

DRAFT  
FOR DISCUSSION ONLY

# REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

March 3-5, 2017 Drafting Committee Meeting

This Draft reflects comments received from the Committee on Style as of February 8, 2017.

Copyright © 2017  
By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

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

February 15, 2017

## **REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

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

FRED MILLER, 80 S. 8th Street, 2000 IDS Center, Minneapolis, MN 55402-2274, *Chair*

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

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

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

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

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

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

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

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

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

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

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

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

### **EX OFFICIO**

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05401, *President*

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

STEPHEN MIDDLEBROOK, 4320 Deerwood Lane Pkwy., Suite 101-163, Jacksonville, FL 32216, *ABA Advisor*

### **AMERICAN LAW INSTITUTE ADVISOR**

RICHARD FIELD, 755 Anderson Avenue, #4, Cliffside Park, NJ 07010 *ALI Advisor*

### **EXECUTIVE DIRECTOR**

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

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, IL 60602  
312/450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

# **REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

## **TABLE OF CONTENTS**

### **[ARTICLE] 1**

#### **GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. ....	1
SECTION 102. DEFINITIONS. ....	1
SECTION 103. SCOPE. ....	12
SECTION 104. CUSTODY. ....	20

### **[ARTICLE] 2**

#### **LICENSURE**

SECTION 201. LICENSE. ....	20
SECTION 202. LICENSES NOT TRANSFERBLE OR ASSIGNABLE. ....	22
SECTION 203. APPLICATION FOR LICENSE. ....	22
SECTION 204. RECIPROCAL LICENSING. ....	25
SECTION 205. ACTION BY DEPARTMENT. ....	29
SECTION 206. SECURITY. ....	29
SECTION 207. ISSUANCE OF LICENSE. ....	31
SECTION 208. RENEWAL OF LICENSE. ....	32
SECTION 209. NET WORTH AND MINIMUM CAPITAL REQUIREMENTS; PERMISSIBLE INVESTMENTS. ....	36
SECTION 210. MAINTENANCE OF PERMISSIBLE INVESTMENTS. ....	38
SECTION 211. PROVISIONAL REGISTRATION; REGISTRATION FEE; MINIMUM NET WORTH; AND REQUIREMENTS. ....	40

### **[ARTICLE] 3**

#### **EXAMINATION, REPORT, RECORD, COOPERATION AND DATA-SHARING,**

#### **INTERIM REPORT, CHANGE IN CONTROL, MERGER AND ACQUISITION;**

#### **ADVANCE NOTICE OF PROPOSED CHANGE**

SECTION 301. AUTHORITY TO CONDUCT EXAMINATION. ....	43
SECTION 302. REPORTS AND RECORDS. ....	43
SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY. ....	45
SECTION 304. CONFIDENTIALITY. ....	46
SECTION 305. INTERIM REPORT; ADVANCE NOTICE OF PROPOSED CHANGE. ....	47
SECTION 306. CHANGE IN CONTROL. ....	48

SECTION 307. MERGER, ACQUISITION, CONSOLIDATION, AND ENTITY CONVERSION.....	50
--	----

## **[ARTICLE] 4**

### **ENFORCEMENT**

SECTION 401. ENFORCEMENT MEASURES.....	52
SECTION 402. NOTICE AND OPPORTUNITY FOR HEARING.....	54
SECTION 403. CIVIL PENALTY.....	55
SECTION 404. EFFECTIVE PERIOD OF REVOCATION, SUSPENSION, OR CEASE AND DESIST ORDER. ....	55
SECTION 405. CONSENT ORDER.....	56
SECTION 406. SCOPE OF PRIVATE RIGHT OF ACTION.....	56

## **[ARTICLE] 5**

### **DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS**

SECTION 501. REQUIRED DISCLOSURES.....	57
SECTION 502. RESIDENT PROTECTION POLICIES AND PROCEDURES. ....	60
SECTION 503. PROPERTY INTEREST OF ENTITLEMENT HOLDER OF VIRTUAL CURRENCY IN CUSTODY OR CONTROL OF LICENSEE OR PROVISIONAL REGISTRANT.....	62

## **[ARTICLE] 6**

### **COMPLIANCE PROGRAMS AND POLICIES AND MONITORING**

SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES AND MONITORING.....	66
SECTION 602. MANDATED COMPLIANCE POLICY. ....	67
SECTION 603. POLICIES AND PROCEDURES TO DETECT AND DETER FRAUD.....	68
SECTION 604. POLICIES AND PROCEDURES TO DETECT AND DETER USE OF ITS BUSINESS OPERATIONS FOR MONEY LAUNDERING AND TERRORIST FINANCING PURPOSES.....	69

## **[ARTICLE] 7**

### **MISCELLANEOUS PROVISIONS**

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	70
SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	70

SECTION 703. SAVING AND TRANSITIONAL PROVISIONS.....	70
SECTION 704. SEVERABILITY CLAUSE. ....	71
SECTION 705. REPEALS. ....	72
SECTION 706. EFFECTIVE DATE.....	72

1                   **REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT**

2                                   **[ARTICLE] 1**

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. DEFINITIONS.** In this [act]:

7                   (1) “Applicant” means a person that applies for a license under this [act].

8                   (2) “Bank” means a person engaged in the business of banking. The term includes a  
9 savings bank, savings and loan association, and credit union. The term does not include a trust  
10 company, limited purpose trust company, or industrial loan company.

11                  (3) “Control” means, except as otherwise provided in section 306, possession of sufficient  
12 virtual currency credentials or authority on a virtual currency network to execute unilaterally or  
13 prevent indefinitely virtual currency business transactions.

14                  (4) “Convertible virtual currency” means virtual currency that:

15                               (A) has an equivalent value in legal tender and can be exchanged for legal tender;

16                               or

17                               (B) can be exchanged for an account denominated in legal tender.

18                  (5) “Custody” means maintaining an account for a resident of this state to which virtual  
19 currency is or may be credited in accord with an agreement under which the person maintaining  
20 the account undertakes to treat the resident for which the account is maintained as entitled to the  
21 use and benefit of the virtual currency. A person has custody of virtual currency if the person:

22                               (A) indicates by book entry that an amount of virtual currency has been credited to  
23 a resident’s account with it;

1 (B) receives control of virtual currency from the resident or acquires control of  
2 virtual currency on behalf of the resident and accepts control for credit to the resident's account;  
3 or

4 (C) becomes obligated under other law to credit virtual currency to an account of a  
5 resident or other person.

6 (6) "Department" means the [name of state agency implementing this [act]].

7 (7) "Exchange" means to sell, trade or convert:

8 (A) virtual currency for legal tender or for one or more forms of virtual currency;  
9 or

10 (B) legal tender for one or more forms of virtual currency by a person that, at least  
11 momentarily, has custody or control of the virtual currency being sold, traded, or converted.

12 (8) "Executive officer" means an individual who exercises control over virtual business  
13 activity.

14 (9) "Legal tender" means a medium of exchange or unit of value, including the coin or  
15 paper money of the United States, recognized by the United States as a lawful means for payment  
16 of taxes and the discharge of debts.

17 (10) "Licensee" means a person licensed under this [act].

18 (11) "Person" means an individual, estate, partnership, business or nonprofit entity,  
19 [public corporation, government or governmental subdivision, agency, or instrumentality,] or  
20 other legal entity. [The term does not include a public corporation, government or governmental  
21 subdivision, agency, or instrumentality.]

22 (12) "Provisional registrant" means a person that has registered with this state to conduct  
23 virtual currency business activity but whose volume of virtual currency business activity in this

1 state is below the threshold required for licensure under Section 211.

2 (13) “Reciprocity agreement” means an arrangement between the department and the  
3 appropriate licensing agency of another state that permits a licensee to engage in virtual currency  
4 business activity in this state under a license granted by the other state.

5 (14) “Record” means information that is inscribed on a tangible medium or that is stored  
6 in an electronic or other medium and is retrievable in perceivable form.

7 (15) “Registry” means the Nationwide Multistate Licensing System and Registry.

8 (16) “Resident” means, as to a specific state, a person that is domiciled in, is physically  
9 located in for more than 183 days of the previous 365 days, or has a place of business in the state.

10 (17) “Responsible individual” means an individual who has managerial authority over the  
11 licensee’s virtual currency business activity in this state.

12 (18) “Sign” means, with present intent to authenticate or adopt a record:

13 (A) to execute or adopt a tangible symbol; or

14 (B) to attach to or logically associate with the record an electronic  
15 symbol, sound, or process.

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

19 (20) “Storage” means maintaining custody or control of virtual currency or virtual  
20 currency credentials on behalf of a resident by any person other than the resident.

21 (21) “Transfer” means, as to virtual currency, assuming custody or control of virtual  
22 currency or virtual currency credentials from or on behalf of a resident and

23 (A) crediting the virtual currency to the account of another resident;

24 (B) moving the virtual currency from one account of a resident to another



1 account of the same resident;

2 (C) changing the location of virtual currency from this state to another state or  
3 from this state to another jurisdiction, wherever located, regardless of whether the same resident  
4 is the owner of the virtual currency; or

5 (D) relinquishing control of virtual currency to another resident.

6 (22) “Trust company” means a person licensed or chartered as a trust company or a  
7 limited purpose trust company by this state or any state with which this state has a reciprocity  
8 agreement.

9 (23) “Virtual currency”:

10 (A) means a digital representation of value that:

11 (1) is used as a medium of exchange, unit of account, or store of value; and

12 (2) is not legal tender, whether denominated in legal tender; and

13 (B) does not include:

14 (1) software or a protocol governing transfer of the digital representation of  
15 value;

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

19 (3) a digital representation of value used exclusively within an online  
20 game or game platform.

21 (24) “Virtual currency administration” means issuing a virtual currency with the authority  
22 to redeem the currency or to withdraw the currency from circulation.

23 (25) “Virtual currency business activity” means:

1 (A) exchange, transfer, or storage of virtual currency with residents of this state or  
2 engaging in virtual currency administration, whether directly or under an agreement with a virtual  
3 currency control services vendor;

4 (B) holding electronic precious metals or electronic certificates of previous metals  
5 on behalf of other persons or issuing shares or e-certificates representing interests in precious  
6 metals; or

7 (C) making a market in digital, in-game units outside the game or game platform  
8 from which the original digital units were received or facilitating person-to-person, player-to-  
9 player, or user-to-user exchanges of digital, in-game units for convertible virtual currency or for  
10 legal tender.

11 (26) “Virtual currency control-services vendor” means a person that has control of virtual  
12 currency solely pursuant to agreement with a person that, on behalf of another person, assumes  
13 custody of virtual currency custody or control of virtual currency credentials or authority on a  
14 virtual currency network.

15 ***Legislative Note: Definition of the Terms “Bank” and “State”***

16 *States that wish to include state-chartered trust companies under the definition of the term*  
17 *“bank” should consider adding a sentence at the end of the definition of “bank” that express the*  
18 *scope of the inclusion of trust companies under the exemption for “banks” in Section 103. Entities*  
19 *that obtained national trust charters from the Office of the Comptroller of the Currency should be*  
20 *included in the “bank” exemption in Section 103.*

21  
22 **Reporter’s Notes on Section 102**

23 The definitions are by far the most important and complex aspects of this drafting project.  
24 A handful of definitions are of primary importance – the definitions of “virtual currency,”  
25 “virtual currency business activity,” “virtual currency administration,” “custody” [of virtual  
26 currency], “control” [of virtual currency, of virtual currency credentials or authority over a  
27 virtual currency network], “transfer,” “exchange,” “store,” and “convertible virtual currency.”  
28 For the purposes of this draft, the following discussion proceeds with the most challenging  
29 choices faced so far by the Drafting Committee and these Notes are not presented in alphabetical  
30 order.

1       *Scope of the term “virtual currency.”* The definition of “virtual currency” closely tracks  
2 the definition urged by Conference of State Bank Supervisors (“CSBS”) in its September 15,  
3 2015, Framework. This draft does not define the term “money,” as is the norm in the Uniform  
4 Law Commission draft legislation. Rather, it defines “legal tender” in order to accommodate the  
5 revised definition of the term “virtual currency” that more closely models the CSBS’  
6 Framework. For more information, see Financial Action Task Force, VIRTUAL CURRENCIES  
7 –KEY DEFINITIONS AND POTENTIAL AML/CFT RISKS 4 (July 2014). [http://www.fatf-](http://www.fatf-gafi.org/publications/methodsandtrends/documents/virtual-currency-definitions-aml-cft-risk.html)  
8 [gafi.org/publications/methodsandtrends/documents/virtual-currency-definitions-aml-cft-risk.html](http://www.fatf-gafi.org/publications/methodsandtrends/documents/virtual-currency-definitions-aml-cft-risk.html).  
9

10       Some Observers prefer FATF’s definition over the definition included in this draft act.  
11 FATF published its definition in its 2014 Report entitled “Virtual Currencies: Key Definitions and  
12 Potential AML/CFT Risks,” available at [http://www.fatf-](http://www.fatf-gafi.org/publications/methodsandtrends/documents/virtual_currencies_key_definitions_and_potential_aml/cft_risks)  
13 [gafi.org/publications/methodsandtrends/documents/virtual\\_currencies\\_key\\_definitions\\_and\\_potenti](http://www.fatf-gafi.org/publications/methodsandtrends/documents/virtual_currencies_key_definitions_and_potential_aml/cft_risks)  
14 [al\\_aml/cft\\_risks](http://www.fatf-gafi.org/publications/methodsandtrends/documents/virtual_currencies_key_definitions_and_potential_aml/cft_risks). FATF’s explains its vision of “virtual currency” as:  
15

16       Virtual Currency is a digital representation of value that can be digitally traded and  
17 functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but  
18 does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of  
19 payment) in any jurisdiction. It is not issued or guaranteed by any jurisdiction, and fulfills the above  
20 functions only by agreement within the community of users of the virtual currency. Virtual  
21 currency is distinguished from fiat currency (a.k.a “real currency,” “real money,” or “national  
22 currency”), which is the coin and paper money of a country that is designated as its legal tender;  
23 circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It  
24 is distinct from e-money, which is a digital representation of fiat currency used to electronically  
25 transfer value denominated in fiat currency. E-money is a digital transfer mechanism for fiat  
26 currency—i.e., it electronically transfers value that has legal tender status.  
27 *Id.*, at 4.  
28

29       FATF’s definition is intended for some purposes beyond those addressed in this draft act  
30 and would require states to determine whether a virtual currency is “legal tender” in any jurisdiction  
31 on a continuously updated basis that has little to do with how virtual currency businesses should be  
32 regulated by them. One observer noted that issuers offer virtual currency denominated in U.S.  
33 dollars, thus raising issues not necessarily contemplated in FATF’s definition.  
34

35       FinCEN’s definition dates from its first foray into the virtual currency “space” and is  
36 designed to identify which types of transactions qualify as the equivalents of “money transmission”  
37 for purposes of providers’ duty to register with FinCEN as “money service businesses” under  
38 FinCEN’s regulations implementing the Bank Secrecy Act. FinCEN defines the divide between  
39 “currency” or “real currency” and “virtual currency” with the former being  
40

41 ... the coin and paper money of the United States or of any other country that [i] is designated as  
42 legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of  
43 exchange in the country of issuance.  
44 31 C.F.R. §1010.100(m).  
45

46       On the other hand, “virtual currency” is “a medium of exchange that operates like a

1 currency in some environments, but does not have all the attributes of real currency.” Fin. Crimes  
2 Enf. Network, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or  
3 Using Virtual Currencies, FIN-2013-G001 (March 18, 2013).

