions appear  
4 as footnotes to the relevant provision, instead of in the more common presentation by ULC  
5 Reporters of “comments” following each section of the draft. The purpose is to allow the  
6 Drafting Committee members, Advisors, and Observers the opportunity to see each note or  
7 question directly in connection with the text to which it pertains. In the next version of the draft,  
8 the notes will appear in proper “comments” sections following each article of the legislation.  
9

10 Source documents and thanks: Source documents for this initial working draft include the  
11 2004 Amendments to the ULC’s Uniform Money Services Act, the Conference of State Bank  
12 Supervisors’ (CSBS) September 15, 2015 Model Regulatory Framework and its Draft Model  
13 Regulatory Framework released on December 16, 2014, definitions contained in guidance  
14 published by the United States Department of the Treasury’s Financial Crimes Enforcement  
15 Network (“FinCEN”) in March 2013 and early 2014, and, to a lesser extent, the Final  
16 “BitLicense” Regulation (Virtual Currency Businesses) promulgated by the New York State  
17 Department of Financial Services. Specific sources are not mentioned in the presentation of  
18 many sections of this initial working draft, but will be in subsequent drafts. All of these  
19 documents provided valuable source materials; all can assist in the crafting of a draft that can  
20 promote potentially greater uniformity and, to the degree feasible, reduce duplicative licensing  
21 requirements for providers already licensed for some purposes. Thanks go to the CSBS for  
22 hosting the April, 2015 stakeholders’ meeting, to the talented staff at the ULC, works shared by  
23 Dax Hansen of Perkins Coie and Ryan Straus of Riddell Williams, among others, and the May  
24 2015 Report by Peter Van Valkenburgh and Jerry Brito of CoinCenter, *State Digital Currency*  
25 *Principles and Framework*, [http://coincenter.org/2015/04/state-digital-currency-principles-and-](http://coincenter.org/2015/04/state-digital-currency-principles-and-framework/)  
26 [framework/](http://coincenter.org/2015/04/state-digital-currency-principles-and-framework/).  
27

28 Coverage: This initial working draft envisions that any person or entity that operates as a  
29 trusted intermediary in the performance of services or offering of products to third parties,  
30 whether consumers or not, should be licensed. The range of such intermediaries is large already  
31 and likely to expand.  
32

33 For now, the range includes at least the following types of digital currency businesses:  
34 digital currency payments intermediaries, digital currency converters and exchanges, providers  
35 of web wallet services and products, digital currency gateways, digital cash platforms and digital  
36 currency ATMs, and is intended to cover any form of business that handles, stores, maintains, or  
37 transfers or engages in the exchange or delivery of digital currency for money or real currency or  
38 of one form of digital currency for another, or – like money transmission traditionally – performs  
39 functions necessary to move or transfer digital currencies from one person to another or from one  
40 location to another even for the same person or beneficiary.  
41

42 If this statement of intent does not cover every option currently available or about to  
43 come to market, the Drafting Committee will wish to revise it to be more encompassing. To  
44 allow for segmentation of the licensure authority, if desired, this initial working draft reserves  
45 Articles 3, 4 and 5 for possible sub-industries – without intending to prejudge in any manner the  
46 wisdom of license segmentation.

1 The activating principles of this draft include the concept, to paraphrase CoinCenter’s  
2 Van Valkenburgh and Brito, that if a trusted intermediary operates in a space that walks and  
3 quacks like a financial services provider, it should be regulated like a financial services provider.  
4 Here, that concept translates into three work streams – licensure and prudential regulation,  
5 user/consumer protections, and, increasingly over the past few decades, the deterrence and  
6 detection of money laundering, economic sanctions, and terrorism support.  
7

8 In preparing this initial working draft, the Chairman encouraged that it follow to the  
9 extent possible guidance available from CSBS so that the process of enactment of the resulting  
10 draft uniform law might be smoother. The September 15, 2015 release of the final CSBS Model  
11 Regulatory Framework means that this initial working draft does not conform to every  
12 recommendation that CSBS made, but the Drafting Committee may choose to follow the CSBS  
13 lead even more closely than this initial working draft does.  
14

15 As an initial proposition, the Drafting Committee should decide whether to refer to the  
16 subject of this draft as “digital currency,” as is proposed, or as “virtual currency,” as both the  
17 CSBS Model Regulatory Framework and the New York State Virtual Currency Business  
18 Regulation (“BitLicense”) describes its subject matter. For possible future collaboration between  
19 the CSBS and ULC in this arena, the CSBS’ definition of the term “virtual currency” may be  
20 employed in lieu of the definition of “digital currency,” in draft section 102(7) of this initial  
21 working draft. Draft section 102(7) is modeled after the definition used by FinCEN in its 2013  
22 and 2014 guidance on this topic. The CSBS definition of “virtual currency” provides:  
23

24 Virtual Currency is a digital representation of value used as a medium of exchange, a unit  
25 of account, or a store of value, but does not have legal tender status as recognized by the  
26 United States Government. Virtual Currency does not include the software or protocols  
27 governing the transfer of the digital representation of value. Virtual Currency does not  
28 include stored value redeemable exclusively in goods or services limited to transactions  
29 involving a defined merchant, such as rewards programs.<sup>2</sup>  
30

31 Consistent with the policy expressed in the CSBS Model Regulatory Framework, this  
32 initial working draft proceeds from the policy goal that “entities performing activities involving  
33 third party control of virtual currency should be subject to state licensure and supervision like an  
34 entity performing such activities with fiat currencies.”<sup>3</sup> Because the CSBS Model Regulatory  
35 Framework was released after much work on this initial working draft had been completed, there  
36 will be variations between principles in the Framework and this initial working draft. One  
37 marked difference between this initial working draft and the Model Regulatory Framework  
38 involves the latter’s decision not to include an “on-ramp” option – that is, a temporary or  
39 conditional license – similar to the BitLicense. CSBS notes that, in addition to the consumer  
40 harm that can attend an intermediary operating on such a license, it was concerned about the

---

<sup>2</sup> CSBS Model Regulatory Framework, at 2.

<sup>3</sup> *Id.* at 2-3 (citing CSBS Policy on Virtual Currency Regulation and *State Digital Currency Principles and Framework*, Coin Center Report, Peter Van Valkenburgh and Jerry Brito (May 2015) (“Trusted intermediaries ... so long as they walk and quack like a money transmitting duck, offer the same case for regulation as traditional financial services.”), available at <http://coincenter.org/2015/04/state-digital-currency-principles-and-framework>.

1 “property rights” issues and due process issues that would attend it.<sup>4</sup>

2  
3 This working draft’s accommodates an “on-ramp” option to a degree and invites  
4 comments and suggestions from the Drafting Committee on them. These include possible lower  
5 licensing application or renewal fees, a possible provisional registration for providers who seek  
6 licenses under the reciprocal licensing option posed in Article 2, and a possible *de minimis*  
7 exception. The Drafting Committee should express preferences on which approach – favoring  
8 the CSBS Framework, the BitLicense or any of the many other possible approaches arising from  
9 States such as California and North Carolina – it wishes to see in the second working draft and  
10 whether it wishes to see a more expanded range of “on-ramp” provisions. (Note: both California  
11 and North Carolina appear to have abandoned legislation introduced in each state over the course  
12 of the last few months.)

13  
14 The BitLicense provides for “conditional licenses,” subject to heightened supervision in  
15 regard to the potential scope and frequency of examinations and also provides that conditional  
16 licenses expire two years after their issuance if the condition first imposed is not removed or the  
17 conditional license renewed. BitLicense, § 200.4(c). This initial working draft provides, instead,  
18 for “provisional registrations” for applicants proceeding under reciprocal licensing arrangements  
19 pursuant to Article 2’s provisions. The reason not to provide for conditional licenses is to avoid  
20 the creation of a property right that could be repealed only by a full-dress notice and hearing  
21 pursuant to any jurisdiction’s administrative procedures statute. As noted in footnotes  
22 accompanying Article 2, because CSBS does not prefer to permit “conditional licenses,” this  
23 initial working draft does not do so either. The concerns about both sufficient consumer  
24 protections and due process expressed in the CSBS Model Regulatory Framework were  
25 sufficient to keep “conditional licenses” out of this draft. I note, however, that I made need to  
26 devote additional time to determining whether a provisional registration prevents the due process  
27 issues that CSBS raised in connection with “conditional licenses.”

28  
29 Additionally, CSBS advocates use of a licensing system that can accommodate  
30 significant collaboration among a few or many States, such as the Nationwide Multistate  
31 Licensing System (“NMLS”) that CSBS operates.<sup>5</sup> In this initial working draft, Alternative C in  
32 Section 203 (“Reciprocal Licensing”) mentions this possible NMLS option for licensure. CSBS  
33 recommends that regulators be capable of exchanging information “in real time or close to real  
34 time” and that they can use a system such as the NMLS to “streamlin[e] all technical aspects of  
35 licensing, including application processing, background check processing, reporting, and  
36 complaint management.”<sup>6</sup> This initial working draft provides language to enable such forms of  
37 collaboration and seeks instruction on whether background check processing is an issue that  
38 should be spelled out in a uniform law, when the 2004 Amendments to the UMSA did not  
39 mention it. This draft also proposes the development of a common application in cooperation  
40 with CSBS, regardless of whether the Drafting Committee embraces full reliance on the NMLS.

