

DRAFT
FOR DISCUSSION ONLY

REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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February 2, 2016

REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

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1 **REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

2 **ARTICLE I**

3 **GENERAL PROVISIONS**

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

6 **SECTION 102. SCOPE.** This [act] governs the operation of a business, wherever
7 located, that engages in virtual currency business activity as that term is defined in this act in this
8 [State or jurisdiction], which involves:

9 (a) offering virtual currency transfer and storage services to persons who are residents of
10 or are located in this [State or jurisdiction];

11 (b) facilitating transfers of virtual currency from one person who is resident or located in
12 this [State or jurisdiction] to another person, wherever located, or on behalf of residents of this
13 [State or jurisdiction];

14 (c) offering the conversion of virtual currency from one form to another or to one or more
15 forms of money for a resident of this [State or jurisdiction] or of another [State or jurisdiction];
16 or

17 (d) offering other services and products that assist residents of this [State or jurisdiction]
18 to acquire virtual currency, to convert money into virtual currency, or vice versa, or to transfer
19 virtual currency from a person in this [State or jurisdiction] to other persons, wherever located.

20 **SECTION 103. DEFINITIONS.**

21 (1) “Applicant” means a person that files an application for any license under this [act];

22 (2) “Bank” means a person engaged in the business of banking and includes a savings
23 bank, savings and loan association, or credit union. [The term does not include a trust company

1 chartered as such by this [State or jurisdiction] or any other [State or jurisdiction] or as a limited
2 purpose trust company by this [State or jurisdiction] or any other [State or jurisdiction]].

3 (3) “Control” means

4 (A) ownership of, or the power to vote, directly or indirectly, at least 25 per cent
5 of a class of voting securities or voting interests of a licensee, a person that should be licensed, or
6 a person in control of a licensee;

7 (B) power to elect a majority of executive officers, managers, directors, trustees,
8 or other persons exercising managerial authority of a licensee, a person that should be licensed,
9 or a person in control of a licensee; or

10 (C) power to exercise, directly or indirectly, a controlling influence over the
11 management or policies of a licensee, a person that should be licensed, or person in control of a
12 licensee.

13 (4) “Department” means the [name of State or jurisdiction] [name of specific department]
14 empowered to license and regulate under this [act] virtual currency intermediary business
15 activity within the scope of this [act].

16 (5) “Executive officer” means a president, chair of the executive committee, chief
17 financial officer, responsible individual, or other individual who performs or has the capacity to
18 perform similar functions regardless of their title;

19 (6) “Jurisdiction” means a State or territory of the United States, or any other form of
20 jurisdiction including a the governing body of a federally recognized Indian tribe;

21 (7) “Licensee” means a person licensed under this [act].

22 (8) “Money” means the coin or paper money of the United States or of any other
23 jurisdiction, a monetary unit of account established by an intergovernmental organization or by

1 agreement between two or more governments, whether in tangible or digital form, or a digital
2 medium of exchange, that meets the following criteria:

3 (A) is designated as by a government; and

4 (B) circulates or is customarily used in the jurisdiction of issuance as a means of
5 discharging obligations to other persons.

6 The term does not include Virtual Currency.

7 (9) “Monetary value” means a medium of exchange, whether or not redeemable in
8 money, that acts as a substitute for money.

9 (10) “Nationwide Multistate Licensing System and Registry” or “NMLSR” means the
10 system of record for non-depository, financial services licensing or registration through which
11 companies and individuals may apply for, amend, renew and surrender licenses granted by in
12 participating jurisdictions, including the District of Columbia, U.S. Territories of Puerto Rico,
13 the U.S. Virgin Islands, and Guam, and that is owned and operated by the State Regulatory
14 Registry LLC (SRR)², a wholly owned subsidiary of the Conference of State Bank Supervisors.

15 (11) “Person” means an individual, corporation, business trust, estate, trust, partnership,
16 limited liability company, association, joint venture, government, government subdivision,
17 agency or instrumentality, public corporation, or any other legal or commercial entity, regardless
18 of how organized.

19 (12) “Qualified custodian” means a bank located in this [State or jurisdiction] that subject
20 to the prior approval of the [title of senior Department official] is eligible to hold permissible
21 investments on behalf of a licensee under this [act]. To the extent applicable, terms used in this
22 definition shall have the meaning ascribed by the [State or jurisdiction] [Banking Law].

23 (13) “Record” means information that is inscribed on a tangible medium or that is stored

1 in an electronic or other medium and is retrievable in perceivable form.

2 (14) “Reciprocity Agreement” means a bilateral or multilateral arrangement among two
3 or more [States or jurisdictions] that permits the recognition of a license to engage in virtual
4 currency business activity that is granted by a [jurisdiction] other than this [jurisdiction] if
5 participation is approved by the [title of senior Department official], subject to any condition
6 imposed by the arrangement.

7 (15) “Resident” means any person that primarily resides, is physically located in for more
8 than one-half of any calendar year, or has any place of business in or is conducting any business
9 in this [State or jurisdiction], whether by means of a physical location or via the Internet or other
10 electronic media.

11 (16) “Responsible individual” means an individual who is employed by a licensee and
12 has managerial authority over the provision of virtual currency business activity or services by
13 the licensee in this [State or jurisdiction].

14 (17) “State” means a State of the United States of America, the District of Columbia,
15 Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular
16 possession subject to the jurisdiction of the United States of America.

17 (18) “Substitute for monetary value” means any unit of value that is a commonly
18 accepted medium of exchange.

19 (19) “Transfer” means:

20 (A) any change in ownership, possession or power to execute or prevent
21 transactions of virtual currency or of credentials, including private keys or other means of
22 accessing virtual currency, effected by or through a person engaged in virtual currency business
23 activity from one person to another person, from one account or depository to another, and

1 (B) the conversion of one form of virtual currency into money or another form of
2 virtual currency, or of money into one or more forms of virtual currency.

3 (20) “Trust company” means a person licensed or chartered as a trust company or a
4 limited purpose trust company by this [State] or any [jurisdiction] with which this [State or
5 jurisdiction] has a reciprocal licensing arrangement for virtual currency business activity to the
6 extent that the jurisdiction issuing the charter specifically allows trust companies to engage in the
7 specific activities defined by this [act] as “virtual currency business activity.”

8 (21) “Unfair or deceptive practice” means a practice or conduct by a person licensed to
9 engage in virtual currency business activity that poses more than nominal risks to users other
10 than market risks;

11 (22) “Unsafe or unsound practice” means a practice or conduct by a person licensed to
12 engage in virtual currency business activity that may pose more than nominal financial risk other
13 than market risk to the licensee or to its users’ ability to redeem on demand or on any other basis
14 provided by contract the virtual currency or other digital units of value being held by or under
15 the custody or control of the licensee, including risks of more than nominal loss, insolvency,
16 dissipation of the licensee’s assets, or otherwise materially prejudices the interests of its users or
17 of its users’ ability to redeem or use virtual currency or other digital units of value held by or
18 under the custody or control of the licensee;

19 (23) “User” means a person that owns or obtains virtual currency;

20 (24) “Virtual currency” means any digital unit of value that is used as a medium of
21 exchange or that substitutes in a transaction for money but that is not money. The term includes
22 digital units of exchange that (i) have a centralized repository or administrator, (ii) have no
23 centralized repository or administrator, or (iii) may be created or obtained by computing or

1 manufacturing effort. The term “Virtual Currency” does not include any of the following:

2 (A) Digital units of value that are used only within and are redeemable only
3 within online gaming platforms, that have no market or application outside those gaming
4 platforms, may not be converted into or redeemed for or other forms of virtual currency, and
5 may not be redeemed for real-world tangible or intangible goods, services, discounts, or
6 purchases;

7 (B) Digital units of value that can be redeemed only for goods, services,
8 discounts, or purchases as part of a customer affinity or rewards program maintained by the
9 issuer, other designated or affiliated merchants, or used in another customer affinity or rewards
10 program, but cannot be converted into, or redeemed for money or other forms of virtual
11 currency;

12 (C) Digital units of value that may not be converted into money or otherwise act
13 as a substitute for money or convertible virtual currency; or

14 (D) Digital units of value purchased for use by and maintained or used by means
15 of a card, code, or other means of access to the digital units which card, code, or means is issued
16 on a prepaid basis otherwise than for use in virtual currency business activity.