4  
5 Other observers prefer the definition included in this draft so long as the exclusions that are  
6 now in Section 103 (and that formerly were elsewhere in Article 1) remain. The CSBS definition  
7 was approved by the CSBS commissioners and we have attempted to follow their lead where  
8 possible.

9  
10 The definitions included in this draft act have received considerable attention during the  
11 Drafting Committee’s meetings to this point, and were the subject of discussion at the First  
12 Reading of the act at the 2016 Annual Meeting. The line currently drawn carves out digital  
13 representations of bank money as may be loaded onto electronic travelers’ checks or credit cards  
14 in part because providers of those services are subject to longstanding regulation. The  
15 distinction between “virtual currency” and digital representations of “legal tender” as the terms  
16 are defined in this Draft lies in the fact that traditional demand deposit accounts are  
17 representations of legal tender or other “hard assets” in a manner that makes the account holder a  
18 creditor of a federally insured depository institution under the Federal Deposit Insurance Act. 12  
19 U.S.C. 1813(l) (2013).

20  
21 Additionally, at least one Native American tribe has issued “virtual currency” that they  
22 have deemed to be “legal tender” on their lands. Thus, the definition of what is not “legal tender  
23 in any jurisdiction” is already a complex question and is likely to grow more complex. The  
24 solution presented in this Draft is designed to provide guidance to future virtual currency  
25 businesses and to State regulators in an arena in which the adoption of a virtual currency by a  
26 sovereign could cloud the ability of regulators to distinguish between currency and virtual  
27 currency. Thus, for now, the only sensible definition is the one closest to that adopted in 2015  
28 by the CSBS that relies on distinguishing between what the United States government deems to  
29 be “legal tender” rather than what any other sovereign deems for its own purposes to be “legal  
30 tender.” What another sovereign deems to be “legal tender” also falls under FinCEN’s March  
31 2013 guidance as “foreign exchange” to which distinct FinCEN regulations apply. *See*, FIN-  
32 2013-G001, *supra* at 5.

33  
34 The Drafting Committee considered whether the term “virtual currency” should cover  
35 any unit of value or exchange denominated in U.S. dollars. As explained above, some issuers  
36 offer virtual currencies that are denominated in dollars. Whether a unit of virtual currency is  
37 denominated in U.S. dollars or Yen is immaterial to the question of whether the person who  
38 issues it or holds themselves out as providing services connected to transfer, exchange, or storage  
39 of such virtual currency should be regulated under this act or regulated under state money  
40 services or money transmission statutes or regulated as an insured depository institution or other  
41 form of trusted intermediary. So long as the virtual currency is not deemed to be legal tender by  
42 the United States for purposes of paying taxes or discharging debts among private parties, it is  
43 virtual currency for purposes of this draft legislation. The decision by a non-government issuer  
44 of “virtual currency” to denominate its exchange value in a particular fashion (USD, Yen, or  
45 Euros) should not be the controlling factor in determining coverage of the business entity or the  
46 transaction here.

1 Thus, the three-part test – medium of exchange, unit of account, and store of value –  
2 should remain as the tests for what constitutes “virtual currency” for now.  
3

4 The scope of the exclusions in the current “virtual currency” definition have covered  
5 merchants’ affinity or rewards programs and the equivalent sorts of value online games and  
6 online game platforms. At the October 2016 meeting of the Drafting Committee, it became clear  
7 that any exclusion for online games or game platforms should be restricted to accounting units  
8 that cannot be converted into cash. The revision originally suggested by the Entertainment  
9 Software Association (“ESA”) has been re-drafted to make it clear that any conversion to cash as  
10 opposed to units usable in the game or between one game and others on the game platform is not  
11 excluded from the definition of “virtual currency.” This bright line between non-cash and cash-  
12 out possibilities is consistent with FinCEN’s most recent no-action letter, *see supra*,  
13

14 The current draft includes in the definition of “virtual currency,” “e-precious metals,” and  
15 e-certificates for precious metals” that can be transferred from one owner to another. FinCEN  
16 issued guidance in August 2015 that extended its March 2013 guidance, *see supra*, concerning  
17 what types of business activity with virtual currency render the business a “money services  
18 business” for the purposes of federal AML requirements under 31 C.F.R. Part X. Fin. Crimes  
19 Enf. Network, Application of FinCEN’s Regulations Pertaining to Persons Issuing Physical or  
20 Digital Negotiable Certificates of Ownership of Precious Metals, FIN-2015-R001, August 14,  
21 2015, [https://www.fincen.gov/news\\_room/rp/rulings/pdf/FIN-2015-R001.pdf](https://www.fincen.gov/news_room/rp/rulings/pdf/FIN-2015-R001.pdf) (hereinafter  
22 “FinCEN Precious Metals Certificate Guidance”). FinCEN’s 2015 guidance concluded that e-  
23 precious metals and e-certificates for precious metals were “virtual currency” and persons  
24 offering them were engaged in “money transmission” for two reasons. The first is that e-  
25 precious metals are units of value held by intermediaries on behalf of others and are not units of  
26 “legal tender.” Thus, as the ABA’s Advisor explained at the Annual Meeting, they are  
27 representations of value that underlie the virtual currency owned by another person. E-  
28 certificates for precious metals are similar to warehouse receipts in some ways, and are  
29 “negotiable” or transferable by one person to another, by one person from an account to another  
30 account that person owns, or by one jurisdiction to another. This draft includes both e-precious  
31 metals and e-certificates of precious metals in the definitions of “virtual currency” and treats  
32 persons engaged in business of the exchange of virtual currency for real currency, funds, or other  
33 virtual currency or of issuing a virtual currency that has authority to redeem the same virtual  
34 currency in the definition of the term “virtual currency business activity,” primarily because  
35 FinCEN includes the same businesses under its “prepaid access” and “money services business”  
36 regulations to the extent that the person is engaged in performing services for others.  
37

38 *Scope of the term “virtual currency business activity”:* The definition of “virtual  
39 currency business activity” has been debated extensively since the first meeting of the Drafting  
40 Committee. The goal is to capture within the scope of this draft act those activities with  
41 sufficient similarity to money transmission or other money services as to become proper targets  
42 for regulation under this act, and to restrict the activity to that performed with or on behalf of  
43 residents of the jurisdiction that seeks to license the provision of such activities in a jurisdiction  
44 in the United States.  
45

46 Two Observers favored using a “facts and circumstances” approach in the definition of

1 “virtual currency business activity” in large measure because FinCEN uses it in its guidance on  
2 what constitutes “money services” activities that trigger its regulations governing registration of  
3 “money services” businesses. This draft does not use a “facts and circumstances” approach  
4 because this legislation determines the need to be licensed and sets forth two pre-licensure stages  
5 – a full exemption for businesses are truly in start-up mode using a specific threshold, an “on  
6 ramp” or “provisional registration” stage as the business grows, and full licensure. Each of these  
7 stages needs to operate on as bright a line as possible to provide certainty and uniformity – and to  
8 protect persons in the two early stages from liability for not being fully licensed.  
9

10 The definition of the term “virtual currency business activity” is not intended to create an  
11 expansive exemption for what the virtual currency community refers to as “multi-sig” – that is,  
12 arrangements that require more than one credential-equivalent to be used to effect transactions.  
13 Definition of the terms “control” and “custody, only those credentialing arrangements under  
14 which an intermediary obtains unilateral power to transact, convert or redeem, or the power to  
15 prevent transactions, conversions or redemptions of virtual currency of others, or to prevent such  
16 transactions permanently, should be covered under this act. The consensus for this approach was  
17 reached during the course of several meetings and submissions that are part of the record for this  
18 Drafting Committee project.  
19

20 An exclusion of “multi-sig” used for escrow-like services from this act, however, opens  
21 the prospect that this type of business entity would require a license as an escrow agent under the  
22 laws of those states that have general escrow-agent licensure requirements. A conservative  
23 count of states that regulate escrow services and providers in one or more segments of that  
24 market suggests that nearly all states have some licensure requirements unless the provider is a  
25 lawyer licensed in that state. Thus, an exclusion from this act is not the end of the game for the  
26 providers who in fact offer escrow-like services to members of the general public, as at least  
27 some of the multi-sig providers are likely to seek to do. Readers interested in this issue should  
28 review the draft definitions of the terms “control,” and “virtual currency business activity.” The  
29 scope of the definition of the terms “custody” and “control” and the treatment of multi-sig  
30 technologies remains an issue for further consideration by the Drafting Committee and possible  
31 consultation with FinCEN.  
32

33 The Drafting Committee has not decided whether to exclude from the definition of  
34 “virtual currency business activity” the issuance, exchange, or transfer of e-precious metals and  
35 e-certificates of precious metals. These two categories of indirect holdings of value stores are  
36 covered by FinCEN’s 2013 and 2014 guidance on what constitutes “money services” for  
37 purposes of Bank Secrecy Act compliance. To maintain as much consistency with FinCEN’s  
38 positions as is appropriate to this act’s purposes, the references to e-precious metals and e-  
39 certificates of precious metals remains in this December 2016 draft of this act.  
40

41 For consistency with the “money services” and “end-user-facing” scope of the Uniform  
42 Money Services Act and other money transmitter statutes, the definition of “virtual currency  
43 business activity” does not cover non-currency uses of the technologies underlying virtual  
44 currencies today. This definition, thus, excludes a new class of technologies at an enterprise or  
45 business-wide level that are not end-user-facing and are designed to perform functions, such as  
46 “enabling existing currencies to be exchanged more efficiently.” *See* Comment of Ripple, April

1, 2016, at 5 (on file with the Uniform Law Commission).

After considerable discussion, the Drafting Committee has determined that three active verbs – exchange, transfer, and store – cover the core concepts animating what constitutes “virtual currency business activity.” This decision allowed the Drafting Committee to work towards a definition that includes activities associated with each verb so long as the virtual currency business holds sufficient credentials to affect or prevent the activity on a unilateral basis. This draft defines the terms “exchange, transfer, and store” used in the definition of the term “virtual currency business activity.” In addition, it defines the terms “virtual currency control services vendor” and “virtual currency administration” that were not in the February 2016 draft. These definitions have continued to evolve with the assistance of the Observers to the versions included in this Draft.

The definition of the term “exchange” covers cases in which the exchanger, at least momentarily, has custody or control of the virtual currency being exchanged. This term is not intended to cover an individual that operates equipment to perform a function or service on the individual’s own virtual currency. Thus, in order to maintain a distinction between businesses that offer “virtual currency business” services to others and persons managing their own virtual currency holdings, if the intermediary virtual currency business lacks sufficient credentials to control virtual currency or lacks custody of virtual currency, as the terms “control” and “custody” are defined in Section 103, then that person is not engaged in the “exchange” of virtual currency for purposes of this act.

The verb “exchange” covers any sale or barter of virtual currency for, other virtual currency, or “real world” goods or services other than by “miners.” “Miners” in the Bitcoin system use computing power to expand the extant number of bitcoins in a decentralized currency such as Bitcoin) and are exempt under FinCEN’s March 2013 guidance. This means that the act of mining is excluded from the definition of “virtual currency business activity” but the sale or barter of virtual currency by miners from their own portfolios would be included. The primary reason for excluding miners who mine bitcoins for their own purposes is that they are not engaged with third parties or holding themselves out as trusted intermediaries for third parties except when the miners use their own bitcoin to pay for goods or services, transactions that FinCEN and this draft act exempt from coverage.

Although bitcoins are “mined” (a process yielding a “bitcoin” that is a form of payment or reward for solving a difficult puzzle), others virtual currencies are issued by a centralized authority in exchange for legal tender or other virtual currencies to a user who seeks to obtain goods or services, other virtual currency, or legal tender in exchange. It is the group of centralized issuers of virtual currency – not the miners – at the moment of issuance who are engaged in virtual currency business activity because they are holding themselves out to others as the equivalent of issuers of prepaid cards (also known as prepaid value) or as offering other forms of trusted and intermediated financial services.

The term “control” in Section 103 is focused on control of virtual currency, not control of a business entity engaged in virtual currency business. In Sections 306 (change in control) and 307 (mergers and acquisitions), we have provided a separate definition of “control” aimed at

1 historical concerns about changes in ownership or management that adversely affect the  
2 operation of a business.

3  
4 The term “transfer” is intended not to include movement of fiat currency from one user to  
5 another, or from one user to another account of the same user, or from one jurisdiction to another  
6 for the simple reason that transfers that involve fiat currency are “money transmission” not  
7 “virtual currency transmission.” If a transaction involved both fiat currency and virtual currency,  
8 that transaction involves an “exchange” not a transfer.

9  
10 The definition of “virtual currency administration” follows definitions set forth in the  
11 Financial Crimes Enforcement Network’s March 18, 2013 guidance on virtual currency and  
12 money transmission. Fin. Crimes Enf. Network, Application of FinCEN’s Regulations to Persons  
13 Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001,  
14 [https://www.fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-G001.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf) . The Guidance explains:  
15 “An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual  
16 currency, and who has the authority to redeem (to withdraw from circulation) such virtual  
17 currency.” *Id.*

18  
19 *Scope of the definition of the term “bank” for purposes of exemptions in Section 103: The scope*  
20 *of the definition of the term “bank” and the resulting exemptions from this act continue to be*  
21 *discussed. Options include using Treasury Department regulations, 31 C.F.R. Section*  
22 *1010.100(d).*

23  
24 The draft excludes trust companies from the definition of the term “bank.” Thus, trust  
25 companies seeking to engage in virtual currency business activities would need to comply with  
26 the provisions of this act. State statutes authorizing trust companies vary as do states’ attitudes  
27 about the ability of out-of-state trust companies to engage with residents of their states if the trust  
28 company does not hold a trust company charter from their states. This issue rose in prominence  
29 when New York State issued a trust company charter to ItBit in 2015. ItBit’s ability to engage in  
30 transactions with residents of other States was challenged by other States. In April 2016, ItBit  
31 withdrew from offering its services to residents of Texas. Since then, there has been no  
32 additional information about whether the states will insist on their own charters for trust  
33 companies engaging in virtual currency business activity.