41  
42 To add to the range of choices to be made, this initial working draft shifts from following  
43 the UMSA’s provisions on “permissible investments” to the “flexible” approach that CSBS

---

<sup>4</sup> CSBS Model Regulatory Framework, at 3-4.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

1 recommends. Draft Section 702 (“Types of Permissible Investments”) is currently bracketed for  
2 discussion during the first meeting of the Drafting Committee and whatever specific  
3 collaboration with CSBS the Chair and ULC may authorize. For references purposes, please  
4 consult Section 702 of the 2004 Amendments to the UMSA for the content of what a comparable  
5 provision in this act might contain.  
6

7 The provisions of Article 11 (“Compliance”) are drawn, nearly verbatim but not  
8 necessarily in the same order of presentation, from the BitLicense’s provisions. Compliance  
9 responsibilities is one area in which provisions of the BitLicense comport perfectly with the  
10 CSBS Framework.  
11

12 New York State and the CSBS have taken what appear to be different positions on the  
13 nature of anti-money-laundering program requirements and reports that each will require or  
14 propose. The 2004 Amendments to the UMSA take a somewhat different approach as well.  
15 Before the comparable provisions in this Act are drafted, the Drafting Committee may wish to  
16 discuss the scope they would like to see and give instructions.  
17

18 Beyond the definitions presented in this initial working draft, the hardest task in  
19 producing this draft relates to Article 10 on Disclosures and User Protections. The sources  
20 mentioned above in this note offer many alternatives to formulating these very important  
21 provisions, but in formulating those presented and in furtherance of potential collaboration with  
22 CSBS, this draft endeavors to follow the CSBS Framework principles for user protection, which  
23 CSBS refers to as “consumer protection.”  
24

25 This initial working draft does not make any provision for authorized delegates of the  
26 licensee on the theory that emergent digital currency transfers businesses that operate primarily  
27 by electronic media are not likely to have the need for remote agent locations, as has been the  
28 norm for traditional check cashers, currency exchanges, and money transmitters. This may be a  
29 mistaken impression. In the event that it is, the 2004 Amendments to the UMSA offer suitable  
30 examples of legislative text to govern what that Act referred to as “authorized delegates.” The  
31 Drafting Committee, Advisors and Observers may consult Section 802 of the UMSA for an  
32 example of what such text would provide.  
33

34 Another major issue is the extent to which “user protections” should extend to include  
35 provisions more commonly associated with commercial laws than laws providing for licensure  
36 and prudential supervision. The December, 2014 Report from the Study Committee touched  
37 upon the possibility of including some commercial law provisions that would focus on the  
38 execution of transfers that can be completed using digital currency payments intermediaries, and  
39 the rights and liabilities that flow from transfer execution. If the Drafting Committee is  
40 interested in seeing how commercial law provisions could play out, Stephen T. Middlebrook, one  
41 of the ABA’s Business Law Section Advisors to the Alternative and Mobile Payments Study  
42 Committee, and I have written an article advocating a commercial law for digital currency  
43 intermediaries that is about to be in print. I can make copies of the article in draft form available  
44 for the Drafting Committee’s use.  
45

1 And, finally, as noted in the CSBS Model Regulatory Framework,  
2

3 To ensure that existing laws and regulations can be implemented in the event of a failure  
4 [of a digital currency transfers or custody provider], CSBS added a strength and stability  
5 component that policies and procedures be in place to protect customer access to funds in  
6 the event of a failure. Entities that manage private keys for a public ledger risk losing  
7 customer funds if the private keys become unavailable upon failure. At a minimum,  
8 policies and procedures should cover how private keys are transferred or recovered in the  
9 event a licensee goes out of business.

10  
11 Because of the importance of this subject to the preservation of customer and consumer access to  
12 their assets, this is a topic that requires additional consultation by the Drafting Committee and  
13 with the CSBS.

14  
15 Readers will note that this initial working draft leaves open the text of certain standard  
16 state licensure scheme provisions and specifically leaves open for consultation with other ULC  
17 Drafting Committees or the CSBS other sections. In the case of the former, the standard  
18 provisions are pro forma and do not require the same degree of attention from the Drafting  
19 Committee at this stage as others.

20  
21 Finally, readers should know that the Chairman of the Drafting Committee has not  
22 approved the text presented below. It is presented in the spirit of a discussion draft. The Reporter  
23 is responsible for all controversies and errors or omissions in the text below.



1 to include digital units of exchange that (i) have a centralized repository or administrator, (ii) are  
2 decentralized and have no centralized repository or administrator, or (iii) may be created or  
3 obtained by computing or manufacturing effort.

4 (9) “Digital Currency” shall not be construed to include any of the following:

5 (A) Digital units that are used solely within online gaming platforms, have no  
6 market or application outside of those gaming platforms, cannot be converted into, or redeemed  
7 for, money or Digital Currency, and may or may not be redeemable for real-world goods,  
8 services, discounts, or purchases.

9 (B) Digital unites that can be redeemed for goods, services, discounts, or  
10 purchases as part of a customer affinity or rewards program with the issuer and/or other  
11 designated merchants or can be redeemed for digital units in another customer affinity or rewards  
12 program, but cannot be converted into, or redeemed for, money or Digital Currency. Or,

13 (C) Any digital units that cannot be converted into legal tender or otherwise act as  
14 a substitute for real currency.

15 (D) Digital units used as part of Prepaid Cards.

16 (9) “Digital Currency Transfers Business Activity” means the conduct or any one of the  
17 following types of activities involving [this State] or a Resident [of this State]:

18 (A) Engaging as a business in issuing or circulating a digital currency or having  
19 the authority to redeem or withdraw from circulation the same form of digital currency as it  
20 issues or circulates;

21 (B) Engaging as a business in the exchange of digital currency for money, real  
22 currency, funds, or other digital currency or in the conversion of one digital currency to one or  
23 more digital currencies or of one digital currency to money or to one or more currencies of one

1 or more Governments, including through the offering or operation of a digital cash platform or  
2 ATM machine;

3 (C) Receiving Digital Currency for Transmission or Transmitting Digital  
4 Currency, except where the transaction is undertaken for non-financial purposes and does not  
5 involve the transfer of more than a nominal amount of Digital Currency;<sup>9</sup>

6 (D) Storing, holding, or maintaining custody or control of Digital Currency on  
7 behalf of others, including by hosting one or more Web Wallets, as a customer business;

8 (E) Buying and selling Digital Currency as a customer business;

9 (F) Performing Exchange Services as a customer business; or

10 (G) Controlling or administering a Digital Currency.<sup>10</sup>

11 The term does not include development or dissemination of software related to Digital Currency  
12 activity, or the provision or sale of prepaid access or as a dealer in foreign exchange as those  
13 terms are defined in federal statutes or regulations. The term also does not include a person that  
14 obtains digital currency to purchase goods or services or any person excluded pursuant to section  
15 103 of this [act].<sup>11</sup>

16 (10) “Digital currency exchange” means receipt of revenues or other consideration from  
17 the exchange of one form of digital currency for another form of digital currency, or the  
18 exchange of Digital Currency for Money of one Government, or the exchange of Money of one  
19 Government for a Form of Digital Currency;

---

<sup>9</sup> Reporter’s Note: This provision is mentioned in the BitLicense. The Drafting Committee should discuss whether they want to allow the exception for transactions undertaken for “non-financial purposes” or those involving transfers of no “more than a nominal amount of Digital Currency.”

<sup>10</sup> Reporter’s Note: “Mining” is not covered by FinCEN’s guidance, as adjusted by guidance letters issued in early 2014. Miners “administer” the Bitcoin block chain. The Drafting Committee might want to adjust this definition to exclude miners who are not engaged in administering the block chain or other ledger.

<sup>11</sup> Reporter’s Note: This definition is an amalgam of the guidance provided by FinCEN in 2013 and 2014 and the definition of “Virtual Currency Business Activity” contained in the BitLicense, § 200.2(q) (2015).

1 (11) “Digital currency transfers” means ...

2 (12) “Executive Officer” means a president, chairperson of the executive committee,  
3 chief financial officer, responsible individual, or other person who performs similar functions  
4 regardless of their title;

5 (13) “Fiat Currency” means ....<sup>12</sup> – an alternative formulation is CSBS’ definition of  
6 “Sovereign Currency;”<sup>13</sup>

7 (14) “Gateway” means a network participant takes deposits of one Digital Currency in  
8 exchange for credits to be used on the network and capable of exchanging or of arranging  
9 exchanges of one currency for another by employing intermediaries in one or more transactions  
10 as necessary to complete the exchange.

11 (15) “Licensee” means a person licensed under any form of license under this [act];

12 (16) “Monetary value” means a medium of exchange, whether or not redeemable in  
13 money;<sup>14</sup>

14 (17) “Money” means a medium of exchange that is authorized or adopted by the United  
15 States or a foreign government as a form of legal tender by government decree, regulation, or  
16 law. The term includes a monetary unit of account established by an intergovernmental  
17 organization or by agreement between two or more governments, including in tangible or digital  
18 form;

19 (18) “Outstanding” means ....<sup>15</sup>

---

<sup>12</sup> Reporter’s Note: The Drafting Committee may want to include a definition of “Fiat Currency” as the BitLicense does. I am not persuaded it is necessary here.

<sup>13</sup> CSBS Model Regulatory Framework, at 3.

<sup>14</sup> Reporter’s Note: This definition is drawn from the UMSA. The Drafting Committee should decide if it wishes to include it here.

<sup>15</sup> Reporter’s Note: This definition is a placeholder until the Drafting Committee decides whether it is needed. Practically speaking, many digital currency transfers can be completed P2P and so quickly that there is little intervening “float” or credit risk. Others, however, require a series of transfers much like a commercial wire transfer to move the originator’s initial form of digital currency into an intermediary’s hands for exchange for another form

1 (19) “Payments Intermediary” means a person, other than a licensed [money services  
2 business or money transmitter] or a regulated bank that engages in offering and providing  
3 transaction execution services for third parties for which it receives compensation or  
4 consideration.

5 (20) “Person” means an individual, corporation, business trust, estate, trust, partnership,  
6 limited liability company, association, joint venture, government; government subdivision,  
7 agency or instrumentality; public corporation; or any other legal or commercial entity, regardless  
8 of how organized;

9 (21) “Qualified Custodian” means a bank, trust company, national bank, savings bank,  
10 savings and loan association, federal savings association, credit union, or federal credit union in  
11 the State of [name of this State], subject to the prior approval of the superintendent/  
12 commissioner, eligible to hold permissible investments on behalf of a licensee under this [act] .  
13 To the extent applicable, terms used in this definition shall have the meaning ascribed by the  
14 State [Banking Law];

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

17 (23) “Reciprocity Agreement” means a bilateral or multilateral arrangement among the  
18 States that permits the recognition of a license granted by another State by the [superintendent/  
19 commissioner] of [this State] subject to any condition imposed by the participating States.

20 (24) “Responsible individual” means an individual who is employed by a licensee and

---

of digital currency or for money of one Government before finally reaching the intended beneficiary in the intended final form of the exchange. In this second subset of transfers, float and credit risks may arise, even if they may – stress may – be lower or shorter in time than with legacy providers’ wire transfers, for example. The UMSA definition of “outstanding” read: “... with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.” UMSA § 102 (15) (2004).

1 has principal managerial authority over the provision of digital currency business services by the  
2 licensee in this [State].