17 (25) “Virtual Currency Business Activity” means the conduct of one or more of the
18 following types of services or products other than only for one’s own account or on a person-to-
19 person basis:

20 (A) Engaging as a business in the issuance and circulation or circulation alone of
21 virtual currency or having the authority to redeem or withdraw from circulation the same form of
22 digital currency as it issues or circulates;

23 (B) Engaging as a business in the exchange of virtual currency for money,

1 deposits denominated in money or other forms of stored value excluding digital units defined in
2 subsection 103(24)(D), or other virtual currency, or in the conversion of one virtual currency to
3 one or more virtual currencies;

4 (C) Engaging as a business in (i) receiving virtual currency for transfer or
5 transmission, (ii) transferring or transmitting virtual currency from one person or location to
6 another person or location by any means, except where the transaction is undertaken for non-
7 monetary purposes or does not involve the transfer of more than [a nominal amount [which the
8 Drafting Committee must prescribe] or no more than [a nominal number that Drafting
9 Committee must prescribe] of transactions in the preceding six calendar months], or (iii) taking
10 deposits of money or of one or more forms of virtual currency in exchange for credits to be used
11 on a network or otherwise and holding credentials that enable the taker to exchange or arrange
12 exchanges of one virtual currency in one or more transactions or to prevent exchanges of the
13 customer's money or virtual currency;

14 (D) Engaging as a business in storing, holding, or maintaining custody or control
15 of virtual currency on behalf of others, including by hosting one or more Web Wallets or by
16 offering any other service or product to users that allows the business to have access to users'
17 virtual currency credentials and that allows the business to execute users' instructions or to
18 prevent the execution of users' instructions or redemption or conversion of the virtual currency;

19 (E) Engaging as a business in buying and selling virtual currencies on behalf of
20 others, in any other business offering any service or product that allows the business to have
21 custody or control over the users' virtual currency or the user's virtual currency credentials;

22 (F) Engaging as a business in controlling or administering one or more virtual
23 currencies; or

1 (G) Engaged in the business of holding e-precious metals or e-certificates of
2 precious metals on behalf of other persons or of issuing shares or e-certificates representing
3 interests in precious metals.

4 The term “virtual currency business activity” does not include (i) development or dissemination
5 of software related to virtual currency, (ii) a person that obtains virtual currency solely to
6 purchase goods or services for personal family or household purposes or that purchases
7 inventory or equipment for their own purposes or who receives virtual currency from the
8 purchase or sale of goods or services, (iii) a person that utilizes virtual currency for investment
9 purposes, [(iv) storage, holding, or maintenance of custody or control of virtual currency by a
10 trust company holding a charter from this [State or jurisdiction] or a charter recognized by this
11 [State or jurisdiction] to the extent that the chartering jurisdiction expressly authorizes trust
12 companies it charters to engage in virtual currency business activities,] or (v) any other person
13 exempted from this [act] pursuant to section 104 of this [act].

14 (27) “Web Wallet” means a collection of private keys associated with a virtual currency
15 address on a public ledger, whether distributed to one or more devices, including but not limited
16 to a mobile application, that, through software, allows a person with custody or in control of the
17 private key(s) to (a) spend or manage the virtual currency, question the public ledger, and report
18 the number or value] of virtual currency units available, (b) generate new addresses to receive
19 virtual currency, (c) allow a user to transfer virtual currency to an address of the user’s choice,
20 track, or (d) observe confirmation of a transaction or transfer, or make a back-up copy of the
21 keys or restore the keys.

22 **Comment**
23

24 The definitions are by far the most important and complex aspects of this drafting project.
25 In some instances, choices are more stylistic than substantive, such as the choice between using

1 the term “money” or “legal tender” to connote value that is adopted by a government for the
2 purpose of discharging obligations. The final draft will limit one or the other of these terms and
3 will use it consistently across the provisions. This draft uses only the term “money” both in the
4 definitions and elsewhere.
5

6 The overall goal is to capture within the scope of this draft activities that meeting the
7 definition of “virtual currency business activity.” And to restrict the activity to that performed
8 with or on behalf of residents of the jurisdiction that seeks to license the provision of such
9 activities a jurisdiction in the United States, including persons in or offering services that meet
10 the definition in tribal jurisdictions. The definitions of “virtual currency” and “virtual currency
11 business activity” remain central to this exercise. Questions arise including whether the
12 definition of “virtual currency” should include “e-precious metals” and e-certificates for precious
13 metals that can be transferred from one owner to another. FinCEN issued guidance in August
14 2015 that extended its March 2013 guidance concerning what types of business activity with
15 virtual currency render the business a “money services business” for the purposes of federal
16 AML requirements under 31 C.F.R. Part X. The 2015 guidance included e-precious metals and
17 e-certificates for precious metals. This draft includes both in the definitions of “virtual currency”
18 and “virtual currency business activity.”
19

20 The question of whether and how to include an “on-ramp” for new entrants to the virtual
21 currency business industry was discussed to some degree at the October 2015 Drafting
22 Committee meeting with a sense that an “on-ramp” should be considered seriously. Similarly,
23 there is a question about whether to include a *de minimis* exemption from this legislation. In the
24 latter connection, please compare alternative formulations of a *de minimis* exemption in offered
25 in this draft. Please note that the definition is not in subsection 103(26) and the exemption in
26 subsection 104(14) are not intended to create an exemption for what the virtual currency
27 community refers to as a “multi-sig” arrangement – that is, one that requires more than one
28 credential-equivalent to be used to effect transactions. The theory behind retaining such
29 arrangement in this draft is that retention is consistent with the notion of covering any
30 intermediary whose business activity includes the power to transact, convert or redeem or the
31 power to prevent transactions, conversions, or redemptions of virtual currency of others.
32

33 Another question that has been debated since the October meeting of the Drafting
34 Committee is whether the scope of this legislation and the definition of virtual currency business
35 activity should be limited to persons who perform services as intermediaries or should include
36 activities of principals as well. Both Section 102 and the definition of virtual currency business
37 activity in this draft cover both principal and intermediary functions of persons whose activities
38 in a particular jurisdiction that enacts this legislation meet the definition.
39

40 A final question for now concerns coverage or exclusion of trust companies who receive
41 their charters and powers from States. New York State issued a trust company charter to ItBit in
42 2015. ItBit’s ability to engage in transactions with residents of other States was challenged by
43 other States, and, thus, for this draft at least information about inclusion or exclusion of trust
44 companies is bracketed until the Drafting Committee can discuss this issue with particularity.
45

1 **SECTION 104. EXEMPTIONS.** This [act] does not apply to any transfer or transaction
2 any part of which is governed by the Electronic Fund Transfers Act of 1978 (15 U.S.C. §§ 1693-
3 1693r (2012), the Securities Exchange Act of 1934 (15 U.S.C. § 78m (1994 & Supp.)), or the
4 Commodities Exchange Act of 1936 (7 U.S.C. §§ 1-27f (2013)), or to transfers by any of the
5 following:

6 (1) the United States or a [state], county, city or other governmental agency, subdivision,
7 department, agency, or instrumentality thereof, or a federally recognized Indian tribe;

8 (2) a bank chartered under the laws of a State or jurisdiction or the United States;

9 (3) a person in a payment system to the extent that the person provides processing,
10 clearing, or settlement services solely between or among persons otherwise excluded from this
11 [act];

12 (4) a person engaged in the business of dealing in foreign exchange as defined in 31
13 C.F.R. 1010.605(f)(1)(iv);

14 (5) a person that obtains convertible virtual currency to the extent that the person uses it
15 only to purchase real or virtual goods or services for their own purposes and not on behalf of
16 others;

17 (6) a person that mines or manufactures virtual currency and uses it solely for their own
18 purposes, such as to purchase goods and services for their own purposes, so long as the person
19 does not engage in any virtual currency business activity on another person's behalf; [or]

20 (7) a person not otherwise engaged in virtual currency business activity on behalf of third
21 parties that (A) contributes connectivity software or computing power to a decentralized virtual
22 currency, or (B) provides data storage or security services for a virtual currency business and not
23 otherwise engaged in virtual currency business activity on other person's behalf. [or,

1 (8) a person that has third-party control of virtual currency or of user’s virtual currency
2 credentials on behalf of residents of this [State or jurisdiction] that is valued, in the aggregate, at
3 less than [dollar amount to be specified by Drafting Committee], according to a rolling 30-day
4 average of outstanding balances as converted into a dollar amount utilizing each day’s prevailing
5 exchange rate. A person that once qualified for this exemption must file an application for a
6 license with this [State or jurisdiction] or using the reciprocity provisions of Article 2 to retain
7 the exemption to remain exempt during the processing of its application. A person that once
8 qualified for this exemption but that does not obtain a license from this [State or jurisdiction] is
9 no longer exempt and must halt all virtual currency business activity with residents of this [State
10 or jurisdiction] within 48 hours of being notified that its application for license was denied and
11 assist the [Department] in the orderly winding down of its virtual currency business activity in
12 this [State or jurisdiction] or otherwise affecting residents of this [State or jurisdiction].]