34  
35 This draft also excludes industrial loan companies from the definition of the term “bank.”  
36 ILC’s are regulated for many purposes as banks, but the scope of their permissible activities are  
37 not the same as banks and many states do not charter ILCs. Thus, inclusion of ILC’s might  
38 complicate state regulation of their activities and the reciprocity provisions in Article 2.

39  
40 Since the October 2016 Drafting Committee meeting, the Office of the Comptroller of the  
41 Currency has announced its plans for issuing “special purpose bank charters” to certain “fintech”  
42 companies, a category that might include some virtual currency businesses. Commissioners  
43 might be familiar with special purpose bank charters held by retailers such as Nordstrom. The  
44 OCC special purpose bank charters would carry whatever preemption of state laws and licensure  
45 requirements that the final rule the OCC adopts allows. Thus, it is unclear to what extent the  
46 OCC’s plans overlap with operating authority that might be granted to license applicants under



1 this act. However, what seems clear is that this act’s exemptions and on-ramp/provisional  
2 registration provisions will allow innovators acting under this act to engage in transactions to  
3 operate even though the OCC might not be willing to grant start-ups special purpose bank  
4 charters or would do so under stiff “conditional approvals.” Thus, the OCC’s plans generally  
5 increase the need for this act, the on-ramp for start-up providers, and other exemptions this act  
6 currently provides greater because of the likelihood that only the best-capitalized and managed  
7 “brand” names in the fintech industry (as yet undefined by the OCC) will qualify for OCC  
8 special purpose national bank charters. In other words, the vast majority of fintech companies  
9 that do not receive OCC charters will require the uniformity and certainty that a uniform act will  
10 offer.

### 11 12 **SECTION 103. SCOPE.**

13 (a) Except as set forth in subsection (b), this [act] governs the virtual currency business  
14 activity of a person, wherever located, that engages in or holds itself out as engaging in such  
15 activity with a resident of this [state] except as otherwise provided in this Section.

16 (b) this [act] does not apply to the exchange, transfer, or storage of virtual currency or to  
17 virtual currency administration to the extent that the activity or is governed by the Electronic Fund  
18 Transfer Act of 1978, 15 U.S.C. Sections 1693 through 1693r [as amended], the Securities  
19 Exchange Act of 1934, 15 U.S.C. Section 78a through 78oo [as amended], the Commodities  
20 Exchange Act of 1936, 7 U.S.C. Sections 1 through 27f [as amended], or [cite “blue sky” laws of  
21 this [state] or to activities by:

22 (1) the United States, a state, a political subdivision of a state, or an agency or  
23 instrumentality of Federal, state, local government, or a foreign government and its subdivisions,  
24 departments, agencies and instrumentalities;

25 (2) a bank;

26 (3) a person in a payment system, to the extent the person provides processing,  
27 clearing, or settlement services solely for transactions excluded among persons otherwise exempt  
28 from this [act];

29 (4) a person engaged in the business of dealing in foreign exchange to the extent

1 the person's activity meets the definition in 31 C.F.R. Section 1010.605(f)(1)(iv);

2 (5) a person that obtains or exchanges convertible virtual currency, to the extent  
3 the person uses it only to purchase real or virtual goods or services for personal purposes and not  
4 on behalf of another;

5 (6) a person that mines or manufactures virtual currency and uses it solely for  
6 personal purposes if the person does not engage in any virtual currency business activity on  
7 another person's behalf other than verification and recording of transfers of interests in virtual  
8 currency;

9 (7) a person whose virtual currency business activity with residents of this state is  
10 reasonably expected to be valued, in the aggregate, on an annual basis:

11 (A) at \$[50,000], or less according to a rolling 30-day average of  
12 outstanding balances converted into a dollar amount using each day's prevailing exchange rate; or

13 (B) at greater than \$[50,000] but less than [dollar amount to be discussed]  
14 if, subject to subsection (c):

15 (i) the person makes a provisional registration with this state,  
16 complies with the requirements of Section 211, and applies for a license under [Article] 2 before  
17 the time its virtual currency business activity reaches \$[50,000];

18 (ii) the registration has not expired;

19 (iii) the department has not suspended or revoked the registration;

20 and

21 (iv) the department has not denied a license under [Article 2] to the  
22 person.

23 (8) an attorney providing escrow services to residents of this state;

1 (9) a title insurance company providing escrow services to residents of this state;

2 (10) a person that

3 (A) contributes connectivity software or computing power to a  
4 decentralized virtual currency;

5 (B) provides data storage or security services for a virtual currency  
6 business and is not otherwise engaged in virtual currency business activity on behalf of other  
7 persons;

8 (C) obtains virtual currency solely to purchase goods or services for  
9 personal purposes or receives virtual currency from the purchase or sale of goods or services, and  
10 does not otherwise engage in virtual currency business activity; or

11 (D) obtains virtual currency for investment and holds it solely for that  
12 purpose;

13 (11) a securities or commodities intermediary, as defined in [insert state reference  
14 to U.C.C. Section 8-102], other than a bank or clearing corporation not otherwise exempt under  
15 this section, which:

16 (A) engages in the ordinary course of business in virtual currency business  
17 activity with residents of this state; and

18 (B) affords protections comparable to those set forth in [insert state  
19 reference to U.C.C. Article 8] to its customers; or

20 (12) a secured creditor under [insert state reference to U.C.C. Article 9 [revised]]  
21 or judgment creditor with a lien on collateral that is virtual currency, if the virtual currency  
22 business activity of the creditor is limited to enforcing its security interest or judgment and  
23 related lien and disposing of the collateral under [insert state reference to U.C.C. Article 9].

1 (c) A person that qualifies for provisional registration under subsection (b) must file an  
2 application for a license with this state or use the reciprocity provisions of [Article] 2 before its  
3 business activity reaches \$200,000 and may continue to engage in virtual currency business  
4 activity while its application is pending with the department. A person that qualified for this  
5 exemption but does not obtain a license from this state as required is no longer exempt and shall  
6 halt all virtual currency business activity with residents of this state not later than 48 hours after  
7 being notified that its application for license was denied and assist the department in orderly  
8 winding up its virtual currency business activity in this state or otherwise affecting residents of  
9 this state. A provisional registrant that provides notice to the department that it is no longer doing  
10 virtual currency business in this state or as being inactive no longer is subject to the requirements  
11 of this [act].

### 12 **Reporter's Notes on Section 103**

13  
14 *Scope generally.* The goal of this draft legislation is not to regulate “virtual currencies” as  
15 such. Rather, it is to regulate persons that issue virtual currencies or that provide services that  
16 allow others to exchange, transfer, or store virtual currencies. Accordingly this act is intended to  
17 govern persons hold themselves out as providing services to a holder of virtual currency  
18 comparable to service that would be deemed “money transmission” under the Uniform Money  
19 Services Act or other state “money transmission” statutes. Additionally, “currency” exchange  
20 services to the public and persons that offer to take custody of virtual currency for other persons.  
21 This goal is to regulate that person in a manner that affords suitable licensure, supervision, and  
22 user protections.  
23

24 *Exemptions generally.* The Drafting Committee decided to exempt certain activities from  
25 the coverage of this act. In the draft circulated in October, 2016, Section 102 included numerous  
26 exclusions that in prior drafts were stated in the definition of the term “virtual currency business  
27 activity.” In this draft, we have moved text related to exemptions from this act to Section 103.  
28

29 Section 103 also identifies exemptions from this act. The majority of the exemptions now  
30 set forth in Section 103 should seem familiar to persons familiar with the ULC’s “Money  
31 Services Act” and with guidance published by the U.S. Department of Treasury’s Financial  
32 Crimes Enforcement Network (“FinCEN”) since March 2013.  
33

34 The rationale for the less common cases are described below.  
35

1           *Exemptions Not Common in “Money Services” or “Money Transmission” Statutes:*

2  
3           ▪ *Personal Uses, Investment Uses, Receipt by Persons in the Ordinary Course of*  
4           *Sales of Goods or Services.* Following the leads of FinCEN and the CSBS,  
5           Section 103 exempts persons who use virtual currencies for personal purposes  
6           (including uses for investment purposes or in the purchase of goods or services)  
7           or businesses that receive virtual currencies comes from sales of goods or services  
8           in the ordinary course of business. These persons are not engaged in the  
9           equivalent of money transmission. FinCEN laid out this distinction in its March  
10          2013 guidance, *see supra*.

11  
12          It has been suggested that the Drafting Committee combine subsections (5) and (6). At  
13          this point, because there is a significant potential difference between “mining” virtual currency  
14          for one’s own account and purchasing virtual currency to use in payment of goods or services  
15          from another party, this Draft keeps both subsection (5) and (6) pending additional discussion  
16          and instructions from the Drafting Committee.

17  
18          ▪ *Permanent Limited, Low-Volume Exemption and An Intermediate “On-ramp”*  
19          *for Start-Up Companies.* The question of whether and how to include an “on-  
20          ramp” for new entrants to the virtual currency business industry was one of the  
21          first issues tackled by the Drafting Committee. At the October 2016 Drafting  
22          Committee meeting, the Committee decided to split its coverage of start-up  
23          businesses into two categories – a permanent limited exemption for tiny volumes  
24          of activity is below a threshold of [\$50,000] and an “on-ramp” for entities  
25          between \$50,000 and [a figure as yet undetermined] that this draft refers to as  
26          “provisional registration.” These independent categories respond to the charge  
27          this Drafting Committee received to craft a licensure and prudentially “lite”  
28          regulatory scheme for virtual currency businesses that would facilitate innovation  
29          by virtual currency businesses. These two categories are designed to frame the  
30          “on-ramp” in a manner that postpones full licensure to the time at which the  
31          entity’s business in a State meets a threshold test. The \$50,000 threshold  
32          provisionally included in this Draft follows the threshold employed by  
33          FinCEN’s Bank Secrecy Act regulation for Dealers in Precious Metals,  
34          Gemstones, and Jewelry and its 2015 Precious Metals Certificate Guidance,  
35          *supra* at 31 C.F.R. §1027.100(b). The Drafting Committee may decide to lower  
36          this threshold for virtual currency businesses because of the differences in business  
37          models between trusted intermediaries in payments and asset-custody businesses  
38          generally and retailers and wholesalers of metals, gems, and jewelry.

39  
40          Above the lower-end threshold set for this purpose, a virtual currency business  
41          moves to what the participants in this project have called an “on-ramp,” which is a  
42          status that does not require full licensure, but requires these businesses to comply  
43          with other obligations set forth in this Draft Act including user protections and  
44          establishment and implementation of anti-money laundering and cybersecurity  
45          programs.

1 Activities of businesses in the “on-ramp” will include those defined as “virtual  
2 currency business activity,” but these businesses will be allowed to operate under  
3 “provisional registrations” until they reach the threshold prescribed by the act.  
4 They will be expected to have registered with both the regulators in States and  
5 jurisdictions offering this “on-ramp” and with FinCEN to the degree that their  
6 activities meet the tests for “money service” businesses under FinCEN guidance.  
7

8 Observers, including the Digital Chamber of Commerce and Coin Center have  
9 suggested that the threshold for full licensure be set at \$1 million. This threshold  
10 was included in legislation that was proposed in Pennsylvania in 2015. The  
11 Pennsylvania bill allowed the exempt entity to remain exempt so long as the entity  
12 took “reasonably timely steps to seek a license.” The version presented varies the  
13 effect on the entity as the threshold dollar value is reached by requiring that it file  
14 as it approaches whatever threshold may be prescribed, and orders a prompt halt  
15 and assistance in the unwinding of the entity’s activity if its application is denied.  
16 Pennsylvania: House Bill No. 850, Printer’s No. 1029 (2015) has been in the  
17 Commerce Committee of the House of Representatives since March 26, 2015.  
18 *Bill Information*, Legislative Data Processing Website (2016). Some Observers  
19 continue to favor exemption at the \$1 million threshold for coverage under this act.  
20 However, no comparably high threshold exists under State “money transmission”  
21 or “money services” statutes.  
22

23 The threshold test can be based on a dollar volume or a number of transactions  
24 (regardless of dollar amounts involved) in a period (day, week, month or year) or  
25 a number of customers in a comparable time frame, but once the threshold is met,  
26 full licensure is required. Subsequent fluctuations in dollar volumes or numbers of  
27 transactions or customers in the period chosen would not affect the requirement to  
28 obtain and maintain the license in the States or other jurisdictions involved. Thus,  
29 once a business reaches the level at which licensure is required, this draft act uses  
30 a “Hotel California” principle: the business can check in but not check out” except  
31 by selling or winding down the business or relinquishing its license.  
32

33 The second stage is the “on-ramp” status is described in Section 211. The  
34 bracketed material in subsection 103(7), is intended to protect provisional  
35 registrants who have met the requirements of Section 211. The more recent  
36 addition to subsection (7) was suggested in concept by an Observer in the period  
37 prior to the Annual Meeting draft, but not in time to be included in it. The  
38 Observer strongly favored an inactive-status option, as opposed to application of  
39 the “Hotel California” principle that the Drafting Committee previously discussed.  
40 In connection with the threshold below which persons may be on the “on-ramp”  
41 and need not yet to be fully licensed, 2016 amendments to North Carolina’s  
42 “money transmitter” statute and to legislation pending in Washington State provide  
43 useful examples.  
44

45 Some Observers have proposed that decisions on exemptions be made on a “facts  
46 and circumstances” basis. To date, the Drafting Committee has not accepted that

proposal. The on-ramp is not a place where “facts and circumstances” approach should be applied. Without precise parameters that start-ups, state regulators, and law enforcement officials can look to, the on-ramp will not achieve the certainty and predictability for innovators intended and the goal of offering uniformity to participants in this market will be frustrated.

Besides encouraging innovators, both the limited full exemption and the on-ramp are intended to protect start-up businesses from inadvertently engaging in activity that should be licensed in order to avoid prosecution as an unlicensed money transmitter under 18 U.S.C. Section 1960. As such, the on-ramp is central to the goal of encouraging innovators in the virtual currency business community and, as their businesses expand, of bringing them under State licensure and supervision.