3 (25) “State” means a State of the United States, the District of Columbia, Puerto Rico, the  
4 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
5 the United States.

6 (26) “[State] Resident” means any Person that resides, is located, has a place of business,  
7 or is conducting business in [this State], whether by means of a physical location or via the  
8 Internet or other electronic media;

9 (27) “Stored value” means monetary value that is evidenced by an electronic record, but  
10 does not include substitutes for monetary value or digital currency as defined in this [act];

11 (28) “Substitutes for monetary value” means ... ;

12 (29) [“Superintendent/ commissioner”] means the [state superintendent/ commissioner of  
13 banks or other senior state regulator empowered to license digital currency businesses under this  
14 [act];

15 (30) “Transmission” means the transfer, by or through a third party, of Digital Currency  
16 from a Person to a Person, including the transfer from the account or storage repository of a  
17 Person to the account of storage repository of a Person;

18 (31) “Trust company” means a person licensed or chartered by this state or any state with  
19 which this state has reciprocal licensing arrangements as a trust company or a limited purpose  
20 trust company under the laws of this state or any other such state.<sup>16</sup>

21 (32) “Unsafe or unsound practice” means a practice or conduct by a person licensed to

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<sup>16</sup> Reporter’s Note: Some states treat trust companies chartered by any other state as exempt from their “money services” or “money transmitter” license requirements (Illinois, for example) and others (including California) only exempt those trust companies that they themselves charter.

1 engage in digital currency transmission that may pose financial risks to a licensee or to its  
2 customers' ability to redeem digital currency, money, or other value being held by the licensee,  
3 including risks of material loss, insolvency, dissipation of the licensee's assets, or otherwise  
4 materially prejudices the interests of its customers or of customers' ability to redeem digital  
5 currency, money, or other value being held by the licensee.<sup>17</sup>

6 (33) "Vault" means a ....

7 (34) "Web Wallet" means a collection of private keys associated with a digital currency  
8 address on a public ledger, whether distributed to one or more devices, including but not limited  
9 to a mobile app, that through software allows the provider (the person in control) to spend or  
10 manage the digital currency, query the public ledger and report on the amount of digital currency  
11 available, generate new addresses to receive digital currency, allow the user to send digital  
12 currency to addresses of the user's choosing, track or observe transactions' confirmation status,  
13 make a back-up copy of the wallet, or restore a copy of the wallet, and held by an external  
14 provider.<sup>18</sup>

15 **SECTION 103. EXCLUSIONS.** This [act] does not apply to<sup>19</sup>:

16 (1) the United States or a department, agency, or instrumentality thereof;

17 (2) money transmission by the United States Postal Service or by a contractor on behalf  
18 of the United States Postal Service;

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<sup>17</sup> Reporter's Note: This definition is slightly broader than the 2004 amendments to the Uniform Money Services Act.

<sup>18</sup> Reporter's Note: At this time, web wallet providers are not covered by any form of deposit insurance offered by a government and, with the exception of providers covered by BitLicenses issued by New York State, are not regulated. For more information on digital wallets generally, see Pedro Franco, UNDERSTANDING BITCOIN 123-142 (John Wiley & Sons, 2015).

<sup>19</sup> Reporter's Question: This draft does not contain a *de minimis* exception, but that is a topic on which the Drafting Committee might focus. A *de minimis* exception could proceed from a cap on the number of transactions in a year, a cap on the equivalence of United States dollars transferred, or a combination of both. A *de minimis* exclusion could be placed among the exclusions in Section 103, or in the definition of "digital currency transfers business" in Section 102.

1 (3) A state, county, city, or any other governmental agency or governmental subdivision  
2 of a State;

3 (4) A commercial bank, bank holding company, office of an international banking  
4 corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service  
5 Corporation Act [12 U.S.C. Section 1861-1867 (Supp. V. 2011)], or corporation organized under  
6 the Edge Act [12 U.S.C. Section 611-633 (Supp. V. 2011)] under the laws of a State or the  
7 United States if it does not issue, sell, or provide digital currency, payment instruments, or stored  
8 value through a person that is not a licensee under [this act].<sup>20</sup>

9 (5) Electronic funds transfer or governmental benefits for a federal, state, [county], or  
10 governmental agency by a contractor on behalf of the United States or a department, agency, or  
11 instrumentality thereof, or a State or government subdivision, agency or instrumentality thereof.

12 (6) A board of trade designated as a contract market under the federal Commodity  
13 Exchange Act [7 U.S.C. Section 1-25 (2011)] or a person that, in the ordinary course of business,  
14 provides clearance and settlement services for a board of trade to the extent of its operation as or  
15 for such a board.

16 (7) A registered futures commission merchant under the federal commodities laws to the  
17 extent of its operation as such a merchant.

18 (8) A person that provides clearance or settlement services pursuant to a registration as a  
19 clearing agency or that holds an exemption from such registration granted under the federal  
20 securities laws to the extent of its operation as such a provider.

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<sup>20</sup> Reporter's Note: The Final BitLicense Regulation uses an alternate formulation of the bank exemption that the Drafting Committee could consider. It requires that commercial banks and other chartered depository institutions obtain permission from the Superintendent/ commissioner to engage in new virtual currency activities. The Clearing House noted its objection to this BitLicense requirement in its February 13, 2015 comment on the Conference of State Bank Supervisors Model Framework. Thus, for the purpose of this initial working draft, I have followed the preference of The Clearing House, rather than the model offered by the Final BitLicense Regulation.

1 (9) An operator of a payment system to the extent that it provides processing, clearing, or  
2 settlement services, solely between or among persons otherwise excluded by this [act], [in  
3 connection with wire transfers, credit or debit card transactions, stored-value transactions,  
4 automated clearing house transfers, or similar funds transfers.

5 (10) A person registered as a securities broker-dealer under federal or state securities  
6 laws to the extent of its operation as a broker-dealer.

7 (11) A person who obtains convertible digital currency to the extent that the person uses  
8 it to purchase real or virtual goods or services on the user's own behalf or for their own  
9 investment purposes;

10 (12) A person who mines or manufactures digital currency and uses it solely for their  
11 own purposes, such as to purchase goods or services on the user's own behalf, including paying  
12 debts previously incurred in the ordinary course of the user's business (including the debts of its  
13 owner(s)), or in the case of a corporate user, making distributions to shareholders or its own  
14 investment purposes, even if it is necessary to convert the digital currency to currency or funds in  
15 order to do so, so long as the person is not engaged in a business service performed on behalf of  
16 another.

17 (13) A person that converts digital currency into currency or another convertible digital  
18 currency for the person's own behalf and not in the course of a business service performed on  
19 behalf of another.

20 (14) A person engaged in activities that, in and of themselves, do not constitute accepting  
21 or transferring currency, funds, or the value of funds or digital currency that can be converted  
22 into currency, funds, or the value of funds.

1 (15) A person engaged in the business of dealing in foreign exchange.<sup>21</sup> And,

2 (16) A person engaged in the development and dissemination of software in and of itself  
3 to support the digital currency transfer businesses of others and not otherwise engaged as a  
4 business in transmission or conversion of digital currency on behalf of others.

## 5 ARTICLE 2

### 6 GENERAL PROVISIONS

#### 7 SECTION 201. LICENSE.

8 (a) License required.<sup>22</sup> A person may not engage in any digital currency business or  
9 advertise, solicit, or hold itself out as providing digital currency ... unless the person:

10 (1) Is licensed under this article;

11 (2) Is licensed by a State with which this State has a reciprocity agreement for  
12 licensure of digital currency businesses; or

13 (3) Is exempt under this [act] from licensure.

14 (b) Exemption from licensure requirements. A person exempt from this [act] pursuant to  
15 section 103 is exempt from licensure requirements of this [act.]

16 (c) A license issued under this [act] is not transferable or assignable.

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<sup>21</sup> Reporter's Note: **Source:** 31 C.F.R. § 1010.100(ff)(1) ("dealer in foreign exchange" exempt from FinCEN's definition of "money transmission" because such dealers must deal in the currencies of two or more countries or other monetary instruments, funds, or other instruments in the currency of one or more countries for the currency, or other monetary instruments, funds, or other instruments denominated in the currency of one or more countries, to qualify).

<sup>22</sup> Reporter's Questions: (1) The Uniform Money Services Act has specific provisions for licensure exemptions for authorized delegates of licensees. This has been omitted from this first draft because, in the different environment in which digital currencies circulate and are exchanged, the Drafting Committee may determine that all persons engaged in the transmission or exchange, other than those exempted, should be required to be licensed. Should the Drafting Committee want to exempt authorized delegates, that provision would be subsection (c) and the subsection (c) shown would become subsection (d).

(2) The Uniform Money Services Act permits persons licensed as money transmitters to engage in other services, including check cashing and currency exchange, without obtaining additional licenses from the state(s) that issued the money transmitter license to such person. How does the Drafting Committee wish to handle that subject?

1           **SECTION 202. APPLICATION FOR LICENSE.**

2           (a) A person applying for a license under this [article] shall do so in a form and in a  
3 medium prescribed by the [superintendent/ commissioner]. The application must state or contain:

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

7                   (2) the legal name of the executive officer of the applicant, his or her residential  
8 and business address(es), and any former names or fictitious names used by that person;

9                   (3) the legal name of every responsible individual who is performing or is  
10 expected to perform managerial authority over the provision of services covered by this [act] in  
11 this [State];<sup>23</sup>

12                   (4) a description of the proposed, current, and historical business(es) of the  
13 applicant, including detail on the products and services provided and to be provided, all  
14 associated website addresses, the jurisdictions in which the applicant is engaged in any form of  
15 business, the principal place of business, the projected customer base together with any specific  
16 marketing targets, and the physical address of any current or proposed operation in this [State];<sup>24</sup>

17                   (5) a list of any criminal convictions and deferred prosecution agreements of the  
18 applicant and any [State] or the United States government and of any industry suspensions or  
19 bars imposed by any regulatory or law enforcement agency for any line of business;

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<sup>23</sup> Reporter’s Note: The BitLicense requires fingerprints and photographs for each individual applicant, and for each principal officer, principal stockholder, and principal beneficiary of any trust connected with the proposed virtual currency business to be licensed. § 200.4(a)(5). Additionally, it requires detailed background information, § 200.4(a)(3), and a background report prepared by an independent investigative agency acceptable to the Superintendent/ commissioner of the Department of Financial Services on each individual applicant or on principal officer, principal shareholder or principal beneficiary of the applicant for license. § 200.4(a)(4). The Drafting Committee should give its views on whether it wishes to require this additional information or to provide explicit authority for the [regulatory agency or senior official] to require such information.

