



## ***Memo***

To: ULC Drafting Committee for the Uniform Regulation of Virtual Currency Businesses Act  
Reporter, Sarah Jane Hughes; Observers

Fr: Michael Warnecke, Entertainment Software Association

Date: March 17, 2017

Re: ESA's comments in response to March 3-5 Drafting Committee Meeting

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The Entertainment Software Association thanks the Drafting Committee for the progress made between drafts on the issue of game points. In our comments below, we elaborate on our remaining concerns.

### ***1. Addressing "points for prizes" in Affinity/Rewards Program exclusion***

In the March meeting draft, the accompanying note to the affinity/rewards program exclusion clarified that "the equivalent sorts of value [in] online games and online game platforms" are also part of this exclusion. ESA appreciates this clarification. However, we think it is important that this commentary be coupled with a corresponding change in the exclusion itself. ESA suggested the following change during the meeting:

(2) a transaction in which a merchant grants value **such** as part of an affinity or rewards program, which value cannot be taken from or exchanged with the merchant for cash or bank credit; or

This change would allow for flexibility to encompass "points for prizes" without the Drafting Committee needing to expressly use that game industry term within the exclusion. It appeared that the Drafting Committee supported this change, and we hope that it will carry through into the next draft.

### ***2. Use of non-convertible points among multiple, closed universe games***

The Meeting Draft inserted the term "exclusively" to clarify that the exclusion only applies to non-convertible points. As we have stated before, ESA is fine with limiting the exclusion to non-convertible points. Though, as currently worded, the revised exclusion creates ambiguity with respect to points that may be useable across multiple, closed universe games offered by the same publisher; the use of "exclusively within an" could be read to mean *only one*.

From a policy standpoint, it should not matter whether the points are used in more than one game so long as, in each case, they reside within a closed universe game that does not permit cash out.

We discussed this concern at the meeting. There seemed to be agreement that this scenario is probably within the scope of the exclusion. However, the Drafting Committee reached no conclusion on how best to modify the language. ESA proposes the following change to help address that concern:

(3) a digital representation of value used exclusively within an online game, a family of games by the same publisher, or game platform.

We note that this approach is also consistent with the scope of FinCEN’s March 2016 administrative ruling, which covered points exchanged “within a family of games sold by the same publisher and offered over the same gaming platform” so long as those points cannot be converted into real currency under the applicable legal terms.

### 3. *Simplifying the “Secondary Markets” Inclusion to VCBA Definition*

ESA proposes the following revised definition, along the lines of our November 2016 letter:

(27) “Virtual currency business activity” means engaging as a business in:

(D) ~~making a market in exchanging otherwise non-convertible~~ digital, ~~in game~~ units for virtual currency or for legal tender outside the game or game platform from which the original digital units were received ~~or facilitating person-to-person, player-to-player, or user-to-user exchanges of digital, in-game units in exchange for convertible virtual currency or for legal tender.~~

We did so to address concerns that the Drafting Committee had raised at the prior meeting, in which Commissioners urged a simpler formulation and one that does not create liability for merely “facilitating” a transaction. We think that this revised language is preferable to the current language (largely unchanged from the prior draft) and urge the Drafting Committee to consider it.

Consistent with the Drafting Committee’s decision to strike “convertible virtual currency” from the definitions, we have used just “virtual currency” here. As we understand it, the rationale for striking that term was that game points are excluded from “virtual currency” such that the phrase “exchanges of in-game units for virtual currency” can only mean *into convertible virtual currency* by implication. We do not disagree with this analysis. But, practically speaking and for the record, we think it would be clearer to retain the upfront label of “convertible virtual currency” so that a reader does not have to drill down into nested definitions to reach the conclusion that exchanging one form of game points for a non-convertible virtual currency is outside the scope of activity captured by the secondary markets clause.

### 4. *Note to Section 103*

There appears to be some commentary in Section 103 that relates to exclusions in Section 102. That commentary should be moved to Section 102.