▪ *Persons Engaged in Foreign Exchange.* In subsection (4), this draft proposes to exempt dealers in foreign exchange from the scope of this act. FinCEN refined the definition of the term “currency dealer or exchanger” for purposes of 31 C.F.R. Part X in 2011 to “a dealer in foreign exchange” to capture the exchange of money instruments as well as of funds or other instruments denominated in foreign currency. *See Bank Secrecy Act Regulations: Definitions and Other Regulations Relating to Money Services Businesses*, 76 Fed. Reg. 43585, 43589 & 43596 (July 21, 2011). Thus, for consistency with FinCEN’s most recent position on this topic, it seems prudent to exempt dealers in foreign exchange from this act.

*Exclusions generally.* A limited number of exclusions are found in Section 102. For example, the definition of the term “virtual currency” excludes retail rewards or affinity programs in which the rewards or affinity points are not granted in and cannot be exchanged for legal tender. This exclusion is consistent with the position taken in early 2016 by the Financial Crimes Enforcement Network (“FinCEN”), that such programs fall outside FinCEN’s definition of what constitutes “money transmission.” Fin. Crimes Enf. Network, No-action Letter, April 2016 ((unpublished); copy on file with the Uniform Law Commission) provided by the Entertainment Software Association with its April 2016 comment on URVCBA Draft). The real question is whether the “reward” offered by a merchant or financial institution is redeemable for legal tender – or only for goods or services. If the reward may be redeemed for legal tender, the person offering the reward or the person handling the redemption for legal tender, or both, are engaged in virtual currency business activity as defined in Section 102 and should be subject to this act. An exclusion of retail rewards or affinity programs from this act on this basis also is consistent with the exclusion of loyalty card programs from the Unclaimed Property Act approved at the 2016 Annual Meeting, even if the terminology employed varies. As the Chair of the Unclaimed Property Act Drafting Committee observed during the First Reading of that act, the basis for this exclusion – wherever they appear in either act – is that these “[rewards] cannot be monetized into legal tender.”

Separating the application of this draft act into three stages as Section 103 does not alter the businesses’ need to follow FinCEN’s regulations and guidance pertaining to which types of activities are “money services” for purposes of Bank Secrecy Act and anti-money laundering compliance. (It also will not excuse any business from compliance with statutes and regulations

1 enforced by Treasury's Office of Foreign Assets Control (OFAC).) FinCEN's regulations  
2 impose a "registration" requirement on all businesses that offer money services to the general  
3 public. Failure to register with FinCEN as a "money services business" remains the law of the  
4 land regardless of what this draft act otherwise provides. Thus, this draft act will not derogate  
5 any of these federal compliance requirements: businesses that are exempt from this draft act or  
6 on the "on ramp" should register with FinCEN to avoid penalties for non-registration imposed  
7 by FinCEN to the extent their business activities align with FinCEN's interpretations of the  
8 Bank Secrecy Act's requirements.

9  
10 The government of Australia has just published a proposed framework for what it calls a  
11 "sandbox" for fintech innovators that provides an exemption from full licensure requirements  
12 for companies that offer services to a limited number of customers with a specific cap on the  
13 value of the assets the company may handle for each customer. The exempt companies also  
14 have to register with the Australian government agency, the ASIC, and satisfy certain additional  
15 requirements to maintain the exemption. This framework applies not only to virtual currency  
16 businesses, but also to fintech companies offering credit to customers and comparable services.  
17 As this framework was proposed subsequent to the most recent Drafting Committee meeting for  
18 this act, this Draft does not contain any provisions that are drawn from that framework.

19  
20 The final stage involves full licensure under the provisions of Article 2 of this draft act.  
21 This stage is closely modeled on the Uniform Law Commission's Uniform Money Services Act  
22 in terms of licensure, renewal, reporting, and other matters with important adjustments to reflect  
23 the differences between businesses handling legal tender and those handling virtual currency that  
24 is not legal tender. Where differences exist between the Money Services Act and this draft act  
25 exist, they follow the sense of the instructions given to the Drafting Committee by the Council or  
26 Style Committee.

27  
28 This draft also exempts lawyers and title insurance companies engaged in offering escrow  
29 services to their customers in subsection (8). One Commissioner suggested an exemption from  
30 this act for judgment creditors and foreclosing secured parties, but it is not included in this draft.

31  
32 The term "bank" is defined in Section 102. One comment in the most recent round  
33 preferred the definition of "bank" found in Treasury Department regulations, 31 C.F.R. Section  
34 1010.100(d). The other issue in the proposed exemption for banks is the treatment of state-  
35 chartered trust companies and limited-purpose trust companies. If the state decides to exempt, it  
36 needs to adjust the definition of the term "bank" and of "trust company" in Section 102.

37  
38 This Draft does not exempt two categories that some Observers favored. Open-ended  
39 exemptions for "academics" and "hobbyists." Two factors motivated this position. First, the  
40 Draft gives generous exemptions for small providers and those operating under its intermediate  
41 "on-ramp" provisions. Second, the Drafting Committee has expressed its sense that those  
42 who handle the assets of others should be covered in one of the ways described in this Draft if  
43 their activities exceed the thresholds provided. The Drafting Committee so far has not  
44 authorized additional exemptions for academics or hobbyists.

45  
46 *Should both this act and the state or jurisdiction's "money services" or "money*



1 *transmission” act apply if the provider both engages in virtual currency business activity and*  
2 *engages in transactions that involve fiat currency/legal tender?* The Drafting Committee has  
3 discussed but not decided finally whether to require intrastate dual licensure – a virtual currency  
4 business license and a money services or money transmitter license – in the case of entities  
5 offering exchange of virtual currency to fiat currency or vice versa. The only State currently  
6 requiring both licenses for “money transmission” and “virtual currency” business activities is  
7 New York. The key definitions are premised on virtual currency businesses that can handle  
8 virtual-to-virtual currency transactions as well as virtual-to-fiat-or-fiat-to-virtual currency  
9 transactions. The sense of the Drafting Committee was to facilitate cross-satisfaction of  
10 requirements for both licenses if the jurisdiction elects to require both and to allow for easy on-  
11 boarding of virtual currency exchanges to licenses under the Uniform Money Services Act or the  
12 money transmitter statutes.

13  
14 **SECTION 104. CUSTODY.** A person has custody of virtual currency if the person:

15 (1) indicates by book entry that an amount of virtual currency has been credited to the  
16 account of a resident of this state;

17 (2) receives control of virtual currency from the resident or acquires control of virtual  
18 currency on behalf of the resident and accepts control for credit to the resident’s account; or

19 (3) becomes obligated under other law to credit virtual currency to an account of the  
20 resident or another person.

#### 21 **Reporter’s Note**

22 The Committee on Style suggested moving the definition of the term “custody” to this  
23 location in this draft. In light of the ULC’s rules about the location of definitions, the Drafting  
24 Committee may wish to direct the Reporter to return it what is now Section 102 with other  
25 definitions.

#### 26 27 **[ARTICLE] 2**

#### 28 **LICENSURE**

29 **SECTION 201. LICENSE.** A person may not engage in virtual currency business  
30 activity, or hold itself out as being able to engage in virtual currency business activity, with a  
31 resident of this state unless the person:

32 (1) is licensed under this [act];

(2) is licensed to conduct virtual currency business activity by a state with which this state has a reciprocity agreement;

(3) is a provisional registrant operating in compliance with Section 211 or has been operating under Section 211 and has pending an application to be licensed; or

(4) is exempt from this [act] under Section 103.

### **Reporter's Note**

A person engages in virtual currency business activity subject to this act if any part of the transaction that is part of its virtual currency business activity is with a resident of this state, whether by through the use of a physical location such as a virtual currency "ATM" in this state used by a resident, or otherwise as part of an intended engagement with a resident of this state. An advertisement, solicitation or other holding out that appears in a newspaper or occurs by telephone, email, regular mail received by a resident, or otherwise, and whether or not seen by a resident, is sufficient contact to generate the need for a license from this state unless this state and another state have a reciprocity agreement that covers the person's activities in this state or the transaction is consummated by the resident while physically present in another state.

The Drafting Committee has expressed support for greater use of available reciprocal licensing arrangements, including those facilitated by the Registry.

No license issued by this state can be transferred or assigned except pursuant to law as in a merger, and then only as long as the department or other relevant state or federal regulator does not disapprove the transfer or assignment. Some states' money transmitter statutes, including California, allow licenses to be granted only if the applicant is organized under the laws of California. Others, such as Virginia, do not require incorporation in that state or even a physical presence in Virginia for a license to be issued. This Draft does not require that a licensee or provisional registrant be incorporated in this State as a condition of operations.

Given the online nature of virtual currency business, Section 201 does not contain a requirement for the applicant to have a corporate charter from a state in order to be licensed in that state or to maintain a physical location in that state.

The Conference of State Bank Supervisors supported the concept of "provisional registration" in its September 2015 Framework, but has expressed concerns that any provisional registration status not be phrased in such a manner as would convey a form of property interest that would be subject to the due process requirements applicable to license suspensions or revocations in many States.

The "on-ramp" or "provisional registration" in Section 211 does not give preferential status to holders of Money Services Act or Money Transmitter Act licenses. It is exclusively for virtual currency business activities whose providers' good faith and objectively reasonable

1 estimates of transactions [by dollar equivalent, numbers of transactions or numbers of residents]  
2 for the quarter following the registration do not exceed a threshold set by the department or in  
3 this act.

4  
5 Provisional registrants are not be able to engage in the exchange, transfer or storage of  
6 legal tender.

7  
8 The text in Section 204's Alternative A, subsection (b), below, allows "provisional  
9 operation" by a person that has applied for reciprocal licensure under that section during the  
10 pendency of the licensure process. The term "provisional operation" should be distinguished  
11 from "provisional registration" under Sections 201 and 211 or any comparable limited operating  
12 authority granted by this act. Under this act, neither "provisional registration" nor "provisional  
13 operation" conveys a property right in the person engaged in virtual currency business activity in  
14 this state.

15  
16 **SECTION 202. LICENSES NOT TRANSFERBLE OR ASSIGNABLE.** A license  
17 issued or license or provisional registration recognized under this [act] is not transferable or  
18 assignable.

19 **SECTION 203. APPLICATION FOR LICENSE.**

20 (a) Except as provided in Section 205, an application under this act must be made in a  
21 form and medium prescribed by the department or in the form prescribed by the registry if this  
22 state uses the registry. The application must:

23 (1) be accompanied by a nonrefundable fee [of [\$] [determined by the department  
24 by regulation];

25 (2) state the legal name of the applicant, its current or proposed business address,  
26 and any fictitious or trade name used by the applicant or planned to be used by the applicant in  
27 conducting its virtual currency business activity;

28 (3) state the legal name of the executive officer of the applicant and any other  
29 person that exercises control over the applicant's virtual currency business activity, the  
30 residential and business address, and any former name or fictitious name;

31 (4) describe the current and historical business of the applicant for the previous

1 ten years, including its products and services, associated website addresses, its principal place of  
2 business, its projected customer base, specific marketing targets, and the location of each current  
3 database server expected to be used with its virtual currency business activity with residents of  
4 this state;

5 (5) disclose:

6 (A) each money service or money transmitter license the applicant holds  
7 in any other state;

8 (B), the date the license expires; and

9 (C) license revocations, suspensions, or other disciplinary actions taken  
10 against the license;

11 (6) disclose criminal convictions of, and deferred prosecution agreements against:

12 (A) the applicant;

13 (B) a person that exercises control over the applicant; and

14 (C) a person over which the applicant exercises control;

15 (7) disclose material litigation in which the applicant or any executive officer has  
16 been involved in the 10-year period preceding the application, determined in accord with  
17 generally accepted accounting principles and the extent the applicant would be required to  
18 disclose the litigation in the applicant's annual audited financial statements, reports to  
19 shareholders, or similar statements or reports;

20 (8) disclose any bankruptcy or receivership proceedings in the previous ten years  
21 in which the applicant, an executive officer, or a responsible individual is a debtor;

22 (9) state the name and address of each bank in which the applicant plans to  
23 deposit funds obtained by its virtual currency business activity;

1 (10) describe the source of funds and credit to be used by the applicant to provide  
2 virtual currency business activity to residents of this state and demonstrate that the applicant has  
3 the minimum net worth specified in Section 209;

4 (11) state the United States Post Office address and email address to which  
5 communications from the department may be sent;

6 (12) state the name, United States Post Office address, and email address of the  
7 registered agent of the applicant in this state;

8 (13) provide a copy of each liability, casualty, business- interruption or cyber-  
9 security insurance policy maintained by applicant for itself, its officers and directors, or its  
10 customers;

11 (14) if applicable, state the date of and the state where the applicant was  
12 incorporated, chartered or formed and provide a copy of the most recent certificate of good  
13 standing;

14 (15) if the applicant is a wholly owned subsidiary of a corporation publicly traded  
15 in the United States, provide a copy of the corporation's audited financial statement for the most  
16 recent fiscal year of the corporation or a copy of the most recent report of the parent corporation  
17 filed under Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m;

18 (16) if the applicant is a wholly owned subsidiary of a corporation publicly traded  
19 outside the United States, provide a copy of documentation similar to that required in paragraph  
20 (15) filed with the foreign regulator in the domicile of the parent corporation;

21 (17) if the applicant is a partnership, state the names and addresses of general  
22 partners;

23 (18) if required to register by the Financial Crimes Enforcement Network of the

1 United States Department of the Treasury as a money service business, provide evidence of the  
2 registration;

3 (19) provide a set of fingerprints for each executive officer of the applicant,  
4 together with an employment history and history of any investigation or legal proceeding  
5 involving any executive officer for each for the previous ten years, if available; and

6 (20) other information that the department reasonably may require by regulation.

7 (b) Upon a showing of good cause, the department may waive a requirement of  
8 subsection (a) or permit the applicant to submit other information instead of the required  
9 information.

#### 10 **Reporter's Note**

11 These provisions generally follow the Uniform Money Services Act. The suggested  
12 minimum initial license fee of \$1500 was used in the 2016 North Carolina amendments to that  
13 state's money transmitter law affecting virtual currency businesses.  
14

#### 15 **SECTION 204. RECIPROCAL LICENSING.**

16 (a) The department may use the registry for applications for licenses to be issued under  
17 this act.

#### 18 **Alternative A**

19 (b) Instead of the application required by section 203, an applicant may file an application  
20 with the registry.