<sup>24</sup> Reporter’s Note: This provision is nearly verbatim from BitLicense Section 200.4(a)(8).

1 (6) a list of any material litigation in which the applicant has been involved in the  
2 [10]-year period immediately preceding the submission of the application, determined in  
3 accordance with generally accepted accounting principles and to the extent that it would be  
4 required to be disclosed in the applicant's annual audited financial statements, reports to  
5 shareholders, or similar records or reports;

6 (7) a list of any other [States /jurisdictions] in which the applicant is licensed to  
7 provide services and any license revocations, suspensions or other disciplinary actions taken  
8 against the applicant in another [State/ jurisdiction];

9 (8) information concerning [any bankruptcy or receivership proceedings affecting  
10 the applicant, the executive officer, or any responsible individual] in the past 10 years;

11 (9) the name(s) and address(es) of any bank in which applicant plans to deposit  
12 any money belonging to its customers or through which any digital currency business of the  
13 applicant is expected to be performed;

14 (10) a description of the source of money and credit to be used by the applicant to  
15 provide any digital currency business in this [State];

16 (11) the locations at which the applicant currently uses or expects to use in the  
17 next six months the digital currency it expects to hold on behalf of its customers;

18 (12) a description of any money services or money transmitter licenses that the  
19 applicant conducts in any other [jurisdiction/ State] and a copy of every license of current or past  
20 validity held by the applicant from each such [jurisdiction/ State];

21 (13) a description of any other lines of business engaged in or expected to be  
22 engaged in by the applicant in this [State];

23 (14) If applicable, a copy of any insurance policy(ies) maintained for the benefit

1 of the applicant, its directors and officers, or its customers, including of any business interruption  
2 insurance;<sup>25</sup>

3 (15) an explanation of the methodology that the applicant proposes to use to  
4 calculate the value of Digital Currency in United States Dollars or any other money of a  
5 Government;<sup>26</sup> and,

6 (16) other information that the [superintendent/ commissioner or any common  
7 application approved by the superintendent/ commissioner] reasonably may require.

8 (b) If the applicant is a corporation, limited liability company, partnership, or other entity,  
9 the applicant also shall provide:

10 (1) the date of the applicant's incorporation or formation and the State or country  
11 of incorporation or formation;

12 (2) if applicable, a certificate of good standing from the State or country in which  
13 the applicant was incorporated or formed;

14 (3) a brief description of the structure or organization of the applicant, including  
15 any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

16 (4) the legal name, any fictitious or trade name, all business and residential  
17 addresses, and the employment in the [10]-year period immediately preceding the submission of  
18 the application of each executive officer, manager, director, or person that has control of the  
19 applicant;

20 (5) a list of any criminal convictions and material litigation, determined in  
21 accordance with generally accepted accounting practices and to the extent that it would be  
22 required to be disclosed in the applicant's annual audited financial statements, reports to

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<sup>25</sup> Reporter's Note: This requirement is based on BitLicense Section 200.4(a)(13).

<sup>26</sup> Reporter's Note: This requirement is based on BitLicense Section 200.4(a)(14).

1 shareholders, or similar records or reports;

2 (6) a copy of the applicant's audited financial statements for the most recent fiscal  
3 year and, if available, for the two-year period immediately preceding the submission of the  
4 application;

5 (7) a copy of the applicant's unconsolidated financial statements for the current  
6 fiscal year and, if available, for the two-year period immediately preceding the submission of the  
7 application; and,

8 (8) if the applicant's shares are publicly traded, a copy of the most recent report  
9 filed with the United States Securities and Exchange Commission under Section 13 of the federal  
10 Securities Exchange Act of 1934 [15 U.S.C. § 78m (1994 & Supp.)];

11 (c) If the applicant is a wholly owned subsidiary of:

12 (1) a corporation publicly traded in the United States, a copy of audited financial  
13 statements for the parent corporation for the most recent fiscal year or a copy of the parent  
14 corporation's most recent report filed under Section 13 of the Securities Exchange Act of 1934  
15 [15 U.S.C. § 78m (1994 & Supp.)]; or

16 (2) a corporation publicly traded outside the United States, a copy of similar  
17 documentation filed with the regulator of the parent corporation's domicile outside the United  
18 States;

19 (d) If the applicant has a registered agent in this [State], the name and address of the  
20 registered agent in this [State]; and

21 (e) A nonrefundable application fee of [determine range of amount].

22 (f) No license shall be issued until the applicant also has paid the initial license fee of  
23 [determine amount].

1 (g) The [superintendent/ commissioner] may waive one or more requirements of  
2 subsections (b), (c), and (d) or permit any applicant to submit other information in lieu of the  
3 required information.

4 (h) A person applying for a license may use any common application form allowed by the  
5 [superintendent/ commissioner] under the provision of Section 203 of this [act].

6 **SECTION 203. RECIPROCAL LICENSING.** <sup>27</sup>

7 **Alternative A**

8 (a) A person engaged in digital currency transmission that is currently licensed in at least  
9 one other state, may, with the approval of the [superintendent/ commissioner] and in accordance  
10 with the provisions of this section, engage in digital money transmission [and such other services  
11 as this [act] may allow] in this state without applying for a license pursuant to Section 202 if:

12 (1) the state where such person is licensed has enacted the Uniform Digital  
13 Currency Business License Act or has digital currency business laws that are substantially  
14 similar to those imposed by the laws of this state, as determined by the [superintendent/  
15 commissioner],<sup>28</sup>

16 (2) any such person that engages in digital currency business in this state pursuant  
17 to this Section shall comply with the requirements of Articles [complete this list per direction of  
18 the Drafting Committee] of this [act].

19 (b) A person that wishes to engage in digital currency business on the basis of reciprocal

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<sup>27</sup> Reporter’s Note: The Uniform Money Services Act offers two alternatives for the text of this section. For the sake of consistency with it, this draft section 203 shows two alternatives that are identical to section 203 of the 2004 amendments to the Uniform Money Services Act. Since the Uniform Money Services Act was last amended, the Conference of State Bank Supervisors has developed its SAFE Act multistate licensure program. A third alternative formulation for section 203 suggests a new provision to be drafted jointly with CSBS to enable use of its SAFE Act Nationwide Mortgage Licensing System (“NMLS”) platform.

<sup>28</sup> Reporter’s Note: As explained in the Comments to UMSA Section 203, Alternative A (2004 Amendments), reciprocity should be recognized only between or among states that have similar licensing requirements to those in the state enacting this [act].

1 licensing shall:

2 (1) File with the [superintendent/ commissioner] a request for a reciprocal license  
3 pursuant to this Section; and

4 (2) Submit:

5 (A) A fee of [specified amount by rule] with the request;

6 (B) A reciprocal license application form; and

7 (C) A certification of license history from the [responsible  
8 official/superintendent/ commissioner of the department] in each [State] that has issued a license  
9 to the applicant.

10 (c) Before permitting a person to operate in this state under a reciprocal license, the

11 (d) [superintendent/ commissioner] shall make such findings as required by [rule].

12 If the [superintendent/ commissioner] determines that the person who wishes to engage in a  
13 digital currency business in this state is not eligible pursuant to the requirements of this [act] and  
14 any [rule] implementing it, the [superintendent/ commissioner] shall deny reciprocity and notify  
15 the person within 15 business days.

16 (e) If the [superintendent/ commissioner] determines that the person who wishes to  
17 engage in a digital currency business in this state is eligible pursuant to the requirements of this  
18 [act] and any [rule] implementing it, the superintendent/ commissioner shall grant the reciprocity  
19 and issue a license to take effect not later than 30 days following the receipt of the items listed in  
20 subsection (b)(2) of this section.

21 (f) The [superintendent/ commissioner] has discretion to waive the bond and net worth  
22 requirements otherwise required under this [act] or [rule] implementing it for any reciprocal  
23 licensee if the State(s) that granted the license(s) on which reciprocity is based require bonding

1 and net worth requirements that are substantially similar to those required under this [act].<sup>29</sup>

2 (g) The [superintendent/ commissioner] has discretion to permit provisional registration  
3 of any applicant for reciprocal licensure during the period necessary to complete the  
4 investigation required by this Section, provided that no provisional registration may be deemed  
5 to convey a property interest to any applicant or other right that may be treated as the equivalent  
6 of a property interest.

7 **Alternative B**

8 (a) A person that is licensed as a digital currency business in another State, may submit a  
9 copy of its license application and license in lieu of submitting an application in the form  
10 prescribed in Section 202. The [superintendent/ commissioner] shall accept the application from  
11 the other State as an application for a license in this State if:

12 (1) the State that licensed such person has enacted the Uniform Digital Currency  
13 Business Act or has digital currency business laws that are substantially similar to those imposed  
14 by the laws of this state, as determined by the [superintendent/ commissioner];

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

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

21 The [superintendent/ commissioner] has discretion to waive the bond and net worth requirements

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<sup>29</sup> Reporter's Note: Bonding and net worth requirements, while important, also can pose significant barriers to entry by start-ups and are criticized for stifling innovation. The recommendation for section 203 attempt to ensure safety for users without unduly burdening licensees.

1 otherwise required under this [act] or [rule] implementing it for any reciprocal licensee if the  
2 State(s) that granted the license(s) on which reciprocity is based require bonding and net worth  
3 requirements that are substantially similar to those required under this [act].<sup>30</sup>

4 (b) The [superintendent/ commissioner] has discretion to permit provisional registration  
5 of any applicant for reciprocal licensure during the period necessary to complete the  
6 investigation required by this Section, provided that no provisional registration may be deemed  
7 to convey a property interest to any applicant or other right that may be treated as the equivalent  
8 of a property interest.

### 9 **Alternative C**

10 [develop per SAFE Act/NMLS program operated by CSBS if CSBS is willing to provide this  
11 support and arrangements can be made] relying on a common application developed with CSBS  
12 for this purpose. The text of this Alternative should include any factor shown in Alternatives A  
13 or B not otherwise included in the CSBS NMLS program application.]

### 14 **End of Alternatives**

## 15 **SECTION 204. SECURITY.**<sup>31</sup>

16 (a) Except as otherwise provided in subsection (b), a surety bond, letter of credit, or other  
17 similar security<sup>32</sup> acceptable to the [superintendent/ commissioner] in the amount of [amount  
18 decided for temporary use] must be provided before any license may be issued.

