

To: Drafting Committee Members and Observers, Uniform Regulation of Virtual Currency Business Act

From: Fred Miller, Chair; Sarah Jane Hughes, Reporter

Date: February 16, 2017

Re: Issues Raised by the Style Committee, Issues on which the Drafting Committee Has not Reached a Consensus, and Recent Developments that Shed Light on the URVCBA

As we approach what the Chairman expects to be the last meeting of this Drafting Committee, we have issues remaining to be finalized and some recent developments pertaining to virtual currencies remain to be discussed.

Here is the proposed agenda order for the meeting:

Friday morning:

Introduction by the Chair, update on state legislative developments outside the draft that affects the subject area; scope and exemptions (now combined as suggested by the Committee on Style into one section – new section 103).

Friday afternoon:

Section 503, the issue of making UCC Article 8 mandatory for providers have custody or control of virtual currency, relationship of the bailment concept to minimum capital requirements, discussion of minimum capital requirements and permissible investments.

If the Committee decides to make incorporation of UCC Article 8 provisions mandatory or to treat a provider's willingness to opt-in to Article 8 treatment a favorable factor in licensing or provisional registration "reviews," the draft may need additional definitions to cover the scope of terms such as "entitlement holder" and "virtual currency credentials" as a form of "financial asset." Using UCC Article 8 may require some review of the draft's Article 2 on licensure and provisional registration. Lastly, the Committee needs to decide whether provisional registrants must follow UCC Article 8 requirements and duties.

Capital requirements remain to be decided. The Committee's decisions on incorporating UCC Article 8's rules factor into the extent of capital to be required. For reference, the Office of the Comptroller appears to be planning to use a minimum capital requirement of \$2 million for the smaller "fintech" charter applicants, but has not yet signaled –insofar as I can ascertain – how it might scale this for larger charter applicants.

Saturday morning:

Shape of the on-ramp, thresholds from full exemption to on-ramp, from on-ramp for need for full licensure; mechanics of reciprocity. This draft uses the three-tier approach that the Committee embraced tentatively at the October 2016 meeting: full exemption below \$50,000, on-ramp from \$50,000 to a figure to be decided, and full licensure application or status for providers above the ceiling for the on-ramp. Should the draft contain any limit on the time frame in which providers may remain in the on-ramp status?

Does the Committee have questions about the operation of the reciprocity options included in the draft?

Saturday afternoon:

On-ramp and reciprocity continued, if necessary; other issues related to licensure and renewals that any Commissioner or Observer wants to raise; user protections as time allows.

Does the Committee have questions about the draft's provisions on licensure and renewals? Does anyone see the need or desirability to lighten these requirements? Does the Committee see any other changes it wants in light of the OCC's fintech charter white paper? Or its proposal about resolutions of failures of non-depository fintech providers?

Sunday morning:

User protections, enforcement provisions, compliance requirements, and any remaining questions about or proposals for definitions.

The Committee has not reviewed the draft's provisions on user protections or compliance requirements as recently as other portions of the draft. Are there any remaining questions or concerns about these requirements?

The draft's provisions on enforcement powers of the department and the private right of action for violations of the October 2016 version of Section 503 have been edited by the Committee on Style and others. These provisions need one final look by the Committee.

The order of issues to be considered is subject to adjustment. Please advise the Reporter at your earliest convenience if your ability to participate in these discussions requires a change in the order of progress suggested in this memorandum.