21 (c) When an application is filed with the registry, the applicant shall notify the department  
22 in a record that the applicant is submitting an application to the registry and shall:

23 (1) submit a certification of license history from the agency in each state  
24 responsible for issuing a license to conduct virtual currency business activity;

25 (2) pay a reciprocal licensing application fee in an amount specified by the

1 department by regulation; and

2 (3) a certification signed by an executive officer of the person affirming that the  
3 person will conduct its virtual currency business in this state in compliance with the requirements  
4 of this [act] and other law.

5 (d) A person may not engage in virtual currency business activity with residents of this  
6 state until a license granted or a provisional registration is complete under Section 211 has been  
7 made.

8 (e) The department may permit provisional operation by a person that has complied with  
9 this section. Provisional operation under this subsection does not convey a property interest in  
10 the person.

#### 11 **Alternative B**

12 (b) A person licensed by another state to engage in virtual currency business activity may  
13 engage in virtual currency business activity with residents of this state without applying for a  
14 license under Section 203 if:

15 (1) the department determines the state where the person is licensed has virtual  
16 currency business activity laws that are substantially similar to, or more protective of rights of  
17 residents than, those imposed by this state; and

18 (2) at least 30 days before the person intends to commence virtual currency  
19 business activity with residents of this state, the person submits to the department:

20 (A) notice of its intent to rely on reciprocal licensing and a certification of  
21 license history from the agency in each state which has issued the person a license to conduct  
22 virtual currency business activity;

23 (B) a reciprocal license fee in the amount of \$[];

1 (C) documentation demonstrating net worth and any security or bond  
2 maintained for the protection of residents that are substantially similar to those required under  
3 this [act]; and

4 (D) a certification signed by an executive officer of the person affirming  
5 that the applicant will conduct its virtual currency business activity in this state in compliance  
6 with this [act];

7 (3) the department does not reject the applicant within 15 days after receipt of the  
8 items specified in subparagraph (2);

9 (4) the person does not commence virtual currency business activity with residents  
10 of this state until 31 days after complying with paragraph (2).

11 (c) The department may permit provisional operation before the expiration of the notice  
12 period under subsection (b) (2) by a person that complies with subsection (b) (2). Provisional  
13 operation under this subsection does not convey a property interest in the person.

14 (d) The department may waive the security and net-worth requirements of this [act] for a  
15 license granted under this section if the state that granted the license on which reciprocity is  
16 based requires bonding and net worth requirements that are substantially similar to those required  
17 by this [act].

### 18 **Alternative C**

19 (b) A person seeking a license to engage in virtual currency business activity with  
20 residents of this state which holds a license issued by another state to engage in the activity may  
21 submit a copy of its license application to and current license issued by that the other state instead  
22 of submitting an application in the form prescribed in Section 203. The department shall accept  
23 the application submitted to the other state as an application for license in this state if:



1 (1) the department determines the state where the person is licensed has virtual  
2 currency business activity laws that are substantially similar to, or more protective of the rights of  
3 residents than, those imposed by this state;

4 (2) the application to the other state contains information substantially similar to  
5 or is more comprehensive than that required in an application submitted to this state; and

6 (3) the applicant certifies that the information contained in the application to the  
7 other state remains accurate and that, since the applicant filed in the other state, no material  
8 claim or loss of assets has arisen which would affect the applicant's ability to perform its  
9 responsibilities under this [act] or its license in the other state.

10 (c) The department may permit provisional operation by a person that has complied with  
11 subsection (a) or by a person that separately complies with Section 211. Provisional operation  
12 under this subsection does not convey a property interest in the person.

13 (d) The department may waive the security and net-worth requirements of this [act] for  
14 any license granted under this section if the state that granted the license on which reciprocity is  
15 based has bonding and net-worth requirements substantially similar to those required under this  
16 [act].

### 17 **End of Alternatives**

18  
19 *Legislative Note: Each state electing to authorize reciprocal licensure should select one of the*  
20 *alternatives in this section. Alternative A is applicable only if the Department has agreed to*  
21 *participate in the Registry operated by a subsidiary of the Conference of State Bank Supervisors.*  
22 *If the jurisdiction already participates in the Registry, the bracketed subsection (a) would be*  
23 *deleted from the legislation and the un-bracketed subsection (a) would begin this Alternative's*  
24 *provisions and, in either event, the subsections of this Section should be renumbered accordingly.*  
25

### 26 **Reporter's Note**

27  
28 Alternative A relies on use of the Registry to facilitate reciprocal licensure or recognition  
29 of licensure by states other than the first state that licensed a virtual currency business. The  
30 reference to "provisional operation" in Alternative A is intended to be limited to persons who

1 have applied for reciprocal licenses under this section, and does not include any person who is  
2 operating under the provisional registration authority provided in Section 211. The terms  
3 “provisional operation” and “provisional registration” are mutually exclusive. The order of the  
4 alternatives has been changed to make the Registry the first option. The text of Alternative B  
5 has been harmonized with that of Alternatives A and C with respect to the jurisdictional limits of  
6 reciprocity.

7  
8 This draft follows an approach for reciprocal licensure close to that used by the CSBS,  
9 instead of the Uniform Law Commission’s Athlete Agents Act, State banking agencies are  
10 already familiar with the CSBS framework. Non-depository providers of financial services also  
11 are likely to be familiar with the CSBS model and not with the Athlete Agents Act.

12  
13 **SECTION 205. ACTION BY DEPARTMENT.** When an original application under  
14 Section 204 is complete, the department shall notify the applicant in a record not later than 30  
15 days after its decision to approve or deny the application. If the department does not notify the  
16 applicant of its decision by the 31st day after the application was complete, the application is  
17 deemed approved; and, absent good cause, the department shall issue the license. The license  
18 shall take effect on the first day following the expiration of the 30-day period if the applicant by  
19 that time has complied with the security requirements of Section 206.

20 **SECTION 206. SECURITY.**

21 (a) Before a license is issued under this [article], the applicant must deposit with the  
22 department funds, investment property, or other security required by the department. The  
23 department shall establish the security in an amount suitable to the nature and extent of risks in  
24 the applicant’s virtual currency business model and to secure faithful performance of obligations  
25 of the licensee under this act. The department may require a surety bond to satisfy the deposit  
26 requirement only if a surety bond is readily available to the applicant. A negative inference may  
27 not be drawn from the fact that a particular form of security, as opposed to a letter of credit or  
28 surety bond, is offered as security by an applicant. The security need not be posted until the  
29 department has approved the application.

1 (b) The security must be collectible by this state for the benefit of any claim against the  
2 licensee to secure the faithful performance of the obligations of the licensee with respect to its  
3 virtual currency business activity with a resident of this state.

4 (c) The security must cover claims for the period the department specifies by regulation,  
5 including a period designated by the department after the licensee ceases to engage in virtual  
6 currency business activity with residents of this state.

7 (d) The department may increase the amount of security required as the licensee's  
8 financial condition requires, as evidenced by a reduction in net worth, financial losses, or other  
9 criteria to be specified by the department by regulation. If the licensee fails to provide the  
10 additional security required by the department within a reasonable time, the department may  
11 suspend the license immediately or commence a license-revocation proceeding.

12 (e) The department may permit a licensee to substitute another form of security  
13 acceptable to the department for the security initially provided under subsection (a) if there is no  
14 time when the licensee's virtual currency business activity in this state is not covered by security  
15 acceptable to the department.

16 (f) A claimant does not have a direct right against the security. Only the department may  
17 exercise rights under security provided under subsection (a). A recovery may be retained for the  
18 time to ensure that the security is available to satisfy claims of residents of this state.

### 19 **Reporter's Note**

20  
21 Surety bonds and letters of credit are not readily available at this time for virtual currency  
22 business start-ups. Accordingly, the security described in Section 206 does not require surety  
23 bonds or letters of credit because such a requirement effectively prevents virtual currency  
24 businesses from being licensed at this time. States should require surety bonds as security only  
25 when they become readily available so as not to deter innovations in virtual currency businesses.  
26 The market may improve as surety bond companies banks that issue letters of credit are more  
27 familiar with the operations of virtual currency businesses and as states clarify their positions on  
28 licensure and regulation of virtual currency businesses and the relationship of virtual currency

1 businesses to traditional money services and money transmission that states otherwise regulate.  
2 This act does not require them as a form of security – no matter how common or appropriate they  
3 may be for other forms of financial services licensees to offer to regulators.  
4

5 This draft adds to the customary references to surety bonds or letters of credit with the  
6 more expansive term “a deposit of funds or investment property.” The primary reason is that,  
7 although it may be easier to obtain a letter of credit than a surety bond, banks have their own  
8 credential requirements for issuing letters of credit. This act should not convey a sense that there  
9 is something wrong with a virtual currency business if it cannot obtain a particular form of  
10 security, such as a letter of credit or surety bond.  
11

12 The amount of security required may be minimal depending on the scope of activities that  
13 the applicant presents as its business model in a given state. This is particularly true because of  
14 the inclusion of an analogue to U.C.C. section 8-503 that specifies that the provider does not  
15 have a property interest in the virtual currency or credentials it controls or has custody over for  
16 its customers, and that the virtual currency cannot be invested by the provider and is not subject  
17 to claims of the providers’ creditors.  
18

19 The type of security may include virtual currency of the type in which the provider  
20 transacts business with residents of this state, a guarantee or, possibly, even a letter asserting  
21 compliance based on submissions under Article 7. In subsection (d), the regulators’ ability to  
22 hold security after the licensee ceases to engage in virtual currency business activity is common  
23 in non-depository financial services regulation. Because of this need for security to be available  
24 during a winding-down period, bonds – if available – would be problematic for licensees. Bonds,  
25 of course, run with the person or entity that first acquired them. In the virtual currency  
26 community, one expects innovators to merge or be acquired by others with more frequency than  
27 might have applied to other forms of non-depository providers of financial services. One  
28 Observer explained that requiring the security to survive a merger or acquisition necessarily  
29 requires a form of security that is not entity-dependent, which is an important consideration and  
30 likely complication with some forms of security that are typically used in non-depository  
31 licensure schemes.  
32

33 The remaining issue in this section is the extent to which a provisional registrant should  
34 be required to provide security as part of its provisional registration requirements. This issue has  
35 not been resolved by the Drafting Committee.  
36

## 37 **SECTION 207. ISSUANCE OF LICENSE.**

38 (a) When an applicant files an application, the department shall investigate the

39 (1) financial condition and responsibility of the applicant;

40 (2) relevant financial and business experience, character and general fitness of the

41 applicant and

1 (3) the competence, experience, character, and general fitness of the executive  
2 officers, directors, managers, and persons in control of the applicant.

3 (b) The department may conduct an investigation of the business premises of the  
4 applicant, including facilities and devices for storage of virtual currency or credentials for use in  
5 virtual currency business activity, and data associated with it wherever those facilities may be  
6 located. The applicant shall pay the reasonable costs of the investigation.

7 (c) An application is not complete until the department has all information required by  
8 this [act], and has completed any investigation under subsections (a) and (b).

9 (d) The department may not issue a license until the applicant has paid the initial license  
10 fee [of \$[ ]] [determined by department by regulation].

11 (e) Absent good cause, the department shall issue a license to an applicant if:

12 (1) the applicant has fulfilled all of the conditions set forth in Section 203 and  
13 206; and

14 (2) the applicant has complied with Section 203 and fulfilled the security  
15 requirements of Section 206.

16 (f) An applicant may appeal the denial of its application, under [cite state administrative  
17 procedure act], not later than 30 days after the notice of denial is sent.

#### 18 **Reporter's Note**

19 The addition of the phrase "absent good cause" to subsection (e) grants discretion to the  
20 department to deny an application if the applicant has been allegedly engaged in violations of  
21 federal anti-money-laundering or other regulations.

#### 22 23 **SECTION 208. RENEWAL OF LICENSE.**

24 (a) In this section, "qualified custodian" means a bank or other person approved by the  
25 department to hold permissible investments on behalf of a licensee.

1 (b) At least 15 days before the anniversary of license issuance, the licensee must pay a  
2 renewal fee, set by regulation of the department, of:

3 (1) an amount not to exceed \$[set flat dollar amount] [amount its dollar volume in  
4 this state for the previous fiscal year was less than \$[ ]]; or

5 (2) \$[ ] if its volume in this state for the same period was [dollar amount] [number  
6 of transactions] or more.

7 (c) A licensee shall submit a renewal report with the renewal fee under subsection (b), in  
8 a form and medium prescribed by the department. The renewal report must state or contain, as  
9 applicable:

10 (1) a copy of the licensee's most recent:

11 (A) reviewed annual financial statement if the licensee's virtual currency  
12 business activity in this state amounted to \$250,000 or less in the previous fiscal year, measured  
13 as of its anniversary date;

14 (B) audited annual financial statement if the licensee's virtual currency  
15 business activity in this state amounted to more than \$250,000 in the previous fiscal year,  
16 measured as of its anniversary date; or

17 (C) if the licensee is a wholly owned subsidiary of a business person,  
18 audited consolidated annual financial statement of the person;

19 (2) a description of any:

20 (A) material change in the financial condition of the licensee;

21 (B) material litigation involving the licensee;

22 (C) license suspension or revocation proceeding commenced or other  
23 action involving a license issued by another state on which reciprocal licensing was based; and

1 (D) federal or state investigation involving the licensee;

2 (E) data security breach; or

3 (F) change in information since the date of the reviewed or audited

4 financial statement submitted under paragraph (1) that has not been reported to the department

5 or reported on a required report or copy of a report submitted under Section 13 of the Securities

6 Exchange Act of 1934, 15 U.S.C. Section 78m;

7 (3) the number of virtual currency business activity transactions with or on behalf

8 of residents in this state and the number of residents' private keys or other credentials received

9 by the licensee for custody or control for the period since the license was issued or the last

10 renewal report;

11 (4) the dollar-equivalent of virtual currency in the custody or control of the

12 licensee at the end of the month at least 30 days before to the date of the renewal report and the

13 total number of residents for whom the licensee had custody or control of virtual currency on the

14 same date;

15 (5) evidence that the licensee continues to maintain:

16 (A) the virtual currency necessary to satisfy the mandate of Section 503;

17 and

18 (B) the permissible investments in accordance with regulations of the

19 department, a listing of each investment, and the name of the qualified custodian holding the

20 investment;

21 (6) evidence that the licensee continues to meet the requirements of Section 209;

22 (7) evidence that the licensee continues to maintain adequate security as required

23 by Section 206; and

1 (8) a list of each location in the state where the licensee operates its virtual  
2 currency business activities or operates or uses a server related to the conduct of virtual currency  
3 business activity with residents of this state.