19

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<sup>30</sup> Reporter's Note: Bonding and net worth requirements, while important, also can pose significant barriers to entry by start-ups and are criticized for stifling innovation. The recommendation for section 203 attempt to ensure safety for users without unduly burdening licensees.

<sup>31</sup> Reporter's Note: Security is one of the hallmarks of every types of non-depository provider licensure statute in every State.

<sup>32</sup> Reporter's Question: The digital currency community may request that security include a comparable amount in a digital currency. Will the Drafting Committee accept digital currency, perhaps with a multiplier effect to ensure value equivalence is maintained?

1 (b) Security must be in a form satisfactory to the [superintendent/ commissioner] and  
2 payable to the State for the benefit of any claimant against the licensee to secure the faithful  
3 performance of the obligations of the licensee with respect to digital currency business activity.  
4 In lieu of the security prescribed in subsection (a), the applicant for a license or licensee may  
5 provide security in any form specified by the [superintendent/ commissioner] by [rule] or  
6 otherwise satisfactory to the [superintendent/ commissioner].<sup>33</sup> The [superintendent/  
7 commissioner] may permit a licensee to substitute another form of security acceptable to the  
8 [superintendent/ commissioner] for the security required under subsection (a) so long as there is  
9 no time when the licensee's activity in this State is not covered by security acceptable to the  
10 [superintendent/ commissioner].<sup>34</sup>

11 (c) The aggregate liability on a surety bond may not exceed the principal sum of the  
12 bond.

13 (d) A claimant against a licensee may maintain an action on the bond, or the  
14 [superintendent/ commissioner] may maintain an action on behalf of the claimant.

15 (e) A surety bond must cover claims for so long as the [superintendent/ commissioner]  
16 specifies by [rule], but at least [specified number] of years after the licensee ceases to provide  
17 digital currency business services in this State.<sup>35</sup>

18 (f) The [superintendent/ commissioner] may increase the amount of security required to a  
19 maximum of [amount decided by Drafting Committee] if the financial condition of the licensee  
20 so requires, as evidenced by reduction of net worth, financial losses, or other criteria to be

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<sup>33</sup> Reporter's Note: This sentence was in subsection (e) to the 2004 Amendments to the UMSA.

<sup>34</sup> Reporter's Note: This subsection differs slightly in its organization from the 2004 Amendments to the UMSA.

<sup>35</sup> Reporter's Note: This subsection differs from the 2004 Amendments to the UMSA, viz., (a) it does not allow for decrease in the amount of security as the value of outstanding transactions being or to be processed in the enacting State is reduced mostly because of the fluctuations in the value of digital currencies that occur, and (b) the last sentence has been moved to subsection (b) of this section and also slightly revised.

1 prescribed by [rule] by the [superintendent/ commissioner]. Failure of a licensee to provide the  
2 additional security required by the [superintendent/ commissioner] shall be grounds for  
3 immediate suspension of a licensee or for commencement of a license revocation proceeding.<sup>36</sup>

4 **SECTION 205. ISSUANCE OF LICENSE.**

5 (a) When an application is filed under Section 202 of this [article], the [superintendent/  
6 commissioner] shall investigate the applicant's financial condition and responsibility, financial  
7 and business experience, character and general fitness; and the competence, experience,  
8 character, and general fitness of the executive officers, managers, directors, and persons in  
9 control of the applicant.

10 (b) The [superintendent/ commissioner] may conduct an on-site investigation of the  
11 applicant's business premises, which may include an investigation of any facilities at and servers  
12 on which the applicant proposes to store customer's digital currency or other digital assets and  
13 from which the applicant proposes to transact digital currency businesses on behalf of its  
14 customers. The applicant shall pay the reasonable costs of any investigation, physical or virtual,  
15 that the [superintendent/ commissioner] may elect to conduct.<sup>37</sup> No application may be deemed  
16 complete for the purposes of this section until the [superintendent/ commissioner] has conducted  
17 any on-site investigation or other [virtual storage and capacity] investigations that the  
18 [superintendent/ commissioner] may require by [rule] or otherwise.

19 (c) No original application under Section 202 of this [article] shall be considered

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<sup>36</sup> Reporter's Note: This sentence is not in the 2004 Amendments to the UMSA, but is needed to clarify the authority of the [superintendent/ commissioner] to act if the licensee fails to provide additional security. Of course, an increase in security under such circumstances may cause the licensee to fail, but the goal is to ensure that the licensee can perform transaction-executions it has undertaken to perform for third parties and have sufficient assets to allow each customer to redeem any digital currency or other digital assets placed with the licensee or otherwise under the licensee's custody or control.

<sup>37</sup> Reporter's Note: It apparently is customary for the responsible state official to set investigation fees by rule, according to the 2004 Amendments to the UMSA.

1 complete until the [superintendent/ commissioner] has all of the information required by [rule] to  
2 implement the requirements of subsection (a) of this Section and has concluded any  
3 investigations required or allowed by subsection (b) of this Section.

4 (d) Once an original application under section 202 of this [article] is complete, the  
5 [superintendent/ commissioner] shall notify the application in a record of the date on which the  
6 [superintendent/ commissioner] determined that the application was complete and:

7 (1) The [superintendent/ commissioner] shall approve or deny the application  
8 within [30] days after that date; or

9 (2) If the [superintendent/ commissioner] has not approved or denied the  
10 application within [30] days after that date:

11 (A) The application is deemed approved; and

12 (B) The [superintendent/ commissioner] shall issue the license under this  
13 [article], which shall take effect on the first business day following expiration of the [30] day  
14 period.<sup>38</sup>

15 (e) The [superintendent/ commissioner] shall issue a license to an applicant under this  
16 [article] if the [superintendent/ commissioner] finds that the applicant has fulfilled all of the  
17 following conditions:

18 (1) The applicant has complied with the requirements of Section 202 or Section  
19 203;

20 (2) The [superintendent/ commissioner] has determined that the financial

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<sup>38</sup> Reporter's Note: The 30-day periods recommended for this section are for purposes of discussion. The 2004 Amendments to the UMSA used the 120-day period specified in the MTRA Model Legislation Online. Given the rapid entry into the digital currency business industry and the pace of innovations within that industry, it seemed more appropriate to suggest a shorter period for discussion. In addition, some states have been criticized publicly for slow action on applications for money transmitter licenses and generally slow progress on review of license applications. The 30-day suggestion is an effort to respond to the concerns raised by the industry, and to facilitate a smoother on-ramp for start-ups and those seeking to expand their services to additional jurisdictions.

1 condition and responsibility, financial and business experience, and character and general fitness  
2 of the applicants and other criteria listed in subsection (a) of this section are met; and

3 (3) The applicant has provided to the [superintendent/ commissioner] the surety  
4 bond, letter of credit or other security in the amount and form required by Section 204(a) of this  
5 [article] [or by rule].

6 (f) The [superintendent/ commissioner] may extend for good cause the application review  
7 period from [30] to [60] days for good cause.

8 (g) An applicant whose application the [superintendent/ commissioner] denied under this  
9 [article] may appeal the denial, within [30] days after receipt of the notice of the denial, and  
10 request a hearing.

11 **SECTION 206. RENEWAL OF LICENSE.<sup>39</sup>**

12 (a) A licensee under this [article] shall pay an annual renewal fee of [discuss suggested  
13 amount] if their volume of digital currency business in this State for the prior calendar year was  
14 \$1,000,000 or less or of [discuss amount twice as high or a scale?] if their volume in this State  
15 for the same period was greater than \$1,000,001. Payment of the renewal fee shall be made no  
16 later than [15] business days before the anniversary of the issuance of the license, or if the last  
17 day is not a business day, on the next business day.<sup>40</sup>

18 (b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a  
19 form and in a medium prescribed by the [superintendent/ commissioner]. The renewal report  
20 must state or contain:

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<sup>39</sup> Reporter's Question: The UMSA requires renewals only biennially rather than annually. They may pose lesser safety and soundness concerns than other licensees. The Drafting Committee could give the [superintendent/ commissioner] discretion to require more frequent reports of licensees whose operations have proved problematic. This is your call.

<sup>40</sup> Reporter's Note: State licensure statutes often require payment of the renewal fee 30 days before the anniversary date. The shorter time period is in line with the increasing number of electronic payments being made to state governments and their more speedy clearing into the regulatory agency's accounts.

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**Alternative A**

(1) A copy of the licensee’s most recent (A) reviewed annual financial statement if the licensee’s digital currency business activity in this State amounted to \$ 300,000 or less in the prior calendar year, (B) audited annual financial statement if the licensee’s digital currency business activity in this State amounted to \$300,000 or more in the prior calendar year, or (C) if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation of the licensee’s most recent audited consolidated annual financial statement;<sup>41</sup>

**Alternative B**

(1) A copy of the licensee’s most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee’s most recent audited consolidated annual financial statement, provided that any licensee whose transfer volume or custody of digital currency on behalf of others did not exceed \$ 500,000 shall only be required to submit a reviewed annual financial statement unless it is a wholly owned subsidiary of another corporation;

**End of Alternatives**

(2) A description of any material change in condition in the licensee’s business, of any material litigation involving the licensee and plaintiff or defendant, and of any investigation by an federal or state governmental unit or agency involving the licensee;

(3) The number of digital currency business transfers engaged in by the licensee

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<sup>41</sup> Reporter’s Note: Audit costs tend to be much higher than costs for reviewed financial statements. Some states, particularly Massachusetts, allow public corporations to submit reviewed rather than audited financial statements if the dollar volume of the corporation is below a fixed threshold. This Drafting Committee might make a similar nod to start-up companies.