13 **Comment**
14

15 Item (14) is based on legislation that was proposed in Pennsylvania in 2015 with a \$1
16 million threshold and drafted with the assistance of CoinCenter. The CoinCenter provision
17 allowed the exempt entity to remain exempt so long as the entity took “reasonably timely steps to
18 seek a license.” The version presented in proposed subsection (9) varies the effect on the entity
19 as the threshold dollar value is reached by requiring that it file as it approaches whatever
20 threshold may be prescribed, and orders a prompt halt and assistance in the unwinding of the
21 entity’s activity if its application is denied. Please compare with subsection 103(26)(c) for a
22 different approach to a *de minimis* exemption. In Pennsylvania: House Bill No. 850, Printer’s
23 No. 1029 (2015) has been in the Commerce Committee of the House of Representatives since
24 March 26, 2015. *Bill Information*, Legislative Data Processing Website (2016).
25

26 FinCEN refined the definition of the term “currency dealer or exchanger” for purposes of
27 31 C.F.R. Part X in 2011 to “a dealer in foreign exchange” to capture the exchange of money
28 instruments as well as of other monetary instruments, funds, or other instruments denominated in
29 currency. *See Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to*
30 *Money Services Businesses*, 76 Fed. Reg. 43585, 43589 & 43596 (July 21, 2011).
31

1 **ARTICLE 2**

2 **LICENSURE**

3 **SECTION 201. LICENSE.**

4 (a) License required. A person, whether or not the person has a location in this [State or
5 jurisdiction], may not engage in virtual currency business activity in this [State or jurisdiction] as
6 defined in Section 102 or advertise, solicit, or hold itself out as providing virtual currency
7 business services, whether or not the person has a physical location from this [State or
8 jurisdiction] or is incorporated under the laws of this [State or jurisdiction], unless the person:

9 (1) is licensed under this [article]; or

10 (2) is licensed by a [jurisdiction] with a substantially similar licensure and
11 supervision law as determined by the [Department] and with which this [State or jurisdiction] has
12 a reciprocity agreement expressly for virtual currency business activity.

13 (b) Exemption from licensure requirements. A person excluded from this [act] pursuant
14 to Section 104 is exempt from licensure requirements of this [act].

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

16 **Comment**

17
18 Some states' money transmitter statutes, including California, California allow licenses to
19 be granted only if the applicant is organized under the laws of California. Others, such as
20 Virginia, do not require incorporation in that State or even a physical presence in Virginia for a
21 license to be issued.

22
23 **SECTION 202. APPLICATION FOR LICENSE.**

24 (a) Applications for a license under this [article] shall be made in such form and in a
25 medium prescribed by the [title of senior Department official] or in the form prescribed by the
26 Nationwide Multistate Licensing System and Registry if this [State] utilizes the NMLSR. To the
27 extent applicable, the application must state or contain:

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

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

7 (3) a set of fingerprints for each executive officer of the applicant, together with
8 an employment history and history of any investigation or legal proceeding involving any
9 executive officer for each for the past ten (10) years, if available, as well as any additional
10 information that the [title of senior Department official] reasonably may prescribe by regulation;

11 (4) a description of the proposed, current, and historical business(es) of the
12 applicant for the past ten (10) years, if applicable, including reasonable detail on the products
13 and services provided and to be provided, all associated website addresses, the principal place of
14 business, the projected user base, together with specific marketing targets, and the location(s) of
15 any current or proposed database server(s);

16 (5) a list of any other [jurisdiction (s)] in which the applicant is licensed to
17 conduct business regulated by this [act] and of any license revocations, suspensions, or other
18 disciplinary actions taken against the applicant in the other [jurisdiction], regardless of the nature
19 of the license;

20 (6) criminal convictions involving the applicant and persons exercising control
21 over applicant and of any deferred prosecution agreements between the applicant and any
22 [jurisdiction] or the United States government;

23 (7) material litigation in which the applicant or any executive officer has been

1 involved in the [10]-year period immediately preceding the submission of the application,
2 determined in accordance with generally accepted accounting principles and to the extent that it
3 would be required to be disclosed in the applicant’s annual audited financial statements, reports
4 to shareholders, or similar records or reports;

5 (8) any bankruptcy or receivership proceedings affecting the applicant, the
6 executive officers, or any responsible individual employed by or in a control position in the past
7 [10] years;

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

11 (10) a description of the sources of funds and credit to be used by the applicant to
12 provide virtual currency business activity in this [State or jurisdiction] and proof that the licensee
13 has the minimum net worth specified in Section 207 of this article;

14 (11) the physical locations of servers that applicant uses or proposes to use in the
15 conduct of its virtual currency business(es) and the address to which communications from the
16 [Department] may be sent;

17 (12) the name and address of the applicant’s registered agent in this [State or
18 jurisdiction];

19 (13) money services or money transmitter licenses that the applicant holds in any
20 other [jurisdiction] together with their dates of expiration;

21 (14) a description of other lines of business the applicant engages in, directly or
22 indirectly, or expects to engage in in this [State or jurisdiction];

23 (15) if applicable, a copy of any liability, casualty, or business interruption

1 insurance policy(ies) maintained by applicant for itself, its officers and directors, or its users, but
2 excluding any health insurance policy or policies;

3 (16) the date of the applicant's incorporation, charter or formation and the
4 jurisdiction in which the applicant was incorporated, chartered or formed, and, if applicable, a
5 copy of the most recent certificate of good standing from the jurisdiction in which the applicant
6 was incorporated, chartered or formed;

7 (17) if the applicant is a wholly owned subsidiary of:

8 (A) a corporation publicly traded in the United States, a copy of the
9 audited financial statement for the most recent fiscal year or a copy of the parent corporation's
10 most recent report filed pursuant to Section 13 of the Securities Exchange Act of 1934 [15
11 U.S.C. § 78m (1994 & Supp.)]; or

12 (B) a corporation publicly traded outside the United States, a copy of
13 similar documentation filed with the regulator of the parent corporation's domicile outside the
14 United States;

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

17 (19) other information that the [title of senior Department official] reasonably
18 may require by regulation.

19 The Department by regulation may define terms under in this section.

20 (b) A nonrefundable application fee of [amount to be prescribed by legislature or
21 determined by Department by regulation].

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

1 (d) The [title of senior Department official], for good cause, may waive one or more
2 requirements of subsection (a) or permit the applicant to submit other information in lieu of the
3 required information.

4 (e) A applicant may use any common form application allowed by the [title of senior
5 Department official] under the provisions of section 203 of this [act], including forms utilized by
6 the Nationwide Multistate Licensing System and Registry. [or,

7 (f) [optional on-ramp provisions for initial applicants still to be drafted if the Drafting
8 Committee agrees].]

9 **Comment**

10
11 With respect to a possible or optional “on-ramp” provision, the Drafting Committee
12 should be aware that the Conference of State Bank Supervisors Task Force supports the idea in
13 concept, but has expressed concerns that any such provision not be phrased in such a manner as
14 would convey a form of property interest that would be subject to the due process requirements
15 applicable to license suspensions or revocations in many States. One way to create an on-ramp
16 would be to deem every Money Services Act or Money Transmitter Act licensee as eligible to
17 conduct virtual currency business activity under this legislation if they filed a notice of intent or
18 an application during the pendency of the application-review process. This approach favors
19 legacy licensees over new entrants, and is likely to draw opposition from new entrants.
20 Moreover, the two laws are different in policy as well as requirements.

21
22 The text in Section 203’s Alternative A, subsection (b), below, speaks in terms of
23 provisional operation and provides that no “provisional operation permission” granted by the
24 Department’s senior official may be treated as the equivalent of a property interest.

25
26 **SECTION 203. RECIPROCAL LICENSING.**

27 **Alternative A**

28 (a) A person engaged in virtual currency business activity that is currently licensed to
29 conduct activities that fall under that definition in Section 103 of this [act] by at least one other
30 [jurisdiction], may engage in virtual currency business activity [and such other activity as this
31 [act] may allow in this [jurisdiction] without applying for a license pursuant to Section 202 if:

32 (1) the [jurisdiction] where such person is licensed has enacted this [act] or has

1 virtual currency business activity laws that are substantially similar to those imposed by the laws
2 of this [State or jurisdiction], as determined by the [title of senior Department official],

3 (2) the person submits to the [title of senior Department official] at least 30 days
4 before the person intends to commence virtual currency business activity in this [State or
5 jurisdiction] each of the following:

6 (A) notice to the [title of senior Department official] of its intention to rely
7 on reciprocal licensing, a certification of license history from the [responsible official] of the
8 [Department] in each [jurisdiction] that has issued the person a license to conduct business
9 allowed by this [act],

10 (B) a reciprocal license fee in the amount of [no more than [dollar amount]]
11 to be specified by the [title of senior Department official] by regulation within 45 days following
12 enactment of this [act],

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

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

19 (3) the [title of senior Department official] does not reject the applicant within 15
20 days following receipt of the items specified in Section 203(a)(2);

21 (4) the person does not commence virtual currency business activity in this [State
22 or jurisdiction] until the 31st day after complying with the requirements of subsection 203(a)(2).