4 (d) If a licensee does not pay its renewal fee or file its renewal report by the renewal date  
5 or by the end of an extension of time granted under subsection (f), the license is suspended and,  
6 subject to subsection (e), the licensee's authority to engage in virtual currency business activity  
7 with residents of this state ceases. A notice or hearing is not required for a license suspension for  
8 failure to pay a renewal fee or file a renewal report. The department may lift the suspension if,  
9 not later than 20 days after the license was suspended, the licensee:

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

11 (2) pays any penalty assessed under Section 403.

12 (e) The department shall provide prompt notice to a licensee of the lifting of any  
13 suspension after the licensee has complied with subsection (c) (1) and (2).

14 (f) Suspension of a license under this section does not invalidate transfers made during  
15 the suspension.

16 (g) The department for good cause may grant an extension of a renewal date.

17 (h) The department shall review the renewal of a license issued under Section 204 to  
18 ensure that the state that issued the original license has not revoked, suspended, or otherwise  
19 limited the license it granted.

20 ***Legislative Note:*** *If the state enacting this act delegates the setting of fees under subsection (b)*  
21 *of this Section to the department, this section should be revised to convey authority to set fees*  
22 *and to establish any minimum or maximum fee levels the department is required to observe.*

23  
24 **Reporter's Note**

25 This draft contains a new provision, recommended by a member of the Drafting  
26 Committee, that is similar to U.C.C. §8-503 that provides that the virtual currency in a licensee's



1 or provisional registrant's custody or control is not subject to claims of the licensee's or  
2 registrant's creditors. See Section 503 of this act.

3  
4 In subparagraph (b)(1), the prospect arises that a small entity will not be required to have  
5 or have an audited financial statement. In these cases, the entity may have a "reviewed" financial  
6 statement and should provide it in lieu of a fully audited financial statement.

7 In subparagraph (b)(2), a clause has been added to clarify that any change in a license  
8 issued by another state or jurisdiction that was the basis for reciprocal licensure under this act  
9 needs to be disclosed in the renewal report, if not previously disclosed to the Department in this  
10 state.

11  
12 In subparagraph (b)(8), it may not be possible or practical to provide all addresses at  
13 which the licensee or provisional registrant operates or uses servers for its virtual currency  
14 business. This draft retains this requirement for the purposes of eliciting comments on the  
15 practicality of this requirement.

16  
17 **SECTION 209. NET WORTH AND MINIMUM CAPITAL REQUIREMENTS;**  
18 **PERMISSIBLE INVESTMENTS.**

19 (a) In addition to the security required under Section 206, a licensee shall provide  
20 evidence to the department of and maintain a minimum net worth of \$[35,000] or [two to five]  
21 per cent of its proposed virtual currency business activity with residents of this state ,to ensure  
22 ongoing business operations and sufficient reserves for winding down operations.

23 (b) The following rules apply:

24 (1) The licensee may include in its calculation of net worth the type of virtual  
25 currency that its virtual currency business activity with residents of this state involves but may not  
26 include virtual currency assets over which it has custody or control under Section 503.

27 (2) A licensee or applicant may demonstrate that it has sufficient net worth to  
28 continue to operate and wind down its operations if it provides the department descriptions of:

29 (A) a complex corporate structure and services of a corporate applicant,  
30 with specific information about:

31 (i) shared services;

1 (ii) the extent to which capital is maintained on a separate basis for  
2 one or more virtual currency businesses in the structure; and

3 (iii) the extent to which it is blended;

4 (B) its anticipated flow of funds;

5 (C) its long-range flow of funds and plans for financial stability and  
6 generation of revenues;

7 (D) its plans for making up funding gaps, including commitments for  
8 funding in hand; and

9 (E) its record for raising funding in the past.

10 (c) A provisional registrant under Section 211 shall demonstrate to the department at the  
11 time it registers that it has sufficient net worth to engage in the level of virtual currency business  
12 activity it proposes to conduct with residents of this state and to wind up its operations. The  
13 department may not require the same level of net worth for a provisional registrant under Section  
14 211 as it requires for a licensee, but may require the provisional registrant to demonstrate, before  
15 it commences virtual currency business activity with a resident of this state, that it holds a  
16 reasonable percentage of the estimated average amount of virtual currency business activity with  
17 residents of this state. The department may require additional net worth to be demonstrated if the  
18 department deems the provisional registrant's virtual currency business activity with residents of  
19 this state to be growing at a rate faster than can be protected by the original percentage otherwise  
20 required by this subsection.

21 (d) In addition to the types of virtual currency in which a licensee or provisional registrant  
22 may conduct virtual currency business activity with residents of this state, permissible  
23 investments include United States securities, fully insured bank deposits, grade A or better

1 corporate bonds, and other forms of investments this state allows money-services businesses or  
2 money transmitters to hold for the net worth and minimum capital standards set for those  
3 businesses.

#### 4 **Reporter's Note**

5 Discussion about the amount of security required for licensees has ranged from a fixed  
6 percent for ongoing operations and winding down expenses of roughly 10.5 percent of expected  
7 volume to be parallel with the standards in Basel III, to a two to five percent standard similar to  
8 standards used in recent state amendments to money services or money transmission acts. The  
9 Drafting Committee has reached no consensus on this important question to this point.

#### 10 11 **SECTION 210. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

12 (a) In addition to its obligations under Section 503 of this [act], a licensee or provisional  
13 registrant shall maintain its permissible investments in a value that complies with Section 209.  
14 The value must be recomputed at the end of each three calendar months.

15 (b) The department by regulation may:

16 (1) limit the extent to which a type of investment within a class of permissible  
17 investments may be considered a permissible investment, except for legal tender and certificates  
18 of deposit issued by an insured bank, but shall allow the licensee to hold a [percentage to be  
19 determined] of its permissible investments in the type or types of virtual currency in which it  
20 may deal in the ordinary course of business under this act; and

21 (2) may prescribe or allow other types of investments the department determines  
22 have safety substantially equivalent to permissible investments specified in any regulation  
23 adopted under Section 209.

#### 24 **Reporter's Note on Sections 207 to 210**

25 The rationale for requiring minimum net worth and reserves was explained succinctly in  
26 commentary to the 2004 final version of the Uniform Money Services Act:

27  
28 Net worth requirements, in combination with bonding/security and permissible-

1 investment requirements, are a means of ensuring that a money transmitter has sufficient  
2 resources to honor its obligations to customers. Only Article 2 licensees are subject to net worth  
3 requirements. ... Net worth requirements are a means of screening an applicant, at the time of  
4 their initial entry into the money-services business, as to their ability to meet their obligations.  
5

6 Only a minimal net worth requirement has been suggested because net worth is used as an  
7 additional requirement to make sure that license applicants and licensees have some resources for  
8 commencing and operating a money transmission business. This Act gives States the option of  
9 choosing between a combination of security, net worth and permissible investment requirements  
10 as prudential measures for licensees. For more information, see UNIFORM MONEY SERVICES  
11 ACT (2004), *available at*

12 [http://www.uniformlaws.org/shared/docs/money%20services/umsa\\_final04.pdf](http://www.uniformlaws.org/shared/docs/money%20services/umsa_final04.pdf).  
13

14 The Uniform Money Services Act specified a minimum net worth of \$25,000, *id.* at 38,  
15 which may need to be adjusted for the purposes of this act.  
16

17 A virtual currency business may be expected to hold virtual currency in the form in which  
18 it transacts business with customers as part of its capital virtual currency, as well as other capital  
19 required for its operations and the winding down of operations. States should consider the price  
20 volatility of virtual currencies when setting net worth and reserve requirements for this act.  
21

22 Technology start-up companies often go through more than one level of capital funding in  
23 their early years. This draft makes no recommendation as to how the requirement to maintain a  
24 specific net worth should be managed as a new entrant goes through its early capital. A “mark-  
25 to-market” style requirement could be particularly onerous for smaller virtual currency licensees  
26 and new entrants and appears unnecessary for a regulated entity that holds its customers’ funds in  
27 trust and not subject to the claims of its creditors.  
28

29 The Drafting Committee considered a formula for minimum capital requirements is based  
30 on the formula adopted for banks under Basel III, which requires at least 6 percent capital for  
31 ongoing operations and 4.5 percent capital for winding down, based in part on the risk assessment  
32 of the nature of the business activities of the licensee. Licensees could be required to have this  
33 capital without regard to the value of the virtual currency over which they have custody or  
34 control on behalf of residents.  
35

36 The issue of what is an appropriate minimum net worth for virtual currency businesses  
37 may depend on many factors, including the nature of the services or products provided, and  
38 relates to the recommendation in Section 503 of this draft that the virtual currency in the custody  
39 or control of the licensee or provisional registrant is a bailment, not the property of the licensee or  
40 provisional registrant and specifically is not subject to the claims of the creditors of the licensee  
41 or provisional registrant pursuant to Section 503.  
42

43 Observers have questioned whether a Basel III approach was suitable for businesses  
44 operating other than on a fractional reserve basis and also whether the percentages suggested –  
45 respectively, of 6 and 4.5 – were not too great to encourage innovation in virtual currency  
46 businesses. As a result, a range of possible net worth requirements is included in this Draft,

1 including a 2% figure for provisional registrants and a minimum of \$35,000 or a percentage for  
2 licensees.

3  
4 **SECTION 211. PROVISIONAL REGISTRATION; REGISTRATION FEE;**  
5 **MINIMUM NET WORTH; AND REQUIREMENTS.**

6 (a) A person may engage in virtual currency business activity with residents of this state  
7 without first obtaining a license under Section 201 if its volume of activity projected for the  
8 quarter that follows such engagement does not exceed [dollar equivalence, number of  
9 transactions, or number of residents to be decided] and the person:

10 (1) files with the department a notice in the form prescribed by the department by  
11 regulation of its intention to engage in virtual currency business activity with residents of this  
12 state, provides the information for an investigation as described in Section 207, and recites the  
13 anticipated activity for its next fiscal quarter;

14 (2) pays a registration fee of \$250 to the department;

15 (3) provides the department with evidence that it has registered with the Financial  
16 Crimes Enforcement Network of the United States Department of the Treasury as a money  
17 service business, to the extent its virtual currency business activity is subject to registration under  
18 that agency's guidance, and that it has in place policies and procedures to comply with the Bank  
19 Secrecy Act, 31 U.S.C. 5311 et seq., and other applicable laws;

20 (4) agrees not to transfer, invest or agree to a security interest in virtual currency  
21 or credentials in its custody or control on behalf of others or to engage in the exchange or transfer  
22 of legal tender other than to pay for its own operating expenses;

23 (5) provides the department with evidence that it has adequate resources for  
24 compliance with Section 209(b), and that it has policies and procedures in place to comply with  
25 [Articles] 3, 5, and 6; and

1 (6) provides the department with evidence that it holds permissible investments in  
2 compliance with Sections 209 and 210 and a copy of its most recent financial statement, whether  
3 reviewed or audited.

4 (b) When the virtual currency business activity with resident of this state of a provisional  
5 registrant under this section exceeds 75 percent of the [equivalent value, number of transactions,  
6 or number of residents] specified in its notice to the department under subsection (a)(1), the  
7 provisional registrant must file an application for license with the department and may continue  
8 to operate past the estimate of anticipated activity provided under subsection (a)(1) so long as its  
9 application for license is pending.

10 (c) A provisional registration is not assignable or transferable and expires on the  
11 occurrence of either of the following:

12 (1) an acquisition of the provisional registrant by any person or a merger of the  
13 provisional registrant with another person; or

14 (2) the second anniversary date of the provisional registration unless the virtual  
15 currency business activity of the provisional registrant with residents of this state remains below  
16 75 percent of the estimated volume declared in the original provisional registration under  
17 subsection (a)(1).

18 (d) The department for cause shown may suspend or revoke a provisional registration or  
19 refuse to license a person that had filed a provisional registration under this [act], or use any other  
20 authority the department has under the laws of this state. The department may suspend or revoke  
21 a provisional registration without a hearing or opportunity to be heard.

22 (e) A provisional registrant is subject to the duties in Article 3 of this act except that no  
23 report under Section 306(a) shall be required unless the control includes the power to vote at

1 least 51 percent of the voting stock of the provisional registrant, and except as such duties are  
2 modified by regulation of the department based on consideration of operational costs to the  
3 provisional registrant in relation to the extent of its virtual currency business activities with  
4 resident of this state.

#### 5 **Reporter's Note**

6  
7 The proper threshold below which a “provisional registration” is appropriate has been the  
8 subject of considerable discussion in the Drafting Committee and in comments from Observers.  
9 Three alternatives have emerged that include using the value of the virtual currency business  
10 activity in US dollar equivalent terms, the number of transactions, or the number of users. Each  
11 has its proponents. Each is difficult to fix as a numerical proposition given the still relatively  
12 small size of the market proposed to be regulated.  
13

14 Observers have urged that a threshold of \$1 million be established for this purpose.  
15 Contrarians might observe that that figure is significantly greater than would be tolerated under  
16 the Uniform Money Services Act or state money transmitter statutes. To the extent that the goal  
17 of Section 211 is to promote innovation and allow both academic research and beta testing to  
18 occur without the necessity of full licensure or the risks of being prosecuted for engaging in  
19 unlicensed money transmission or prepaid access activity under state laws or 18 U.S.C. Section  
20 1960, a \$1 million threshold is too high.  
21

22 FinCEN's guidance on the application of its “money service business” definition to  
23 persons engaged in virtual currency business activity employs a “facts and circumstances”  
24 approach. Some Observers favored using a “facts and circumstances” approach for determining  
25 eligibility for “provisional registration,” but others objected approach because it would not afford  
26 sufficient clarity for start-up businesses. For this reason, no facts and circumstances approach is  
27 included in this Section.  
28

29 Subsection (a)(4) has been revised: a provisional registrant must be able to transfer legal  
30 tender to pay its own operating expenses.  
31

32 Subsection (c) prohibits the assignment or transfer of a “provisional registration,” which  
33 means that in advance of an acquisition or merger of a virtual currency business operating under a  
34 provisional registration under this section, the acquiring or surviving entity must register as a  
35 provisional registrant and meet the other requirements for such status under this act, or be a  
36 person holding a license under this act, or be an applicant for a license under this act in a state  
37 that permits provisional operation by persons who have applied for full licensure under this  
38 article. This provision is included at the suggestion of the CSBS in order to avoid the necessity for  
39 its members to go through due process to terminate a privilege offered on a provisional basis in  
40 the “on-ramp.”  
41

1 [ARTICLE] 3

2 EXAMINATION, REPORT, RECORD, COOPERATION AND DATA-SHARING,  
3 INTERIM REPORT, CHANGE IN CONTROL, MERGER AND ACQUISITION;  
4 ADVANCE NOTICE OF PROPOSED CHANGE

5 Reporter's Note

6  
7 The Committee on Style proposed some edits to Article 3. None in our opinion affect the  
8 substance of these provisions in a material manner.  
9

10 SECTION 301. AUTHORITY TO CONDUCT EXAMINATION.

11 (a) The department may conduct an annual examination of a licensee without prior notice  
12 to the licensee or one annual examination of any of the licensee's servers upon five days prior  
13 notice to the licensee. For good cause, the department may examine a licensee at any time,  
14 without notice for cause shown

15 (b) The licensee shall pay the reasonable costs of an examination under this section.