1 on behalf of third parties in this State for the most recent[determine number of months] if this  
2 license was first issued in the same fiscal year or for the most recent fiscal year of the licensee,  
3 the number and equivalence in United States dollars of the digital currency transfers or the  
4 amount and equivalence of the digital currency in custody in the month next preceding the  
5 submission of the renewal report, and the number of private keys stored in any Web Wallet  
6 hosted by the licensee for the same month;

7 (4) The dollar-equivalent of digital currency or digital currency assets held on  
8 behalf of others as of the date [30 days] prior to the date of the renewal report, and the total  
9 number of customers for whom digital currency or digital currency assets were held on the same  
10 date;

11 (5) A description of each material change in information submitted by the licensee  
12 in its original license application in this State or any other State that has not been reported to the  
13 [superintendent/ commissioner] on a required report or a copy of any report submitted under  
14 Section 13 of the Securities Exchange Act of 1934 [15 U.S.C. § 78m (1994 & Supp. 1999)] not  
15 previously provided to the [superintendent/ commissioner];

16 (6) A list of the licensee’s permissible investments and proof that the licensee  
17 continues to maintain permissible investments according to requirements set forth in Sections  
18 [701 and 702];<sup>42</sup>

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

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<sup>42</sup> Reporter’s Notes: The 2004 Amendments to the UMSA require a certification, not proof, of the maintenance of permissible investments. Certifications in some environments are only as good as the paper or electronic medium they were written on yesterday in many cases. It would seem proof – the higher standard—is the preferable means of obtaining the user protections that both permissible investments and adequate security were intended to provide. Is there any method other than a certification that would satisfy the Drafting Committee? Certifications in some environments are only as good as the paper or electronic medium they were written on yesterday in many cases

1 (8) A list of the locations in this State where the licensee engages in digital  
2 currency business activity or where the licensee operates any servers for the hosting of Web  
3 Wallets or the conduct of its business or the provision of services to third parties; and,

4 (9) Notice of any data security breach, specifying the number of customers that  
5 may be affected and the dollar-value of any digital currency or digital assets that may have been  
6 lost or compromised since any prior report to the [superintendent/ commissioner].

7 (c) If a licensee does not file a renewal report or pay its renewal fee by the renewal date  
8 or any extension of time granted by the [superintendent/ commissioner], the [superintendent/  
9 commissioner] shall suspend the license and notify the licensee. Unless the licensee files the  
10 renewal fee and pays the renewal fee, whichever it had failed to do, before the expiration of 10  
11 days after the notice of suspension is sent, the licensee's license is suspended at the beginning of  
12 the 11<sup>th</sup> day after the notice of suspension was sent.<sup>43</sup> The suspension may be lifted if, within 20  
13 days after the license suspended, the licensee:

14 (1) [files the report and] pays the renewal fee; and

15 (2) pays a fine not to exceed [amount to be determined] for each day after  
16 suspension and prior to the date that the licensee provides the information and reports, as well as  
17 the renewal fee required, to the [superintendent/ commissioner].

18 (d) The [superintendent/ commissioner] may for good cause grant an extension of the  
19 renewal date.

20 (e) The licensee may provide the same annual renewal report for this State that it may be  
21 required to prepare for any other State from which it holds a license to the extent that the laws of

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<sup>43</sup> Reporter's Question: the 2004 Amendments to the UMSA allowed reinstatement of the license if within 20 days after the superintendent/ commissioner suspends the license, the licensee files the renewal report or pays the renewal fee – whichever it had failed to do on time -- and pays a \$100 per day after suspension fee. This seems to invite delays.

1 that State are substantially similar to the laws of this State, except with respect to the report that  
2 relates to services provided in this State.

3 **[SECTION 207. NET WORTH [CAPITAL REQUIREMENTS].** A licensee under  
4 this [article] shall demonstrate and maintain a net worth of at least [specify amount] determined  
5 in accordance with generally accepted accounting principles.]<sup>44</sup> Provisional registrants under this  
6 [article] must meet any net worth requirements set by the [superintendent/ commissioner] under  
7 this Section prior to being issued any license under this [article]. ]<sup>45</sup>

8 **ARTICLES 3, 4, AND 5**

9 **RESERVED**

10 [SEE TABLE OF CONTENTS  
11 FOR POSSIBLE CONTENT OF THESE THREE ARTICLES]

12 **ARTICLE 6**

13 **EXAMINATIONS; REPORTS; RECORDS**

14 **SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.**

15 (a) The [superintendent/ commissioner] may conduct an annual examination of a licensee  
16 or of any of its facilities or servers upon [decide number of] days' notice to the licensee. <sup>46</sup>

17 (b) The [superintendent/ commissioner] may examine a licensee at any time, without  
18 notice, if the [superintendent/ commissioner] has reason to believe that the licensee is engaging  
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<sup>44</sup> Reporter's Note: As with the 2004 Amendments to the UMSA, some states may prefer to use net worth as part of their safety and soundness protections and others may rely on bonding and other security requirements. States should choose among combinations of security, net worth, and permissible investment requirements as prudential safeguards, according to choices they have made for money transmission, check cashing or currency exchange regulatory purposes.

<sup>45</sup> Reporter's Question: This requirement is bracketed in the 2004 approved amendments to the UMSA. Please provide guidance on how the Drafting Committee would like to handle this requirement after experience with it. Also, note that I have added a sentence covering net worth requirements to be required of provisional registrants (persons applying for reciprocal licensure), above.

<sup>46</sup> Reporter's Note: The UMSA provides a 45-day advance notice of an examination. Other non-depository providers licensed by States can be subject to spot examinations. The Drafting Committee should decide whether to continue the 45-day notice requirement, to select a shorter advance notice period, or to permit spot examinations if deemed necessary in the [superintendent/ commissioner's] judgment.

1 in an unsafe or unsound practice or has violated or is violating this [act] or a rule adopted or an  
2 order issued under this [act].

3 (c) If the [superintendent/ commissioner] concludes that an on-site examination is  
4 necessary under subsection (a), the licensee shall pay the reasonable costs of the examination.

5 (d) Information obtained during an examination under this [act] may be disclosed only as  
6 provided in Section 607.

7 **SECTION 602. COOPERATION AND DATA-SHARING AUTHORITY.**

8 **Alternative A**

9 (a) [Objective of cooperation.] Subject to section 607 and under terms consistent with  
10 applicable laws concerning privacy and data protection, the [superintendent/ commissioner] may  
11 cooperate, coordinate, jointly examine, consult and share records and information with the  
12 [superintendent/ commissioner] of one or more other States, a self-regulatory organization  
13 (should one be created), a federal or state regulator of banking and non-depository providers, and  
14 a government law enforcement agency concerning the affairs of any licensee under this [act].

15 (b) [Policy to consider.] In cooperating, coordinating, jointly examining, consulting, and  
16 sharing records and information under this section, the [superintendent/ commissioner] may  
17 consider the desirability of:

18 (1) Maximizing effectiveness of regulation and examination for the benefit of  
19 consumers;

20 (2) Maximizing uniformity in federal and state regulatory standards and their  
21 implementation and enforcement;

22 (3) Minimizing burdens on licensees, without adversely affecting consumer  
23 protection goals.

1 (c) [Subjects for cooperation.] This section authorizes cooperating, coordination, joint  
2 examinations, consultation and sharing of records and information for the following purposes:

3 (1) Establishing or employing one or more designees as a central depository for  
4 filings required under this [act] and or records or reports required or allowed to be maintained  
5 under this [act];

6 (2) Developing, maintaining and storing uniform forms for initial applications,  
7 renewals and other reports, and other purposes related to this [act];

8 (3) Conducting joint examinations or investigations;

9 (4) Holding joint administrative hearings;

10 (5) Instituting and prosecuting joint civil or administrative proceedings;

11 (6) Sharing personnel and maximizing their effectiveness in carrying out  
12 responsibilities under this [act];

13 (7) Coordinating requirements for reciprocal licensing under section 203;

14 (8) Sharing and exchanging records, subject to restrictions contained in section  
15 607 (confidentiality);

16 (9) Formulating rules, statements of policy, guidelines, and interpretative opinions  
17 and releases;

18 (10) Formulating common systems and procedures;

19 (11) Notifying the public of proposed rules, forms, statements of policy and  
20 guidelines; and,

21 (12) Cooperating with other federal and state non-depository and bank regulators  
22 to promote or achieve uniformity.

1 **Alternative B**

2 The [superintendent/ commissioner] is authorized and directed to consult and cooperate with  
3 other State and Federal regulators of banks and non-depository providers to maintain compliance  
4 with this [act] and to promote consumer protection. The [superintendent/ commissioner] may  
5 pursue joint examinations and investigations, and take other official action, as may be  
6 appropriate, with any other State or Federal official similarly authorized to undertake  
7 examinations or investigations or to take action.

8 **SECTION 603. REPORTS.**

9 (a) A licensee shall file with the [superintendent/ commissioner] within 15 business days  
10 any material change in information provided in the licensee’s application for license to this  
11 [State].

12 (b) A licensee shall file with the [superintendent/ commissioner] within 15 business days  
13 of any of the following occurrences and subject to the discretion of the [superintendent/  
14 commissioner] to expand the following: a change of physical location or of the physical location  
15 of any server used in the licensee’s business that is under the licensee’s exclusive control, a  
16 change in the business model used by the licensee to perform digital currency transfers for third  
17 parties, a change in the officers, directors, principal shareholders or responsible individuals of the  
18 licensee’s digital currency transfer business together with the names and physical addresses of  
19 each new individual in any such capacity, and a change in the type of digital currencies being  
20 utilized by the licensee or being offered to customers.

21 **SECTION 604. CHANGE OF CONTROL.**

22 **SECTION 605. RECORDS.**

23 (a) A licensee shall maintain the following records for determining compliance with this

1 [act] for a period of at least [three] years:

2 (1) A record of each digital currency transfer made by the licensee on behalf of a  
3 customer or on its own account, including the identification of the customer provided, form of  
4 transfer, amount, date, location, and block chain information;

5 (2) A record of each customer who places into custody with the licensee any  
6 digital currency or digital assets governed by this [act] and the number or value of the units of  
7 digital currency or digital assets placed into custody;

8 (3) A record of the Internet Protocol (IP) address of the customer at the time the  
9 customer requests that the licensee make a digital currency transfer on the customer's behalf  
10 under subparagraph (a)(1) or at the time the customer places into custody or redeems digital  
11 currency or digital assets from the licensee;

12 (4) A record of all cryptographic signatures employed by the customer or the  
13 licensee in connection with transactions governed by subparagraphs (a)(1) or (a)(2) of this  
14 section;

15 (5) A record of the aggregate transaction values and volumes exchanged into  
16 digital currency or digital assets or from digital currency including transactions from United  
17 States dollars or other money of one or more Governments to digital currency, or from digital  
18 currency to United States dollars or money of one or more Governments, made by the licensee,  
19 showing the type(s) of digital currency or digital asset and whether the exchange was for United  
20 States dollars or other money aggregated for each type of digital currency and for United States  
21 dollars or other money;

22 (6) A general ledger posted at least monthly containing all asset, liability, capital,  
23 income, and expense accounts for the licensee;

1 (7) A copy of each business call report that the licensee may be required to create  
2 and provide to the [superintendent/ commissioner] under any requirement of this [State] or the  
3 Nationwide Mortgage Licensing System;

4 (8) Bank statements and bank reconciliation records for the licensee and the  
5 name, account numbers and physical addresses of the banks used by the licensee in the conduct  
6 of its business in this [State] or outside it; and,

7 (9) A record of any digital currency transfer or digital currency or digital asset  
8 held by the licensee in custody for a customer that is the subject of a dispute or that the licensee  
9 has been unable to complete for any reason.