23 (b) The [title of senior Department official] has discretion to permit provisional operation

1 by any person who has complied with subsection 203(a)(2) prior to the expiration of the 30-day
2 notice period described in subsection 203(a)(2), provided that no provisional operation
3 permission may be treated as the equivalent of a property interest.

4 (c) The [title of senior Department official] has discretion to waive the bond and net
5 worth requirements otherwise require by this [act] for any license granted under this Section if
6 the [jurisdiction] that granted the license on which reciprocity is based requires bonding and net
7 worth requirements that are substantially similar to those required by this [act].

8 **Alternative B**

9 (a) A person licensed to engage in virtual currency business activity as defined in this
10 [act] in another [jurisdiction], may submit a copy of its license application to and current license
11 issued by that [jurisdiction] in lieu of submitting an application in the form prescribed in Section
12 202. The [title of senior Department official] shall accept the application from the other
13 [jurisdiction] as an application for license in this [State or jurisdiction] if:

14 (1) the [jurisdiction] that licensed the person has enacted this[act] or has virtual
15 currency business activity laws that are substantially similar to those imposed by the laws of this
16 [State or jurisdiction], as determined by the [title of senior Department official];

17 (2) the application to the other [State or jurisdiction] contains information
18 substantially similar to or is more comprehensive than that required in an application submitted
19 to this [State or jurisdiction]; and

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

1 other [jurisdiction].

2 (b) The [title of senior Department official] has discretion to permit provisional operation
3 by any person who has complied with subsection 203(a)(2) prior to the expiration of the 30-day
4 notice period described in subsection 203(a)(2), provided that no provisional operation
5 permission may be treated as the equivalent of a property interest.

6 (c) The [title of senior Department official] has discretion to waive the bond and net
7 worth requirements otherwise required by this [act] for any license granted under this Section if
8 the [jurisdiction] that granted the license on which reciprocity it based requires bonding and net
9 worth requirements that are substantially similar to those required under this [act].

10 **Alternative C**

11 [Applicable only if the Jurisdiction authorizes or the Department has agreed to participate
12 in the NMLSR, which can be granted in the bracketed subsection (a) below if needed. If the
13 jurisdiction already participates in the NMLSR, the bracketed subsection (a) would be deleted
14 from the legislation and the unbracketed subsection (a) would begin this Alternative's
15 provisions.]

16 [(a)The [title of senior Department official] is authorized to use the National Mortgage
17 Licensing System and Registry operated by the Conference of State Bank Supervisors for
18 purposes of streamlining applications for licenses to be issued under this [act].]

19 (a) A person seeking a license to engage in virtual currency business activity may file an
20 application with the NMLSR in lieu of the application that is prescribed in Section 202 of this
21 [act] together with the processing fee required by the NMLSR and of this [jurisdiction].

22 (b) At the time the person files the application with the NMLSR, it shall provide in a
23 record notice that the person has submitted or intends to submit an application to the NMLSR

1 together with each of the following:

2 (1) a certification of license history from the [responsible official] of the
3 [Department] in each [jurisdiction] that has issued the person a license to conduct business
4 governed by this [act],

5 (2) an application fee in an amount to be specified by the [Department] to this
6 [State or jurisdiction] in addition to the application fee required by the NMLSR, and

7 (3) a certification under penalty of perjury signed by an executive officer of the
8 person affirming that the person will conduct its virtual currency business in this [State or
9 jurisdiction] in compliance with the requirements of Articles [specify] of this [act].

10 (c) No person may commence virtual currency business activity in this [State or
11 jurisdiction] until a license granted by the NMLRS has been granted.

12 (d) The [title of senior Department official] has discretion to permit provisional operation
13 by any person who has complied with subsection 203(a)(2) prior to the expiration of the 30-day
14 notice period described in subsection 203(a)(2), provided that no provisional operation
15 permission may be treated as the equivalent of a property interest.

16 **End of Alternatives; a jurisdiction should select one.**

17 **SECTION 204. SECURITY.**

18 (a) Except as otherwise provided in subsection (b), a surety bond, letter of credit, or other
19 security acceptable to the [title of senior Department official] in the amount of [consider
20 formulation of this standard] must be provided to the [Department] before any license may be
21 issued.

22 (b) Security must be in a form satisfactory to the [title of senior Department official] and
23 be collectible by the [jurisdiction] for the benefit of any claimant against the licensee to secure

1 the faithful performance of the obligations of the licensee with respect to its virtual currency
2 business activity.

3 (c) The aggregate liability on a surety bond may not exceed its amount.

4 (d) Security must cover claims for so long as the [Department] specifies by regulation,
5 but at least [specify number] years after the licensee ceases to engage in virtual currency
6 business activity in this [State or jurisdiction].

7 (e) The [title of senior Department official] may increase the amount of security required
8 to a maximum of [amount suggested by Drafting Committee] if the licensee's financial condition
9 so requires, as evidenced by reduction in net worth, financial losses, or other criteria to be
10 prescribed by [regulation] by the [title of senior Department official]. Failure of the licensee to
11 provide the additional security required by the [title of senior Department official] shall be
12 grounds for immediate suspension of a license or for commencement of a license revocation
13 proceeding.

14 (f) The [title of senior Department official] may permit a licensee to substitute another
15 form of security acceptable to the [title of senior Department official] for the security initially
16 provided under subsection (a) so long as there is no time when the licensee's activity in this
17 [State or jurisdiction] is not covered by security acceptable to the [title of senior Department
18 official].

19 (g) The [title of senior Department official] shall maintain an action on the security bond
20 on behalf of claimant(s), or shall exercise rights under any letter of credit or other security
21 provided pursuant to subsection (a). Any recovery or part thereof may be retained for up to five
22 years to assure that all claimants have access to relief from the security.

23 (h) No claimant shall have a direct right against the security.

1 **SECTION 205. ISSUANCE OF LICENSE.**

2 (a) When an application is filed under Section 202 of this [article], the [title of senior
3 Department official] shall investigate the applicant’s financial condition and responsibility,
4 financial and business experience, character and general fitness, and the competence, experience,
5 character, and general fitness of the executive officers, directors, managers, and persons in
6 control of the applicant.

7 (b) The [title of senior Department official] may conduct any investigation of the
8 applicant’s business premises that it deems necessary, including an investigation of any facilities
9 at and servers or other means or devices on which the applicant proposed to store a user’s virtual
10 currency credentials and from which the applicant proposes to transact virtual currency business
11 on behalf of users. The applicant shall pay the reasonable costs of such investigation, physical or
12 virtual, that the [title of senior Department official] may elect reasonably to conduct.

13 (c) No original application under Section 202 of this [article] shall be considered
14 complete until the [title of senior Department official] has all of the information required by this
15 [act] or the NMLSR, if the application is made through it, and has completed any investigation
16 allowed by subsection (b) of this Section.

17 (d) When an original application under Section 202 of this [article] is complete, the [title
18 of senior Department official] shall notify the applicant in a record within [30 calendar] days of
19 its decision to approve or deny the application. If the [title of senior Department official] does
20 not notify the applicant of approval or denial by the 31st calendar day after application was
21 complete subject to subsection (e), the application is deemed approved and the [title of senior
22 Department official] shall issue the license under this [article], which shall take effect on the first
23 business day following the expiration of the [30 calendar] day period if the applicant by that time

1 has complied with the security requirements of Section 204 of this [article] or on the first
2 business day following the applicant’s compliance with the security requirements of Section 204
3 of this [article].

4 (e) When an applicant has fulfilled all of the conditions set forth in Section 202 and 204
5 of this [article] or has complied with Section 203 and fulfilled the security requirements of
6 Section 204 of this [article] or subsection (d) is applicable, the [title of senior Department
7 official] shall issue a license to the applicant, absent good cause shown.

8 (f) An applicant whose application is denied under this [article] may appeal the denial
9 within 30 calendar days following receipt of the notice of denial, and may request a hearing in
10 conjunction with its appeal.