16 (c) Information obtained during an examination under this [act] may be disclosed only as  
17 provided in Section 304.

18 SECTION 302. REPORTS AND RECORDS.

19 (a) A licensee shall maintain a record of each virtual currency business activity with a  
20 resident of this state in which it has engaged, for a period of five years following the date of the  
21 activity. The record must be in a form that will allow the department to determine whether the  
22 licensee is complying with applicable laws, regulations, and orders. This subsection requires a  
23 record of:

24 (1) each virtual currency business activity of the licensee with or on behalf of a  
25 resident of this state or for the licensee's own account, including:

26 (A) identity of the resident;



1 (B) form of the transaction;

2 (C) amount, date, payment instructions given by the resident,

3 cryptographic credentials used by the resident to authorize the transaction, Internet Protocol

4 address used by the resident or other person authorizing the transaction, and other information

5 used to authorize the transaction; and

6 (D) the account number, name and physical address of each principal party

7 to the transaction, and, to the extent practicable, other parties to the transaction;

8 (2) the aggregate number of transactions and aggregate dollar value of transactions

9 by the licensee with or on behalf of a resident of this state and for the licensee's own account in

10 this state, for the period the licensee holds a license from this state;

11 (3) each transaction in which the licensee exchanges one form of virtual currency

12 for legal tender or another form of virtual currency with a resident of this state or on behalf of a

13 resident of this state;

14 (4) a general ledger posted at least monthly containing all asset, liability, capital,

15 income, and expense accounts for the licensee;

16 (5) each business call report the licensee is required to create or provide to the

17 department by this state or the registry;

18 (6) bank statements and bank reconciliation records for the licensee and the name,

19 account number, and physical address of each bank used by the licensee in the conduct of its

20 virtual currency business activity with residents of this state, regardless of the physical location

21 of the bank; and

22 (7) any dispute with a resident of this state and any virtual currency business

23 activity that the licensee was unable to complete for any reason.

1 (b) The records specified in subsection (a) may be maintained in any form in addition to,  
2 but not in place of, the form in which the record was originally made.

3 (c) If a licensee maintains its records outside this state, the licensee shall make them  
4 available to the department on three days' notice in a record absent good cause.

5 (d) All records maintained by a licensee under this [act] are open to inspection by the  
6 department under this [act] or a regulation or order adopted under this [act].

7 **SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY.**

8 (a) Subject to Section 304 and under terms consistent with applicable Federal and state  
9 laws concerning privacy, consumer financial privacy, data protection, privilege, and  
10 confidentiality, the department may cooperate, coordinate, jointly examine, consult, and share  
11 records and information with the appropriate regulatory agency of another state, a relevant self-  
12 regulatory organization, or a federal or state regulator of banking or non-depository providers,  
13 concerning the affairs and conduct of a licensee or provisional registrant in this state. The  
14 nonpublic personally identifiable information contained in transaction records of consumer  
15 residents' dealings with the licensee or provisional registrant may not be shared unless the  
16 sharing is permitted under Section 502(e)(5) or (8) of the Gramm-Leach-Bliley Act, 15 U.S.C.  
17 Section 6802(e)(5) or (8) or 18 U.S.C. Section 3401 et seq., or the resident expressly consents in  
18 a record.

19 (b) The department, absent good cause to the contrary, shall:

20 (1) establish or participate with other states enacting this or a substantially similar  
21 law as determined by the department, in a central depository for filings required by law;

22 (2) cooperate in the development and implementation of uniform forms for  
23 applications and renewal reports and the conduct of joint administrative hearings or proceedings

1 and civil actions;

2 (3) formulate joint regulations, statements of policy, guidance and interpretative  
3 opinions and releases, and common systems and procedures; and

4 (4) engage in joint notices of proposed regulations, forms, statements of policy, or  
5 guidance.

6 (c) The department may not establish or participate, directly or indirectly, in a central  
7 commercial depository of consumers' nonpublic personally identifiable information which does  
8 not comply with Section 502(e)(5) or (8) of the Gramm-Leach-Bliley Act , 15 U.S.C. Section  
9 6802(e)(5) or (8) or with 18 U.S.C. Sections 3401 et seq.

10 (d) In deciding whether and how to cooperate, coordinate, jointly examine, consult, or  
11 share records and information under this section, the department may consider:

12 (1) maximizing effectiveness and uniformity of regulation and examination and  
13 their implementation and enforcement for the benefit of residents and licensees; and

14 (2) minimizing burdens on licensees without adversely affecting consumer  
15 protection goals.

#### 16 **Reporter's Note**

17 References to 15 U.S.C. § 6802(e)(5), (e)(8), and to 18 U.S.C. §§3401 et seq. were added  
18 at the suggestion of attendees at the April 2016 Drafting Committee meeting. They are intended  
19 to provide financial privacy protection equal to what consumer and non-consumer customers of  
20 other depository and non-depository providers of financial services enjoy.

21  
22 The scope of Section 303 may be broader than comparable provisions applicable to  
23 depository and other non-depository providers and thus may require further revisions.  
24

#### 25 **SECTION 304. CONFIDENTIALITY.**

26 (a) Except as otherwise provided in subsection (b), information or reports obtained by the  
27 department from an applicant for a license or licensee, information contained in or related to an

1 examination, investigation, or operating or condition report prepared by, on behalf of, or for the  
2 use of the department, trade secrets, and other financial and operational information not  
3 contained in a report otherwise available to the public are confidential and not subject to  
4 disclosure under this state's [open records] law. To the extent that the department determines  
5 that a reciprocal-licensing state cannot provide this protection, the records may not be released.

6 (b) This section does not prohibit publication of:

7 (1) general information about virtual currency business activity;

8 (2) a list of persons licensed under this [act]; or

9 (3) the aggregated financial data concerning licensees in this state.

10 **SECTION 305. INTERIM REPORT; ADVANCE NOTICE OF PROPOSED**  
11 **CHANGE.**

12 (a) Absent good cause, a licensee shall file with the department a report detailing any  
13 material change in information provided in its application or most recent renewal report to the  
14 department, consistent with the requirements of Section 13 of the Securities Exchange Act of  
15 1934, 15 U.S.C. Section 78m. The report must be filed no later than 15 days after the change.

16 (b) A licensee shall file with the department a report no later than 15 days after:

17 (1) a change in physical location of a server or of an entity providing cloud  
18 computing or software as a service used in the licensee's virtual currency business;

19 (2) an additional person providing cloud computing or software as a service to the  
20 licensee;

21 (3) a material change in the licensee's business model for the conduct of its virtual  
22 currency business in this state;

23 (4) a change of an officer, director, responsible individual, or principal

1 shareholder of the licensee's virtual currency business activity; and

2 (5) the name, physical address, and fingerprints of any new individual in the  
3 capacity under paragraph (4) since the date of the last report.

4 **SECTION 306. CHANGE IN CONTROL.**

5 (a) In this section, "control" means the ability, directly or indirectly, to direct or cause the  
6 direction of the management and policies of a licensee or provisional registrant, whether through  
7 ownership of stock of the licensee or provisional registrant, ownership of the stock of any person  
8 that possesses the power to direct or cause the direction of the management and policies of the  
9 licensee or registrant, or otherwise, and includes a consolidation or entity conversion. Control is  
10 presumed to exist if a person, directly or indirectly, owns or holds with power to vote at least [10]  
11 percent of the voting stock of a licensee or of a person that owns or holds with power to vote at  
12 least [10] percent of the voting stock of the licensee. A person is not presumed to control another  
13 person solely by reason of being an officer or director of the other person.

14 (b) A licensee shall notify the department of any proposed change of control, merger or  
15 acquisition of a substantial part of the assets of the licensee's not less than 30 days before the  
16 proposed change. Before a change of control, the person seeking to acquire control of a licensee  
17 shall submit an application to the department in a record that meets the form acceptable to the  
18 department and provides the information required by this [act] or regulations adopted under this  
19 [act], including detailed information about the applicant and each director, principal officer,  
20 principal stockholder, and principal beneficiary of the applicant.

21 (c) The department may determine that person applicant does not control another person.  
22 The determination must be made no later than 30 days after the application or a later date the  
23 department prescribes.

1 (d) The filing of an application under this section in good faith relieves the applicant from  
2 any obligation or liability imposed by this section with respect to the subject of the application  
3 until the department has acted upon the application. The department may revoke or modify a  
4 determination under subsection (c), after notice and opportunity to be heard, when in its judgment  
5 revocation or modification is consistent with this [article].

6 (e) In making a determination under subsection (c), the department may consider whether:

7 (1) the applicant's purchase of common stock is made solely as an investment and  
8 not to exercise control over the licensee;

9 (2) the applicant could direct, or cause the direction of, the management or  
10 policies of the licensee;

11 (3) the applicant could propose directors in opposition to nominees proposed by  
12 the management or board of directors of the licensee;

13 (4) the applicant could seek or accept representation on the board of directors of  
14 the licensee;

15 (5) the applicant could solicit or participate in soliciting proxy votes with respect  
16 to a matter presented to the shareholders of the licensee;

17 (6) any other factor indicates that the applicant would exercise control; and

18 (7) the public interest and the convenience and needs of the public would be  
19 served if the applicant had control of the licensee.

20 (f) Absent good cause, the department shall approve or deny an application under  
21 subsection (b) for a change of control of a licensee not later than 30 days from the filing of a  
22 complete application deemed by the department to be complete, absent good cause shown. For  
23 good cause, the department may extend the period may for an additional reasonable time to

enable compliance with this [act].

### **Reporter's Note**

The percentage of voting power required to trigger this provision has been the subject of comments from Observers. Although 10 per cent is a recognized trigger for change in control under other regulatory regimes, it has been suggested that a threshold of 51 percent is more appropriate for smaller companies such as providers in the "provisional registrant" status under Section 211.

### **SECTION 307. MERGER, ACQUISITION, CONSOLIDATION, AND ENTITY CONVERSION.**

(a) Except with the prior approval of the department evidenced in a record, a licensee may not take an action that may result in a merger or acquisition of all or a substantial part of the assets of a licensee or in a consolidation or entity conversion of a licensee.

(b) Before a merger, acquisition, consolidation, or entity conversion and unless waived for cause by the department after receiving requested relevant information, an application containing a plan of merger, acquisition, consolidation, or conversion must be submitted to the department by the persons that are to merge or by the acquiring or resulting person. The plan must:

(1) be in form and of substance acceptable to the department solely with regard to the licensee's virtual currency business activities with residents of this state;

(2) specify each person to be merged, acquired, consolidated, or converted, the surviving person, and, if applicable, the person acquiring all or substantially all of the assets of the licensee; and

(3) describe the terms and conditions of the merger, acquisition, consolidation, or conversion and the mode of carrying it into effect, including any necessary changes to the cyber security programs of the persons.

1 (c) The department shall approve or deny a proposed transfer of the licensee or a  
2 substantial part of the assets of a licensee, or consolidation or conversion, based solely on the  
3 effect on its virtual currency business with residents of this state. The decision must be made  
4 promptly, but no later than 30 days after an application that is determined by the department to be  
5 complete. The department may extend the period for good cause to enable compliance with this  
6 [act]. If a merger or acquisition requires approval of another state or of a federal agency and the  
7 action of the state or agency conflicts with that of the department, the department and other state  
8 or agency shall confer. If the conflict is not resolved, the merger or acquisition cannot proceed.

9 (d) In determining whether to approve a proposed merger, acquisition, consolidation or  
10 conversion, the department shall consider, as to an acquiring or surviving person:

11 (1) whether the person's purchase of common stock is made solely as an  
12 investment and not to exercise control over the licensee;

13 (2) the person's ability to direct, or cause the direction of, the management or  
14 policies of the licensee;

15 (3) the person's ability to propose directors in opposition to nominees proposed  
16 by management or the board of directors of the licensee;

17 (4) the person's ability to seek or accept representation on the board of directors of  
18 the licensee;

19 (5) the person's ability to solicit or participate in soliciting proxy votes with  
20 respect to any matter presented to shareholders of the licensee;

21 (6) whether any other factor indicates that a new person or persons would or  
22 would not exercise control of the licensee; and

23 (7) whether the public interest and the convenience and needs of the public are



1 met.

2 (e) The department may condition approval on acceptance by the parties of amendments  
3 to the plan.

#### 4 **Reporter's Note**

5  
6 This provision is closely modeled after Section 200.11 of the New York State  
7 Department of Financial Services' June 2015 Virtual Currencies regulation. The "convenience  
8 and needs" factor included in subsection (d)(7) is a defense to a merger or acquisition that  
9 otherwise might fail the antitrust standards under the Bank Holding Company Act of 1956, 12  
10 U.S.C. §§ 1841 et seq., and allows regulators to approve a combination that otherwise may  
11 exceed standards articulated for mergers and acquisitions of bank holding companies (first  
12 articulated by the Supreme Court in *Philadelphia National Bank* (1963)) and the Horizontal  
13 Merger Guidelines first adopted by the Department of Justice roughly 30 years ago.

14  
15 Additionally, given the tendency of new entrants in the technology industry to be  
16 acquired by others, including more established market participants, we have included changes of  
17 control and merger or acquisitions of provisional registrants in the scope of Article 3.

#### 18 **[ARTICLE] 4**

#### 19 **ENFORCEMENT**

#### 20 **SECTION 401. ENFORCEMENT MEASURES.**

21 (a) In this [article], "enforcement measure" means an action listed in subsection (b).