10 (b) The items specified in subsection (a) may be maintained in any form of record in  
11 addition to the form of record in which any such record was originally made.

12 (c) Records may be maintained outside this [State] so long as they are made accessible to  
13 the [superintendent/ commissioner] on [seven] business-days' notice that is communicated in a  
14 record.

15 (d) All records maintained by the licensee that are required by this [act] are open to  
16 inspection by the [superintendent/ commissioner] pursuant to Section 601.

17 **SECTION 606. MONEY LAUNDERING REPORTS.**

18 (a) A licensee shall comply with all federal or state laws with response to the detection  
19 and deterrence of money laundering, economic sanctions, or terrorist finance violations, shall file  
20 all reports required by federal cash or currency transaction reporting, record keeping, and  
21 suspicious activity transaction reporting as set forth in titles 26 or 31 of the United States Code  
22 5311 (1994), 31 C.F.R. Part X (2013), and other federal or state laws pertaining to money  
23 laundering, economic sanctions or terrorist financing.

1 (b) The timing filing of a complete and accurate report required under subsection (a) with  
2 the appropriate federal agency or, as may be required under other laws of this [State] with the  
3 appropriate agency of this [State], is compliance with the requirements of subsection (a), unless  
4 the [superintendent/commissioner] notifies the licensee that the licensee is not regularly and  
5 comprehensively filing reports as required by subsection (a).

6 **SECTION 607. CONFIDENTIALITY.**

7 (a) Except as otherwise provided in subsection (b), all information or reports obtained by  
8 the [superintendent/ commissioner] from an applicant or licensee and all information contained  
9 in or related to an examination, investigation, operating or condition report prepared by, on  
10 behalf of, or for the use of the [superintendent/ commissioner], trade secrets, balance sheets and  
11 other financial and operational information not contained in any report not otherwise available to  
12 the public, are confidential and are not subject to disclosure under [this State's open records  
13 law].

14 (b) The [superintendent/ commissioner] may disclose information not otherwise subject  
15 to disclosure under subsection (a) to representatives of state or federal agencies who promise in a  
16 record that they will maintain the confidentiality of the information; or the [superintendent/  
17 commissioner] finds that the release is reasonably necessary for the protection of the public and  
18 in the interests of justice, and the licensee is given advance notice by the [superintendent/  
19 commissioner] of its intent to release the information, provided that additional advance notice  
20 shall be required before any release of any trade secret(s) of the licensee under this subsection.

21 (c) This section does not prohibit the [superintendent/ commissioner] from disclosing to  
22 the public a list of persons licensed under this [act] or the aggregated financial data concerning  
23 those licensees.



1 similar device or software by the licensee. The [superintendent/ commissioner] shall consider as  
2 acceptable methods of reserves under this [article] all of the following: cryptographic proof of  
3 reserves, independently audited reserve accounts, segregated accounts of money or digital  
4 currency, or funds or digital currency held by third parties.

5 (c) In determining the types of permissible reserves, the [superintendent/ commissioner]  
6 of this [State] shall consult with the [superintendent/ commissioner] of any other [State] that has  
7 licensed the same digital currency business to ensure that digital currency businesses' reserves  
8 are treated consistently.

9 (d) The [superintendent/ commissioner] in determining the minimum amount of capital/  
10 net worth to be required of any licensee may consider factors such as:

11 (1) the composition of the licensee's total assets, including the position, size,  
12 liquidity, risk exposure, and price volatility of each type of asset;

13 (2) the composition of the licensee's total liabilities, including the size and  
14 repayment timing of each type of liability;

15 (3) the actual and expected volume of the licensee's digital currency business  
16 activity;

17 (4) whether the licensee is already licensed or regulated by the [superintendent/  
18 commissioner] as a provider of a financial product or service, and whether the licensee is in good  
19 standing in such capacity;

20 (5) the amount of leverage employed by the licensee;

21 (6) the financial protection, if any, that the licensee provides for its customers  
22 through its trust account, bond, insurance, or otherwise;

23 (7) the types of entities to be serviced by the licensee; and,

1 (8) the types of products or services to be offered by the licensee.

2 (e) Permissible investments, even if commingled with other assets of the licensee, are  
3 held in trust for the benefit of its customers in the event of a bankruptcy or receivership of the  
4 licensee.<sup>47</sup>

5 **SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.** [Subsection 702(a) of  
6 the 2004 Amendments to the UMSA contains explicit provisions on a wide variety of types of  
7 permissible investments. Subsection 702(b) permits the [superintendent/ commissioner] to  
8 prescribe the extent to which certain forms of permissible investments may be included in the  
9 total of permissible investments required of a licensee, specifically including receivables. The  
10 Drafting Committee should consider, and provide instruction, on whether it wants this working  
11 draft to follow the UMSA or to be more flexible, as the CSBS Framework recommends.]

## 12 **ARTICLE 8**

### 13 **ENFORCEMENT**

14 **SECTION 801. SUSPENSION AND REVOCATION; [RECEIVERSHIP].**

15 **SECTION 802. ORDERS TO CEASE AND DESIST.**

16 **SECTION 803. CONSENT ORDERS.**

17 **SECTION 805. CIVIL PENALTIES.**

18 **SECTION 806. CRIMINAL PENALTIES.**

19 **SECTION 807. UNLICENSED PERSONS.**

20 **SECTION 808. AUTHORITY TO REMOVE OFFICERS AND DIRECTORS.**

21 [Provisions to address relatively standard enforcement authorities of departments and

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<sup>47</sup> Reporter's Note: The CSBS Model Regulatory Framework recommends regulators "should follow the same procedures [for resolving failures of digital or virtual currency companies] as for resolving failed money transmitters." CSBS, at 8. It also observes that adequate tools exist "for dealing with distressed or failed companies." *Id.*

1 superintendents or commissioners are included in the Final BitLicense Regulation and in the  
2 CSBS Model Regulatory Framework and text of the 2004 Amendments to the USMA.  
3 Assuming the familiarity of the Drafting Committee with the texts of such provisions, they are  
4 not included in this initial working draft.]

## 5 **ARTICLE 9**

### 6 **ADMINISTRATIVE PROCEDURES AND POWERS OF THE [SUPERVISORY** 7 **AGENCY OR SENIOR SUPERVISORY OFFICER]**

8 **SECTION 901. ADMINISTRATIVE PROCEEDINGS.** All administrative  
9 proceedings under this [act] must be conducted in accordance with [the state administrative  
10 procedures act].

11 **SECTION 902. HEARINGS.** Except as otherwise provided in Sections 205(c), 803,  
12 and 807, the [superintendent/ commissioner] may not suspend or revoke a license, [place a  
13 licensee in receivership,] issuance an order to cease and desist, or assess a civil penalty without  
14 notice and an opportunity to be heard. The [superintendent/ commissioner] also shall hold a  
15 hearing when requested to do so by an applicant whose application for a license the  
16 [superintendent/ commissioner] has denied.

## 17 **ARTICLE 10**

### 18 **DISCLOSURES AND USER PROTECTIONS; CYBERSECURITY PROGRAMS AND** 19 **MONITORING; BUSINESS CONTINUITY AND DISASTER RECOVERY PROGRAMS**

20 **SECTION 1001. REQUIRED DISCLOSURES.**<sup>48</sup>

21 (a) Each licensee shall provide each customer, including consumer and enterprise

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<sup>48</sup> Reporter's Note: This provision closely follows both the CSBS Model Regulatory Framework and the Final BitLicense Regulation's recommendations and provisions on disclosures; it is not as detailed as the BitLicense analog.

1 customers, with such disclosures as the [superintendent/ commissioner] may prescribe by rule  
2 pursuant to this section.

3 (b) Such disclosures shall include, at a minimum,

4 (1) A disclosure of whether the digital currency is covered by a form of insurance  
5 or otherwise guaranteed against loss by any governmental agency, including the Federal Deposit  
6 Insurance Corporation or the Securities Investor Protection Corporation, up to the [full  
7 equivalent in United States dollars or in the same form of digital currency] of the digital currency  
8 placed with the licensee or purchased from the licensee on the date of the placement or purchase,  
9 and that any bond or trust account maintained by a licensee for the benefit of its customers may  
10 not be sufficient to cover all losses by users;

11 (2) A disclosure that digital currency is not legal tender, and that its value may  
12 fluctuate unlike legal tender;

13 (3) A disclosure that digital currency transfers may be irreversible, and,  
14 accordingly, losses due to fraudulent or accidental transactions may not be recoverable;

15 (4) A disclosure that legislative and regulatory changes may affect the value after  
16 the use, transfer, and exchange of digital currency, and a disclosure that market participants that  
17 take digital currency in payment for goods or services or in exchange for other digital currencies  
18 or money may not continue to do so in future;

19 (5) A disclosure that the nature of digital currency and unpredictability of its  
20 value relative to legal tender or other digital currency may result in a significant loss of value  
21 over a short period of time; and,

22 (6) A disclosure that the date on which a digital currency transfer or digital is  
23 made so that the user's account may be debited may differ from the date or time that the user

1 initiates the instruction to transfer or makes a transfer of digital currency.

2 (c) The timing of provision of disclosures to be made pursuant to this section shall  
3 include:

4 (1) When opening an account for a customer, and prior to the initial transactions  
5 for, on behalf of, or with a customer, each licensee shall disclose all relevant terms and  
6 conditions associated with the products, services, and activity generally and digital currency  
7 specifically, at a minimum, the following:

8 (A) The customer's liability for unauthorized or erroneous digital currency  
9 transfers and transactions;

10 (B) The customer's right to stop payment of a pre-authorized digital  
11 currency transfer and the procedure to initiate a stop-payment order;

12 (C) Any circumstances under which, absent a court or government order,  
13 the licensee may disclose information concerning the customer's account to third parties;

14 (D) The customer's right to receive periodic statements and valuations  
15 from licensee;

16 (E) The customer's right to receive a receipt, trade ticket, or other  
17 evidence of the transfer or transaction;

18 (F) The customer's right to prior notice of a change in licensee's rules or  
19 policies; and

20 (G) Such other disclosures as are customarily given in connection with the  
21 opening of customer accounts.