11 **Comment**

12
13 The addition of the phrase “absent good cause shown” is added to grant discretion to
14 deny an application if the applicant has been allegedly engaged in violations of federal anti-
15 money-laundering or other regulations. Considering that there is a right to appeal denial of the
16 application, this power was suggested.

17
18 **SECTION 206. RENEWAL OF LICENSE.**

19 (a) At least 15 business days before the anniversary of license issuance, the licensee must
20 pay a biennial renewal fee of, a licensee shall pay a biennial renewal fee of [decide amount or
21 maximum percentage] of its [dollar or transaction] volume in this [State or jurisdiction] for the
22 prior calendar year measured as of December 31st if the [sum or number of transactions] was
23 less, or [decide higher amount of fee] if its volume in this [State or jurisdiction] for the same
24 period was greater than [dollar amount or number of transactions].

25 (b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a
26 form and in a medium prescribed by the [title of senior Department official] or through the
27 Nationwide Multistate Licensing System and Registry, if this [State or jurisdiction] participates

1 in that System. The renewal report must state or contain as applicable:

2 (1) A copy of the licensee's most recent (A) reviewed annual financial statement
3 if the licensee's virtual currency business activity in this [State or jurisdiction] amounted to
4 [dollar amount or transaction number] or less in the prior calendar year measured as of
5 December 31st, (B) audited annual financial statement if the licensee's virtual currency business
6 activity in this [State or jurisdiction] amounted to more than [dollar amount or number of
7 transactions] in the prior calendar year measured as of December 31st, or (C) if the licensee is a
8 wholly owned subsidiary of a business person, the most recent audited consolidated annual
9 financial statement of that person;

10 (2) A description of any material change in the licensee's financial condition, any
11 material litigation involving the licensee, any license suspension or revocation proceeding
12 commenced, any investigation by a federal, state or jurisdiction governmental unit or agency
13 involving the licensee, any data security breach, or change in information since the date of the
14 reviewed or audited financial statement submitted pursuant to subparagraph (1) of this subsection
15 that has not been reported to the [title of senior Department official] or reported on a required
16 report or a copy of any report submitted under Section 13 of the Securities Exchange Act of 1934
17 [15 U.S.C. § 78m (1994 & Supp.);

18 (3) If the license was first issued in the same fiscal year as the renewal report will
19 be submitted pursuant to this subsection, the number of virtual currency business transactions of
20 any type engaged in by the licensee on behalf of persons in this [State or jurisdiction] or the
21 number of private keys or other credentials received by the licensee for [storage/ safekeeping/ on
22 behalf of third parties for the period since the license was first issued;

23 (4) The dollar-equivalent of virtual currency held by or controlled on behalf of

1 others as of the end of the month at least [30 days] prior to the date of the renewal report, and the
2 total number of users for whom the licensee held or controlled virtual currency on the same date;

3 (5) Proof that the licensee continues to maintain permissible investments in
4 accordance with any regulation of the [Department] issued pursuant to Section 207 and a listing
5 of each such investments together with the name of the qualified custodian holding each such
6 investment;

7 (6) Proof that the licensee continues to meet the requirements of Section 207 for
8 minimum net worth;

9 (7) Proof that the licensee continues to maintain adequate security as required by
10 section 204; and

11 (8) A list of any physical locations in this [State or jurisdiction] where the licensee
12 operates its business or where it operates any server related to its conduct of its virtual currency
13 business activity.

14 (c) If a licensee does not pay its renewal fee or file its renewal report by the renewal date,
15 or by the end of any extension of time granted by the [title of senior Department official], the
16 license is suspended and the licensee's authority to engage in virtual currency business activity in
17 this [State or jurisdiction] shall cease until such time as the [title of senior Department official]
18 renews the license. No notice or hearing shall be required for a license suspension for failure to
19 pay a renewal fee or to file a renewal report required by this [act]. The suspension shall be lifted
20 if, within 20 calendar days after the license was suspended pursuant to this subsection, the
21 licensee:

22 (1) files the renewal report and pays the renewal fee;

23 (2) pays a fine not to exceed \$500 for each day after suspension and prior to the

1 date that the licensee files the report and pays the renewal fee; and

2 (3) the [title of senior Department official] notifies the licensee of its receipt of the
3 report and fee.

4 If the suspension is lifted, all transfers made while the license was suspended remain valid.

5 (d) The [title of senior Department official] for good cause may grant an extension of the
6 renewal date.

7 **[SECTION 207. NET WORTH/MINIMUM CAPITAL REQUIREMENTS.]** A
8 licensee under this [act] shall provide proof of and maintain a net worth of [specify amount]
9 determined in accordance with generally accepted accounting principles. [The licensee may
10 include in its calculation of net worth the type(s) of virtual currency(ies) that its virtual currency
11 business activity involves.]

12 **Comment**

13
14 A virtual currency business may be expected to hold as part of its capital virtual currency
15 in the form in which it transacts business for its users, as well as other capital required for its
16 operations. Technology start-up companies often go through more than one level of capital
17 funding in their early years. This draft makes no recommendation as to how the requirement to
18 maintain a specific net worth should be managed as a new entrant goes through its early capital.
19 The Drafting Committee should discuss the pros and cons of allowing a portion of net worth
20 requirements in virtual currency, given the price volatility to which virtual currency has been
21 subject. A “mark-to-market” style requirement could be particularly onerous for smaller virtual
22 currency licensees and new entrants.

23 **ARTICLE 3**

24 **EXAMINATIONS; REPORTS; RECORDS**

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

26 (a) Subject to subsection (b) of this section, the [title of senior Department official] may
27 conduct an annual examination of a licensee or of any of a licensee’s facilities or servers
28 wherever located upon [5] business days’ prior notice to the licensee.
29

1 (b) The [title of senior Department official] may examine a licensee at any time, without
2 advance notice, if the [title of senior Department official] has reason to believe that the licensee
3 is engaging in an unsafe or unsound acts or practices, unfair or deceptive acts or practices, or has
4 violated or is violating this [act] or a regulation adopted or an order issued under this [act].

5 (c) If the [title of senior Department official] concludes that an examination under
6 subsections (a) or (b) of this Section is required, the licensee shall pay the reasonable costs of the
7 examination.

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

10 **SECTION 302. COOPERATION AND DATA-SHARING AUTHORITY.**

11 (a) Subject to Section 305 and under terms consistent with applicable laws concerning
12 privacy, data protection, privilege, and confidentiality of any relevant jurisdiction, the [title of
13 senior Department official] may cooperate, coordinate, jointly examine, consult, and share
14 records and information with the [title of senior Department official] of one or more
15 jurisdictions, any relevant self-regulatory organization, a federal, state or jurisdiction regulator of
16 banking or non-depository providers, and law enforcement agencies concerning the affairs and
17 conduct of any licensee under this [act].

18 (b) In addition to the powers granted by subsection (a) of this Section and subject to the
19 considerations set forth in this subsection, the [title of senior Department official], absent good
20 cause shown to the contrary, shall establish or participate with one or more [jurisdictions] in a
21 central depository for filings required, cooperate in the development and implementation of
22 uniform forms for applications and renewal reports, the conduct of joint administrative hearings
23 or proceedings and civil actions, formulate joint regulations, statements of policy, guidance and

1 interpretative opinions and releases, or common systems and procedures, and engage in joint
2 notices of proposed regulations, forms, statements of policy or guidance.

3 (c) In deciding whether and how to cooperate, coordinate, jointly examine, consult, or
4 share records and information under this Section, the [title of senior Department official] may
5 consider the following factors:

6 (1) Maximizing effectiveness and uniformity of regulation and examination and
7 their implementation and enforcement for the benefit of users and licensees; and

8 (2) Minimizing burdens on licensees without adversely affecting user protection
9 goals.

10 **SECTION 303. INTERIM REPORTS; CHANGE IN CONTROL; MERGER AND**
11 **ACQUISITION; ADVANCE NOTICE OF OTHER PROPOSED CHANGES.**

12 (a) A licensee shall file with the [title of senior Department official] within 15 business
13 days a report detailing any material change in information provided in the licensee’s application
14 or most recent renewal report to the [title of senior Department official], consistent with the
15 requirements of Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. § 78m (1994 &
16 Supp.)).

17 (b) Unless waived for cause by the [Department] after receiving such relevant
18 information as requested, a licensee shall file with the [title of senior Department official] a
19 report within 15 business days of any of the following occurrences: a change in physical location
20 or the physical location of any server or of the entity providing cloud computing or software as a
21 service (“SaaS”) used in the licensee’s virtual currency business, any additional entities
22 providing cloud computing or SaaS to the licensee together with the entity(ies)’ physical location
23 and server location(s), a material change in the licensee’s business model to conduct its virtual

1 currency business, or a change in the officers, directors, responsible individuals or principal
2 shareholders of the licensee’s virtual currency business activity together with the name(s) and
3 physical address(es) of each new individual in any such capacity and fingerprints of any new
4 executive officers.

5 (c)

6 (1) For purposes of this subsection, the term “control” means the possession, directly or
7 indirectly, of the power to direct or cause the direction of the management and policies of a
8 licensee whether through the ownership of stock of the licensee, the stock of any person that
9 possesses the power, or otherwise. Control shall be presumed to exist if a person, directly or
10 indirectly, owns, or holds with power to vote at least 10% of the voting stock of a licensee or of a
11 person that owns, or holds with power to vote at least 10% of the voting stock of the Licensee. A
12 person shall not be deemed to control another person solely by reason of being an officer or
13 director of the other person.

14 (2) Unless waived for cause by the [Department] after receiving such relevant
15 information as requested, a licensee shall notify the [title of senior Department official] of any
16 proposed change of control of or merger or acquisition of a substantial portion of the assets of
17 the licensee’s virtual currency business activity not less than 30 days prior to the proposed
18 change, and, in addition, (A) prior to any change of control, the Person seeking to acquire control
19 of a Licensee shall submit a written application to the [title of senior Department officer] in a
20 form and with substance acceptable to the [title of senior Department officer], including but not
21 limited to detailed information about the applicant and all directors, Principal Officers, Principal
22 Stockholders, and Principal Beneficiaries of the applicant, as applicable.

23 (B) The [title of senior Department officer] may determine upon application that

1 any Person does not, or will not upon the taking of some proposed action, control another
2 Person. Such determination shall be made within 30 days or such further period as the [title of
3 senior Department officer] may prescribe.

4 (C) The filing of an application pursuant to this Subsection in good faith by any
5 Person shall relieve the applicant from any obligation or liability imposed by this Section with
6 respect to the subject of the application until the [title of senior Department officer] has acted
7 upon the application. The [title of senior Department officer] may revoke or modify his or her
8 determination, after notice and opportunity to be heard, whenever in his or her judgment
9 revocation or modification is consistent with this Article.

10 (D) The [title of senior Department officer] may consider the following factors in
11 making any determination under this Subsection:

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

14 (ii) whether such person could direct, or cause the direction of, the
15 management or policies of the Licensee;

16 (iii) whether such person could propose directors in opposition to
17 nominees proposed by the management or board of directors of the Licensee;

18 (iv) whether such person could seek or accept representation on the board
19 of directors of the Licensee;

20 (v) whether such person could solicit or participate in soliciting proxy
21 votes with respect to any matter presented to the shareholders of the Licensee;

22 (vi) the public interest and the convenience and needs of the public; or

23 (vii) any other factor that indicates such person would or would not

1 exercise control of the Licensee.

2 (6) The [title of senior Department officer] shall approve or deny every
3 application for a change of control of a Licensee hereunder within [60] days from the filing of an
4 application deemed by the [title of senior Department officer] to be complete. Such period of
5 [60] days may be extended by the [title of senior Department officer], for good cause shown, for
6 such additional reasonable period of time as may be required to enable compliance with the
7 requirements and conditions of this [act].

8 (d) Mergers and Acquisitions. No action shall be taken, except with the prior written
9 approval of the [Department] that may result in a merger or acquisition of all or a substantial part
10 of the assets of a Licensee.

11 (1) Prior to any such merger or acquisition and unless waived for cause by the
12 [Department] after receiving such relevant information as requested, an application containing a
13 written plan of merger or acquisition shall be submitted to the [title of senior Department officer]
14 by the entities that are to merge or by the acquiring entity, as applicable. Such plan shall be in
15 form and substance satisfactory to the [title of senior Department officer], and shall specify each
16 entity to be merged, the surviving entity, or the entity acquiring all or substantially all of the
17 assets of the Licensee, as applicable, and shall describe the terms and conditions of the merger or
18 acquisition and the mode of carrying it into effect.

19 (2) The [title of senior Department officer] shall approve or deny a proposed
20 merger or a proposed acquisition of all or a substantial part of the assets of a Licensee within
21 [60] days after the filing of an application that contains a written plan of merger or acquisition
22 and is deemed by the [title of senior Department officer] to be complete. Such period of [60]
23 days may be extended by the [title of senior Department officer], for good cause shown, for such

1 additional reasonable period of time as may be required to enable compliance with the
2 requirements and conditions of this [act].

3 (3) In determining whether to approve a proposed merger or acquisition, the [title
4 of senior Department officer] shall consider the following factors in making such a determination
5 whether:

6 (A) such person’s purchase of common stock is made solely for
7 investment purposes and not to acquire control over the Licensee;

8 (B) such person could direct, or cause the direction of, the management or
9 policies of the Licensee;

10 (C) such person could propose directors in opposition to nominees
11 proposed by the management or board of directors of the Licensee;

12 (D) such person could seek or accept representation on the board of
13 directors of the Licensee;

14 (E) such person could solicit or participate in soliciting proxy votes with
15 respect to any matter presented to the shareholders of the Licensee;

16 (F) the public interest and the convenience and needs of the public are
17 met; or

18 (G) any other factor that indicates such person would or would not
19 exercise control of the Licensee.

20 **Comment**

21
22 This provision is closely modeled after, but is not a verbatim adoption of, Section 200.11
23 of the New York State Department of Financial Services’ June 2015 Virtual Currencies
24 regulation.

25
26 The factor in subparagraph (F), as the Committee will recognize, is a common means of
27 approving mergers under the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq.,

1 because it offers a defense in a case in which the combination may exceed review guidance first
2 adopted by the Department of Justice roughly 30 years ago. It was included in the first because
3 it was used by the New York State Department of Financial Services, but it does not have to
4 remain in the ULC draft depending on Committee preferences.

5
6 **SECTION 304. RECORDS.**

7 (a) A licensee shall maintain records in their original form or native file format for a
8 period of [three] years following the date of their creation and in a condition that will allow the
9 [title of senior Department official] to determine whether the licensee is complying with all
10 applicable laws, regulations and regulations. The books and records maintained by each licensee
11 shall, without limitation, include:

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

19 (2) A record of the aggregate number of transactions and aggregate dollar values
20 of transactions by the licensee on behalf of a user or for the licensee's own account in this State
21 or jurisdiction for each calendar year in which the licensee holds a license from this State or
22 jurisdiction, or that portion of any year in which the licensee holds a license from this State or
23 jurisdiction.

24 (3) A record of each transaction in which one form of virtual currency is
25 exchanged for money or for another form of virtual currency.

26 (4) A general ledger posted at least monthly containing all asset, liability, capital,

1 income, and expense accounts for the licensee;

2 (5) A copy of each business call report that the licensee may be required to create
3 or provide to the [title of senior Department official] under any requirement of this [State or
4 jurisdiction] or of the Nationwide Mortgage Licensing System;

5 (6) Bank statements and bank reconciliation records for the licensee and the
6 name(s), account number(s), and physical address(es) of each bank used by the licensee in the
7 conduct of its virtual currency business, regardless of the physical location of the bank in this
8 [State or jurisdiction] or elsewhere; and

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

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

13 (c) Records may be maintained outside this [State or jurisdiction] so long as they are
14 made accessible to the [title of senior Department official] on [three] business-days' notice
15 communicated in a record.

16 (d) All records maintained by the licensee that are required by this [act] shall be open to
17 inspection by the [Department] pursuant to the provisions of this [act] or a regulation or order
18 adopted pursuant to it, regardless of their location in or out of this [State or jurisdiction].

19 **SECTION 305. CONFIDENTIALITY.**

20 (a) Except as otherwise provided in subsection (b), all information or reports obtained by
21 the [title of senior Department official] from an applicant or licensee and all information
22 contained in or related to an examination, investigation, operating or condition report prepared
23 by, on behalf of, or for the use of the [title of senior Department official], trade secrets, or other

1 financial and operational information not contained in any report not otherwise available to the
2 public, are confidential and are not subject to disclosure under this [State or jurisdiction’s open
3 records law] or the open records laws of any reciprocal licensing jurisdiction. If the [title of
4 senior Department official] determines that a reciprocal licensing jurisdiction cannot provide this
5 protection, then, to that extent, the records may not be released.