22 (2) Prior to each transactions in digital currency or digital assets, for, on behalf of,  
23 or with a customer, each licensee shall furnish to the customer the following disclosures:

- 1 (A) The amount of the transaction;
- 2 (B) Any fee, expense, and charge to be borne by the customer, including
- 3 applicable exchange rates;
- 4 (C) The type and nature of digital currency transaction;
- 5 (D) A warning that once executed the transaction may not be reversed, if
- 6 applicable; and
- 7 (E) Such other disclosures as are customarily given in connection with a
- 8 transfer or transaction of this nature.

9 (d) Licensees shall make any disclosures required to be made under this section clearly

10 and conspicuously and in a legible record in the English language and in any language

11 predominantly used by the licensee to communicate with its customers.

12 (e) Licensees shall ensure that all disclosures required by the Section are acknowledged

13 as received by customers.

14 **SECTION 1002. RECEIPTS.<sup>49</sup>**

15 (a) Upon completion of any transfer or transaction, the licensee shall provide a receipt to

16 each customer. Such receipts shall contain all of the following information:

- 17 (1) The name and contact information of the licensee, including a telephone
- 18 number established by the licensee to answer questions and receive complaints;
- 19 (2) The type, value, date, and precise time of the transfer or transaction;
- 20 (3) The fee charged;
- 21 (4) The exchange rate, if applicable;
- 22 (5) A statement of the licensee's liability for non-delivery or delayed delivery;

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<sup>49</sup> Reporter's Note: This section relies heavily on section 200.19 of the Final BitLicense Regulation.

1 (6) A statement of the licensee’s liability for erroneous transfers or transactions;

2 (7) A statement of the refund policy of the licensee; and,

3 (8) Any additional information the [superintendent/commissioner] may require.

4 (b) Each licensee shall make available to the [superintendent/ commissioner] the form of  
5 receipts it uses to comply with this section.

6 **SECTION 1003. CONSUMER PROTECTION POLICIES AND PROCEDURES.**

7 (a) Each licensee shall establish and maintain written consumer protection policies and  
8 procedures to implement the consumer protection and disclosure requirements of this [act].

9 (b) Each licensee shall report to the [superintendent/ commissioner] any change in the  
10 licensee’s consumer protection policies and procedures within seven (7) days of making any  
11 change.

12 **SECTION 1004. RELATION TO OTHER FEDERAL CONSUMER**  
13 **PROTECTION, COMMODITIES TRADING, AND SECURITIES TRADING LAWS.<sup>50</sup>**

14 This [article] does not apply to a transfer any part of which is governed by the Electronic  
15 Fund Transfers Act of 1978 (15 U.S.C. § 1693-1693r (2012)), the Securities Exchange Act of  
16 1934 (15 U.S.C. § 78m (1994 & Supp. 1999), or the Commodities Exchange Act of 1936 (7  
17 U.S.C. §§ 1-27f (2013)).

18 **SECTION 1005. COMPLAINTS.<sup>51</sup>**

19 (a) Each licensee shall establish and maintain written policies and procedures to resolve  
20 complaints on a fair and timely manner.

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<sup>50</sup> Reporter’s Note: The location of this relation to other laws provision and its mention of the term “article” instead of “act” is intended to restrict the carve out to the User Protections in Article 10 of this initial working draft. The Drafting Committee may decide to relocate this provision or to expand it.

<sup>51</sup> Reporter’s Note: This provision is modeled after the Final BitLicense Regulation, § 200.21(a)-(c). Those provisions are similar to the thrust of the CSBS Framework on Complaints and Error Resolution. CSBS Model Regulatory Framework, at 13. Subsection (d) is based on other consumer protection compliance statutes.

1 (b) Each licensee shall provide, in a clear and conspicuous manner, on its website or  
2 websites, in all physical locations that its customers may access to do business with it, and in any  
3 other location or medium that the [superintendent/ commissioner] may prescribe, the following  
4 disclosures:

5 (1) The licensee’s mailing address, email address, and telephone number for the  
6 receipt of complaints;

7 (2) A statement that the complainant also may bring his or her complaint to the  
8 attention of the [department];

9 (3) The Department’s mailing address, website, and telephone number; and

10 (4) Such other information as the [superintendent/ commissioner] may require.

11 (c) Each licensee shall report to the [superintendent/ commissioner] any change in the  
12 licensee’s complaint policies or procedures within seven (7) days of making any change.

13 (d) Each licensee shall retain records of all complaints received for a period of [three]  
14 years from the date of receipt and records of the disposition or resolution of each complaint for  
15 three years from the date of the disposition or resolution.

16 **SECTION 1006. CYBERSECURITY PROGRAMS AND MONIORING.**

17 [This section should be added to the working draft once consultation with the CSBS can be  
18 conducted. It may rely on the requirements stated in section 200.16 of the Final BitLicense  
19 Regulation.]

20 **SECTION 1007. BUSINESS CONTINUITY AND DISASTER RECOVERY**  
21 **PROGRAMS.<sup>52</sup>**

22 (a) Each licensee shall establish, monitor and maintain a written business continuity and

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<sup>52</sup> Reporter’s Note: This provision relies heavily on the text of section 200.17 of the Final BitLicense Regulation.

1 disaster-recovery program reasonably designed to ensure the availability and functionality of the  
2 licensee’s services in the event of an emergency or other disruption of the licensee’s normal  
3 business activities. The program, at a minimum, shall:

4 (1) Identify documents, data, facilities, infrastructure, personnel, and  
5 competencies essential to the continued operations of the licensee’s operations;

6 (2) Identify the supervisory personnel responsible for implementing and  
7 monitoring the program;

8 (3) Include a plan to communicate with supervisory personnel or other personnel  
9 essential to the implementation of the program, and with counterparties, regulatory authorities,  
10 data and communications providers, disaster recovery specialists, and other persons essential to  
11 the recovery of data and resumption of operations;

12 (4) Include procedures for the maintenance of back-up facilities, systems and  
13 infrastructure as well as appropriate staffing to enable timely recovery of data and documentation  
14 and to resume operations as soon as reasonably possible following any disruption to normal  
15 business activities and customer access to digital currency transfers and digital assets in the  
16 licensee’s custody or control;

17 (5) Include procedures for the back-up of documents and data essential to the  
18 operation of the licensee and storing of information off-site; and

19 (6) Identify third parties that are necessary to the continued operations of the  
20 licensee’s business, including providers of electrical supply, and the alternative sources of  
21 electrical supply or other services that licensee is ready to employ to resume operations as soon  
22 and reliably as possible.

23 (b) Each licensee shall distribute a copy of the program required by this section to all

1 employees whose duties are relevant to the program and shall maintain copies of the program’s  
2 content at one or more accessible off-site locations.

3 (c) Each licensee shall provide training to all employees on the program required by this  
4 section and shall re-train employees at suitable intervals or whenever licensee changes any  
5 material aspect of the program.

6 **SECTION 1008. PREVENTION OF FRAUD.**<sup>53</sup> Licensees are prohibited from  
7 engaging in fraudulent activity. Additionally, each licensee shall take reasonable steps to detect  
8 and deter fraud, by establishing, monitoring, and maintaining a written anti-fraud policy. The  
9 anti-fraud policy, at a minimum, shall include:

10 (a) The licensee’s identification and assessment of risks of its business operations related  
11 to fraud;

12 (b) Procedures and controls to protect against identified risks;

13 (c) Allocation of responsibility for monitoring and addressing risks;

14 (d) Procedures for periodic evaluation and revision of the anti-fraud procedures, controls,  
15 and monitoring mechanisms.

## 16 **ARTICLE 11**

### 17 **COMPLIANCE**

18 **SECTION 1101. LICENSEE REQUIRED TO COMPLY WITH APPLICABLE**  
19 **FEDERAL AND STATE LAWS, RULES AND REGULATIONS.** Each licensee shall  
20 comply with all applicable federal and state laws, rules, and regulations.

21 **SECTION 1102. COMPLIANCE POLICY.** Each licensee shall maintain and enforce  
22 written compliance policies, including policies with respect to anti-fraud, anti-money laundering,

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<sup>53</sup> Reporter’s Note: This provision relies heavily on the text of section 200.19(g) of the Final BitLicense Regulation.

1 cybersecurity, customer privacy and information security, and any other policy required by this  
2 [act], which must be reviewed and approved by the licensee’s board of directors or an equivalent  
3 governing body.

4 **SECTION 1103. COMPLIANCE OFFICER.** Each licensee shall designate a qualified  
5 individual or individuals to be responsible for coordinating and monitoring compliance with this  
6 [act] and all other applicable federal and state laws, rules, and regulations.

7 **ARTICLE 12**

8 **MISCELLANEOUS PROVISIONS**

9 **SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

10 In applying and construing this Uniform Act, consideration must be given to the need to  
11 promote uniformity of the law with respect to its subject matter among the States that enact it.

12 **SECTION 1202. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
13 application to any person or circumstance is held invalid, the invalidity does not affect other  
14 provisions or applicability of this [act], which can be given effect without the invalid provision  
15 or application, and to this end the provisions of this [act] are severable.

16 **SECTION 1203. EFFECTIVE DATE.** This [act] takes effect . . . .

17 **SECTION 1204. REPEALS.** The following Acts and parts of Acts are repealed:

18 (1) . . . .

19 (2) . . . .

20 (3) . . . .



1 date of enactment of this [act]. Applicants who comply with the filing requirements of this  
2 subsection shall be deemed in compliance with the licensure requirements of this [act] until the  
3 applicant has been notified by the [superintendent/ commissioner] that its application has been  
4 denied. If an application is denied, the former applicant shall cease operating in this State  
5 immediately and doing business with residents of this [State]. Any person engaged in Digital  
6 Currency Transfers Business Activity that fails to submit an application for license within 45  
7 days of the date of enactment shall be deemed to be conducting unlicensed Digital Currency  
8 Transfers Business Activity.

9 **End of Alternatives**