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

9 **Comment**

10
11 The Discussion Draft included in Article 6, section 606 requirements for anti- money
12 laundering reports as does the New York State regulations do. This draft requires compliance
13 with all other laws to which the licensee may be subject, including federal anti-money-
14 laundering and economic sanctions laws. It is important to note that (a) some states already
15 have adopted anti-money-laundering requirements for some financial services providers, and (b)
16 FinCEN’s 2013 guidance on virtual currencies as money transmission do not cover all of the
17 types of activities included in this draft’s definition of “virtual currency business activity.” Thus,
18 to apply anti-money-laundering laws to all forms of virtual currency business activity, the
19 uniform act could contain a separate anti-money-laundering provision in Article 3.

20
21 **ARTICLE 4**

22 **PERMISSIBLE INVESTMENTS**

23 **[Reserved at Suggestion of the Chairman of the Drafting Committee]**

24 **SECTION 401. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

25 **SECTION 402. TYPES OF PERMISSIBLE INVESTMENTS.**

26 **ARTICLE 5**

27 **ENFORCEMENT**

28 **SECTION 501. SUSPENSION AND REVOCATION [; RECEIVERSHIP].**

29 (a) The [title of senior Department official] may suspend or revoke a license or place a

1 licensee in receivership, on an emergency basis if warranted and otherwise after prior notice and
2 an opportunity to be heard, if:

3 (1) the licensee violates a material provision of this [act] or a regulation adopted
4 pursuant to or an order issued under this [act] or of a federal statute, regulation or order
5 applicable to virtual currency business activity or otherwise applicable to a business in which a
6 licensee under this act may be engaged

7 (2) the licensee does not cooperate when legally required and after notice with an
8 examination or investigation by the [title of senior Department official];

9 (3) the licensee engages in any [material] unsafe or unsound act or practice in the
10 conduct of its business affairs;

11 (4) the licensee engages in fraud, intentional misrepresentation or deception, or
12 unfair or deceptive act or practice;

13 (5) the licensee's license in one or more other [jurisdictions] is suspended or
14 revoked for unsafe or unsound practices or for fraud, intentional misrepresentation or deception,
15 or for unfair or deceptive acts or practices;

16 (6) the licensee is convicted in this [State or jurisdiction] or in one or more other
17 [jurisdictions] for felonious conduct related to its virtual currency business activity or other
18 payment or trust activity; or

19 (7) the licensee is insolvent, suspends payments of its obligations otherwise than
20 due to a natural disaster and only for so long as is necessary to restore operations, or makes a
21 general assignment for the benefit of its creditors.

22 (b) The [Department] shall by regulation specify what conduct or legal regulation is
23 material for the purposes of this Section and this [act].

1 (c) In determining whether a licensee is engaging in an unsafe or unsound act or practice,
2 the [title of senior Department official] may consider the size and condition of the licensee’s
3 virtual currency business activity in this [State or jurisdiction] and in other [jurisdictions], the
4 magnitude of any loss experienced, the gravity of the act or practice or other violation of this
5 [act], and the previous conduct of the person involved.

6 (d) Orders to the licensee to suspend virtual currency business activity shall be effective
7 upon issuance if the [title of senior Department official] finds a threat of immediate and
8 irreparable harm to the public or licensee. Orders revoking licenses to engage in virtual currency
9 business activity shall be effective on issuance if the [title of senior Department official] finds a
10 threat of immediate and irreparable harm to the public, but otherwise an order revoking a license
11 is not effective before [one] ten calendar day after the order is served on the licensee.

12 (e) A license suspension or revocation, or a receivership, is subject to appeal to a court of
13 appropriate jurisdiction.

14 **Comment**

15
16 In subsection 501(d), this draft reduces the time that an order to suspend activity takes
17 effective from 10 to 1 day. If the Department or responsible official has grounds to suspend
18 activity under a license, there is no reason not to make the suspension effective quickly, giving
19 the licensee an opportunity to comply with the suspension order first.

20
21 **SECTION 502. ORDERS TO CEASE AND DESIST.**

22 (a) If the [title of senior Department official] determines that a person (i) is engaging in
23 virtual currency business activity in this [State or jurisdiction] without holding a license from this
24 [State or jurisdiction] or otherwise illegally, (ii) is engaging in unfair or deceptive acts or
25 practices in its virtual currency business activities, or (iii) is engaging in unsafe or unsound acts
26 or practices in its virtual currency business activities any jurisdiction in which it engages in
27 virtual currency business activity, the [title of senior Department official] may issue an order

1 requiring the person to cease and desist from such activity. The order becomes effective upon
2 service of it on the person. A person that is served with a cease and desist order pursuant to this
3 subsection may petition the [appropriate court], for a judicial order setting aside, limiting or
4 suspending the enforcement, operation or effectiveness of the order.

5 (b) In addition to or in lieu of the authority to suspend a license under Section 401(a) of
6 this [act], if the [title of senior Department official] determines that a licensee is violating this
7 [act] or a regulation adopted pursuant to or an order issued under this [act] or a material
8 provision of a federal statute, regulation, or order applicable to virtual currency business activity
9 or otherwise applicable to a business in which a licensee under this [act] is engaged, and that the
10 violation is likely to cause immediate and irreparable harm to the licensee, its users, or the
11 public, or to cause insolvency or significant dissipation of assets of the licensee, or that the
12 licensee is otherwise engaged in unfair or deceptive acts or practices or in unsafe or unsound acts
13 or practices, the [title of senior Department official] may issue an order, effective upon service,
14 requiring the licensee to cease and desist from the violation.

15 (c) An order to cease and desists issued under subsection (b) of this Section, remains
16 effective and enforceable pending the completion of an administrative proceeding pursuant to
17 this [act].

18 (d) An order to cease and desist expires unless the [title of senior Department official]
19 commences an administrative proceeding pursuant to this [act] within [ten (10)] calendar days
20 after the order is issued.

21 (e) A licensee that is served with an order to cease and desist may petition the
22 [appropriate court], for a judicial order setting aside, limiting or suspending the enforcement,
23 operation, or effectiveness of the order pending completing of an administrative proceeding

1 pursuant to this [act].

2 **SECTION 503. CONSENT ORDERS.**

3 (a) The [Department] may enter into a consent order at any time with a person to resolve
4 a matter arising under this [act] or a regulation adopted pursuant to or an order issued under this
5 [act]. A consent order must be signed by the person to whom it is issued or by the person’s
6 authorized representative, and must indicate agreement with the terms contained in the order.

7 (b) A consent order may provide that it does not constitute an admission by a person that
8 this [act] or a regulation adopted pursuant to or an order issued under this [act] has been violated.

9 **SECTION 504. CIVIL PENALTIES.**

10 (a) The [title of senior Department official] may assess a civil penalty against a person
11 that (i) violates this [act] or a regulation adopted pursuant to or an order issued under this [act] or
12 a material provision of a federal statute, regulation, or order applicable to virtual currency
13 business activity or otherwise applicable to a business in which a licensee under this [act] is
14 engaged , (ii) engages in unfair or deceptive acts or practices in its virtual currency activitiesState
15 or jurisdiction, or engages in unsafe or unsound acts or practices in its virtual currency business
16 activities, in an amount not to exceed [\$1,000] per day for each day the violation is outstanding,
17 plus this [State or jurisdiction’s] costs and expenses for the investigation and prosecution of the
18 matter, including reasonable attorney’s fees.

19 (b) There is no individual right of action under either subsection (a) or (b) of this Section.

20 **Comment**

21
22 The provisions of Article 5 are closely modeled after the 2004 amendments to the
23 Uniform Money Services Act (“UMSA”). The order of presentation, in particular, has been
24 changed only slightly from the UMSA. However, there is no provision for criminal penalties, or
25 separate Sections on unlicensed persons or on authority to remove officers and directors in this
26 Draft.
27

1 Note that subsection 504(c) does not allow private rights of action for violations of the
2 provisions of this act. The Drafting Committee should provide guidance on its preferences on
3 whether a private right of action should be established in this act.
4

5 **ARTICLE 6**

6 **ADMINISTRATIVE PROCEDURES AND POWERS OF THE [DEPARTMENT OR** 7 **SENIOR OFFICER]**

8 **SECTION 601. ADMINISTRATIVE PROCEEDINGS.** All administrative
9 proceedings under this [act] shall be conducted in accordance with the [administrative
10 procedures act] of this State or jurisdiction.

11 **SECTION 602. HEARINGS.** Except as otherwise provided in this [act], the [title of
12 senior Department official] may not suspend or revoke a license, [place a licensee in
13 receivership,] issue an order to cease and desist, or assess a civil penalty without notice and an
14 opportunity to be heard. The [title of senior Department official] shall hold a hearing when
15 requested to do so by an applicant whose application for license has been denied.

16 **Comment**

17 The provisions of this Article are as they appeared in the Discussion Draft. The
18 Chairman has recommended moving the content of Section 602 into the body of specific relevant
19 provisions of this Draft, but that move has not been made as of this date.
20

21 **ARTICLE 7**

22 **CONTENT AND FORM OF DISCLOSURES AND USER PROTECTIONS**

23 **SECTION 701. REQUIRED DISCLOSURES.**

24 (a) Each licensee shall provide to any person seeking to use the licensee's products or
25 services the disclosures required by subsection (b) and any additional disclosures that [the
26 Department] as the [title of senior Department official] may deem to be reasonably necessary for
27 user protection and prescribe by regulation pursuant to this section at times and in the form

1 prescribed. Disclosures required by this Article shall be made separately from any other
2 information provided by the licensee and in a clear and conspicuous manner in a record.

3 (b) Prior to establishing a relationship with a resident of this [State or jurisdiction] or a
4 person located in this [State or jurisdiction], the licensee shall make at least the following
5 disclosures: [State or jurisdiction]:

6 (1) A schedule of all fees and charges that the licensee may assess against users
7 and, if relevant, the timing of such fees and charges;

8 (2) Whether the product(s) or service(s) provided by the licensee are covered by a
9 form of insurance or otherwise guaranteed against loss by an agency of the United States,
10 including the Federal Deposit insurance Corporation or the Securities Investor Protection
11 Corporation, up to the full equivalent in United States dollars of the virtual currency or digital
12 units placed with or purchased from the licensee on the date of the placement or purchase;

13 (3) A notice that transfers of virtual currency or digital units are irreversible
14 unless otherwise provided;

15 (4) A notice describing liability, if any, for unauthorized, mistaken, or accidental
16 transfers and of any procedures for providing notice to the licensee of such transfers and for
17 obtaining any relief, if applicable;

18 (5) A notice that the date on which a transfer is made and the user's account is
19 debited may differ from the date or time that the user initiates the instruction to transfer or makes
20 a transfer of virtual currency or digital units from one account to another, or from one person to
21 another;

22 (6) Whether the user has a right to stop pre-authorized virtual currency or digital
23 unit transfers and any procedure to initiate a stop-payment order or to revoke the authorization

1 for subsequent transfers;

2 (7) The user's right to receive a receipt, trade ticket, or other evidence of a
3 transfer or transaction; and

4 (8) The user's right to at least 30 days prior notice of a change in the licensee's
5 fee schedule, other terms and conditions of operating, or policies on the user's account(s).

6 (c) At the conclusion of any virtual currency or digital unit transfer or transaction
7 involving a resident of this [State or jurisdiction] or a person located in this [State or
8 jurisdiction], each licensee shall furnish to the user a receipt in a record that contains the
9 following information:

10 (1) The name and contact information of the licensee, including such information
11 as a user may need to file a complaint or ask a question;

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

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

16 **SECTION 702. USER PROTECTION POLICIES AND PROCEDURES.**

17 (a) Each licensee shall establish and maintain user protection policies and procedures in a
18 record available to users and the [title of senior Department official] and shall implement the
19 user protection and disclosure requirements of Section 701. The policies and procedures
20 required by this section shall include any action or system of records required to comply with the
21 provisions of this [act] or applicable material provision of a federal or [State or jurisdiction]
22 statute, regulation, or order applicable to the licensee or the virtual currency business
23 activity(ies) in which the licensee engages, procedures for resolving disputes between the

1 licensee and users, procedures for detecting and deterring fraud that comply with subsection (b)
2 of this section, and procedures for users to report unauthorized, mistaken, or accidental transfers
3 or transactions.

4 (b) Each licensee’s policies for detecting and deterring fraud, at a minimum, shall
5 include:

6 (1) The licensee’s identification and assessment of the material risks of its
7 business operations related to fraud;

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

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

11 (c) Each licensee shall report to the [title of senior Department official] any change in the
12 licensee’s user protection policies and procedures not less than fourteen (14) calendar days prior
13 to implementing any such change, or as soon as possible following any change that is necessary
14 to protect users from fraudulent activity or other cyber threats or to ensure business continuity or
15 disaster recovery programs required by this [act] are and remain effective.

16 (d) Each license must provide not less than thirty (30) calendar days’ notice to users of
17 any proposed change in its user protection policies required by this [Article] that pertain to
18 dispute resolution, complaint filing, or reports of unauthorized, mistaken, or accidental transfers
19 or transactions.

20 (e) Each licensee shall establish and maintain policies and procedures to resolve
21 complaints in a fair and timely manner, and shall provide a notice of resolution and the reasons
22 for it to the complainant.

23 (f) Licensees must make these policies and procedures available in a clear and

1 conspicuous manner on its website or websites separately from other disclosures made to users.

2 At a minimum, licensees shall include:

3 (1) The licensee’s mailing address, and the physical and electronic addresses to
4 which users may send complaints;

5 (2) A statement that users may bring complaints to the attention of the [title of
6 senior Department official];

7 (3) The [Department’s] mailing address, website, and telephone number; and

8 (4) Such other information as the [title of senior Department official] may
9 reasonably require for an effective complaint system, such as information about what statements
10 of complaint should cover.

11 (g) For [three] years from the date of the disposition or resolution a licensee shall retain
12 records of (i) all complaints received, (ii) its disposition or resolution of each complaint, and (iii)
13 notice to the user regarding the resolution of the complaint.

14 **Comment**

15
16 The discussion draft included a section titled “prevention of fraud” and it began
17 “Licensees are prohibited from engaging in fraudulent activity.” This draft includes neither.
18 Instead, this draft expands the commissioners’ powers to deal with unfair or deceptive acts or
19 practices as well as with unsafe and unsound practices. This approach should encompass
20 fraudulent conduct and avoids drafting issues related to the varying proof of fraud required in
21 different jurisdictions.

22
23 **ARTICLE 8**

24 **CYBERSECURITY PROGRAMS AND MONITORING; BUSINESS CONTINUITY AND**
25 **DISASTER RECOVERY PROGRAMS**

26 **SECTION 801. CYBERSECURITY PROGRAMS AND MONITORING**

27 **[RESERVED].**

1 **ARTICLE 10**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this [act], consideration shall be given to the need to promote uniformity
5 of the law with respect to its subject matter among the [jurisdictions] that enact it.

6 **SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
7 AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the
8 Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001, et seq.)
9 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
11 U.S.C. Section 103(b)).

12 **SECTION 1003. 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 1004. EFFECTIVE DATE.** This [act] takes effect

17 **SECTION 1005. REPEALS.** The following Acts and parts of Acts are repealed:

18 (1)

19 (2)

20 (3)

21 **SECTION 1006. SAVINGS AND TRANSITION PROVISIONS.**

22 (a) A license issued under [name of jurisdiction’s existing MSB or MT statute] that is in
23 effect immediately before the effective date of this [act] remains in effect as a license for its

1 original purposes for one year after the effective date of this [act]. On the effective date of this
2 [act], the licensee under [name of jurisdiction’s existing MSB or MT statute] that is in
3 compliance with the requirements of [name of jurisdiction’s existing MSB or MT statute] and
4 otherwise in good standing is deemed to have applied for and to have received a license under
5 this [act] to the extent that the licensee affirms in a record received by the [Department] that it
6 intends to engage in virtual currency business activity as well as activities allowed under its
7 original license and that it will operate its virtual currency business activity in compliance with
8 this [act]. A licensee under [name of jurisdiction’s existing MSB or MT statute] that does not
9 intend to engage in virtual currency business activity under this [act] is not required to inform the
10 [Department] of its intention. The [Department] may deny a license under this [act] if it finds
11 that the licensee cannot meet the requirements of this [act]. A notice of denial of license must be
12 provided to a licensee under this section within 30 days of the [Department’s] receipt of the
13 licensee’s notice of intent to engage in virtual currency business activity. The licensee is entitled
14 to appeal a denial to a court of appropriate jurisdiction within 60 days of receipt of the notice of
15 denial.

16 (b) This [act] applies to virtual currency business activity on or after the effective date of
17 this [act]. Any person engaged in virtual currency business activity after the effective date of this
18 [act] that does not hold a license issued under [name of existing MBS or MT statute] which is in
19 effect immediately before the effective date of this [act], that is not exempt from this [act]
20 pursuant to Section 104], and that has not applied for a license under this [act] shall be deemed to
21 be conducting unlicensed virtual currency business activity in violation of this [act].

22 **Comment**
23

24 Section 1006 provides to existing money services or money transmitter licensees a means
25 of expanding into virtual currency business activity by providing a notice of intent to conduct

1 virtual currency business activity provided to the Department that is authorized to issue licenses
2 under this act.

3

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