22 (b) On the occurrence of an event listed in subsection (c), the department may:

23 (1) suspend or revoke a license or provisional registration;

24 (2) issue an order to a person to cease and desist from doing virtual currency  
25 business activity with residents of this state;

26 (3) request that the court appoint [obtain from the court as a matter of right the  
27 appointment of] a receiver for the assets of a person doing virtual currency business activity with  
28 residents;

29 (4) request the court to issue temporary, preliminary, or permanent injunctive  
30 relief against a person doing virtual currency business activity [with residents];  
31

1 (5) assess civil penalties under Section 403; and

2 (6) realize on the security under Section 206.

3 (c) The department may take an enforcement measure against a licensee, provisional  
4 registrant, or other person doing virtual currency business activity with residents of this state if:

5 (1) the person materially violates this [act], a regulation adopted or order issued  
6 under this [act], or law of this state other than this [act] that applies to virtual currency business  
7 activity;

8 (2) the person does not cooperate with an examination or investigation by the  
9 department;

10 (3) the person, in the conduct of its virtual currency business activity with a  
11 resident of this state, engages in:

12 (A) an unsafe or unsound act or practice;

13 (B) an unfair or deceptive act or practice; or

14 (C) fraud, intentional misrepresentation, or deception;

15 (4) the United States or another state takes an action against the person that would  
16 constitute an enforcement measure if the department had taken the action;

17 (5) the person is convicted of a felony related to its virtual currency business  
18 activity with a resident [or other transactions];

19 (6) the person:

20 (A) becomes insolvent;

21 (B) ceases to pay its debts when they become due;

22 (C) makes a general assignment for the benefit of its creditors;

23 (D) becomes the debtor, alleged debtor, respondent or other subject of a

1 case or other proceeding relating to it under any bankruptcy, reorganization, arrangement,  
2 readjustment, insolvency, receivership, dissolution, liquidation or similar law [and is  
3 unsuccessful in obtaining relief within a reasonable time]; or

4 (E) applies for or permits the appointment of a receiver, trustee, or other  
5 agent of a court for itself or for a substantial part of its assets.

#### 6 **Reporter's Note**

7 Subparagraphs (b)(4) and (b)(5) leave remedies to the discretion of the court. An  
8 alternative formulation would allow the legislature to decide whether certain remedies were fixed  
9 entitlements, not matters of discretion. The Committee on Style edited subsection (b)(3)  
10 proposed change that involves a question of substance when it deleted the department's right to  
11 appointment of a receiver as a matter of right. At the suggestion of a Commissioner on this  
12 Drafting Committee, we have supplied language in brackets that addresses this important issues.  
13 In paragraphs (b)(3) and (b)(4), the Committee on Style added to the end "with resident of this  
14 state. Because the term "resident" is defined in Section 102 in a manner that limits it to persons  
15 domiciled in the enacting state, the addition of "of this state" is unnecessary. Moreover, we  
16 believe that the Drafting Committee should look one more time at the scope of the equitable  
17 remedies that the department will be authorized to request – that is, the limitation to "residents"  
18 proposed by the Committee on Style is more substantive than stylistic and should be decided.  
19

20 Subparagraph (c)(5) from the October draft included the phrase now shown in brackets  
21 "or other transactions." The Committee on Style recommended its deletion. We believe that this  
22 raises a substantive Point: whether the department's enforcement authority should be limited to  
23 cases in which the licensee or provisional registrant has been convicted of a felony related to  
24 virtual currency business activity or also for other transactions that may bear on the person's  
25 continued fitness to hold a license to conduct virtual currency business activity or a provisional  
26 registration in the enacting state.  
27

28 The Committee on Style suggested a final limitation to subparagraph (c)(6)(D) that read:  
29 "and is unsuccessful in obtaining relief within a reasonable time." In this draft, we have  
30 bracketed that addition because it requires the regulator to wait for the outcome of the  
31 bankruptcy proceeding before it can take action on the basis the commencement of such a  
32 proceeding. Our recommendation is to return to the text without the bracketed language.  
33

#### 34 **SECTION 402. NOTICE AND OPPORTUNITY FOR HEARING.**

35 (a) Except as otherwise provided in subsection (b), the department may take an  
36 enforcement measure only after notice and opportunity for a hearing appropriate in the  
37 circumstances.

1 (b) The department may take an enforcement measure:

2 (1) without notice if the circumstances require action before notice can be given;

3 (2) after notice and without a hearing if the circumstances require action before a  
4 hearing can be held; or

5 (3) after notice and without a hearing if the person conducting virtual currency  
6 business activity with residents of this state does not timely request a hearing.

7 **SECTION 403. CIVIL PENALTY.**

8 (a) If a person engages in virtual currency business activity with a resident of this state in  
9 violation of this [act], the department may assess a civil penalty in an amount not to exceed  
10 \$[50,000] for each day of violation, subject to subsection (c).

11 (b) If a person materially violates a provision of this [act], the department may assess a  
12 civil penalty against the person in an amount not to exceed \$[10,000] for each day of violation,  
13 subject to subsection (c).

14 (c) A civil penalty provided for in this section continues to accrue until the earlier of:

15 (1) the date the underlying violation ceases; or

16 (2) a date specified by the department.

17 **SECTION 404. EFFECTIVE PERIOD OF REVOCATION, SUSPENSION, OR**  
18 **CEASE AND DESIST ORDER.**

19 (a) Revocation of a license under this [article] is effective against a licensee one day after  
20 the department sends, to the address provided for receiving communications from the  
21 department, notice to the licensee in a record.

22 (b) Suspension of a license, suspension of a preliminary registration, or an order to cease  
23 and desist is effective against a licensee or provisional registrant [one] day after the department

1 sends written notice in a record to the licensee or provisional registrant. A suspension or order  
2 remains in effect until the earlier of:

3 (1) entry of an order by the [administrative adjudication division] of the  
4 department under the [state administrative procedure act] setting aside or limiting the suspension  
5 or order;

6 (2) entry of a court order setting aside or limiting the suspension or order; or

7 (3) a date specified by the department.

8 **SECTION 405. CONSENT ORDER.** The department may enter into a consent order  
9 with a person regarding an enforcement measure. The order may provide that it does not  
10 constitute an admission of fact by a party.

11 **SECTION 406. SCOPE OF PRIVATE RIGHT OF ACTION.**

12 (a) Except as otherwise provided in subsection (b), an individual does not have a right of  
13 action for violation of this [act].

14 (b) A resident may enforce Section [503] by a civil action, including by class action  
15 under provisions for class actions under other law of this state other than this [act].

16 **Reporter's Note**

17  
18 Unlike the 2004 amendments to the Uniform Money Services Act ("UMSA"), there is no  
19 provision for criminal penalties or authority given to the department to remove officers and  
20 directors .

21  
22 The Drafting Committee decided that the URVCA should provide a private right of  
23 action only to the extent of the provisions in Article 5 that are modeled on U.C.C. Article 8  
24 protections. However, a failure to perform as directed by a customer such as by use of a  
25 customer's virtual currency directly or as collateral for an obligation of the virtual currency  
26 business, or otherwise, should give rise to the ability to sue the VCB under section  
27 406(b). Because a customer's directions are specific to the transaction and the virtual currency  
28 business's obligations to that customer, allowing a limited private right of action normally should  
29 not add, and is not intended to add, a risk of class-action claims.

30  
31 To the extent that future consumer financial statutes or regulations limit the use of pre-

1 dispute agreements to arbitrate disputes, Article 4 may need to be amended to implement such a  
2 limitation as to transactions between consumers and licensees, provisional registrants, and virtual  
3 currency businesses in provisional operation.

4  
5 Nothing in this Article is intended to preclude an enforcement action by the department  
6 seeking recovery for customers of the virtual currency business.

7  
8 If the Drafting Committee decides to provide additional protections analogous to the  
9 U.C.C.'s Article 8, such are shown in Article 5 of this Draft for the Drafting Committee's  
10 consideration, Subsection 406(b) could be broadened to accommodate relief for violations of  
11 those protections.

## 12 13 [ARTICLE] 5

### 14 DISCLOSURES AND OTHER PROTECTIONS FOR RESIDENTS

#### 15 SECTION 501. REQUIRED DISCLOSURES.

16 (a) Each licensee and provisional registrant shall provide to any resident that uses the  
17 licensee's or provisional registrant's products or services the disclosures required by subsection  
18 (b) and any additional disclosures that the department by regulation deems reasonably necessary  
19 for the protection of residents. The department shall determine by regulation the times and form  
20 required for disclosures. Disclosures required by this [Article] shall be made separately from any  
21 other information provided by the licensee or provisional registrant and in a clear and  
22 conspicuous manner in a record. Licensees or provisional registrants may propose alternate  
23 disclosures as more appropriate for the licensee's virtual currency business activity in this state  
24 for the department's approval.

25 (b) Prior to establishing a relationship with a resident of this state, licensees and  
26 provisional registrants shall make the following disclosures to the extent that they are applicable  
27 to the virtual currency business activity being undertaken by the licensee or provisional registrant  
28 and with residents of this state:

29 (1) A schedule of all fees and charges that the licensee or provisional registrant

1 may assess, the manner that fees and charges will be calculated if not set in advance and  
2 disclosed, and, if relevant, the timing of such fees and charges;

3 (2) Whether the product or service provided by the licensee or provisional  
4 registrant is covered by a form of insurance or otherwise guaranteed against loss by an agency of  
5 the United States, including the Federal Deposit insurance Corporation or the Securities Investor  
6 Protection Corporation, up to the full equivalent in United States dollars of the virtual currency  
7 placed under the custody or control of or purchased from the licensee or provisional registrant on  
8 the date of the placement or purchase or by private insurance against theft or loss, including  
9 cyber theft or theft by other means;

10 (3) A notice that any transfer or exchange of virtual currency normally is  
11 irrevocable and any exception to the irrevocability of transfer or exchange;

12 (4) A notice describing the licensee's liability for unauthorized, mistaken, or  
13 accidental transfers or exchanges and, for the purposes of enabling residents to obtain relief,  
14 describing the resident's responsibility for providing notice to the licensee or provisional  
15 registrant of the transfer or exchange together with a description of the basis for any recovery by  
16 the resident from the licensee or provisional registrant and of general error-resolution rights  
17 applicable to any transaction;

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

22 (6) Whether the resident has a right to stop a pre-authorized transfer of virtual  
23 currency and the procedure to initiate a stop-payment order or to revoke the authorization for

1 subsequent transfers;

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

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

7 (9) A disclosure of the fact that virtual currency is not legal tender.

8 (c) At the conclusion of a virtual currency transaction involving a resident of this state,  
9 the licensee or provisional registrant shall furnish to the resident a confirmation in a record that  
10 contains:

11 (1) the name and contact information of the licensee or provisional registrant,  
12 including information a resident may need to file a complaint or ask a question;

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

14 (3) the fee charged to the resident for the transaction, including any charge for  
15 conversion of virtual currency to another virtual currency or to legal tender.

16 A licensee or provisional registrant may elect to furnish a single, daily  
17 confirmation for all transactions on that day with a resident instead of a per-transaction  
18 confirmation if the licensee or provisional registrant discloses its decision to furnish a daily  
19 confirmation to the resident in the initial disclosures provided under this section.

#### 20 **Reporter's Note**

21 Subparagraph 501(b)(2) raises the question of the depth of insurance coverage that the  
22 Drafting Committee and wishes to require, and of its relationship to capital requirements and the  
23 proposed treatment of virtual currency in the custody of a licensee or provisional registrant as a  
24 bailment or as a creditor-debtor relationship. At the October 2016 meeting, the Chairman asked  
25 for proposals to set suitable capital requirements and for comments on the proposed inclusion of  
26 an analogue to U.C.C. 8-503. More information about this subject can be found in Commissioner



1 Edwin Smith's memorandum on the reasons this draft might rely more heavily on analogues to  
2 UCC Article 8, and specifically its Section 8-503, or to encourage virtual currency businesses to  
3 opt-in to pertinent provisions of U.C.C. Article 8. Readers also will find some additional text for  
4 Section 503 of this draft proposed by the Chairman.

5  
6 **SECTION 502. RESIDENT PROTECTION POLICIES AND PROCEDURES.**

7 (a) A licensee and provisional registrant shall establish, implement, publish in a record  
8 available to residents and the department, and maintain resident protection policies and  
9 procedures as enumerated in this section. The policies and procedures required by this section  
10 shall include:

11 (1) any action or system of records required to comply with the provisions of this  
12 [act] and applicable material provisions of any law of this state applicable to the licensee or  
13 provisional registrant with respect to the virtual currency business activity with residents of this  
14 state in which the licensee or provisional registrant engages;

15 (2) procedures for resolving disputes between the licensee or provisional registrant  
16 and residents;

17 (3) procedures for detecting and deterring fraud that comply with subsection (b);  
18 and

19 (4) procedures for residents to report unauthorized, mistaken, or accidental  
20 transactions.

21 (b) A licensee and provisional registrant shall provide not less than 30 days' advance  
22 notice to residents of any proposed change in its resident protection policies and procedures  
23 required by this [Article] that pertain to dispute resolution, complaint filing, or reports of  
24 unauthorized, mistaken, or accidental transactions.

25 (c) A licensee and provisional registrant shall establish and maintain policies and  
26 procedures to resolve complaints in a fair and timely manner and provide a notice as soon as

1 reasonably possible of resolution and the reasons for it to the complainant. These policies and  
2 procedures must be made available in a clear and conspicuous manner separately from other  
3 disclosures made to residents and in the medium through which the resident contacted the  
4 licensee or provisional registrant. At a minimum, these disclosures shall include:

5 (1) the licensee's or provisional registrant's mailing address, the telephone number  
6 that residents may employ to contact the licensee or provisional registrant, and the physical and  
7 electronic addresses to which residents may send complaints;

8 (2) a statement that residents may bring complaints to the attention of the  
9 department;

10 (3) the department's mailing address, website, and telephone number; and

11 (4) other information the department reasonably requires for an effective  
12 complaint system, such as information about what statements of complaint should cover.

13 (d) For three years from the date of the resolution of a complaint or such lesser period as  
14 the department may allow by regulation, a licensee or provisional registrant shall retain a record  
15 of the complaint, resolution of the complaint, and notice to the complainant regarding the  
16 resolution of the complaint.

17 (e) A licensee or provisional registrant shall maintain records so that resident's virtual  
18 currency or virtual currency credentials are separately identifiable from the virtual currency or  
19 virtual currency credentials of the licensee or provisional registrant.

**SECTION 503. PROPERTY INTEREST OF ENTITLEMENT HOLDER OF  
VIRTUAL CURRENCY IN CUSTODY OR CONTROL OF LICENSEE OR  
PROVISIONAL REGISTRANT.**

## Alternative A

(a) Except as otherwise provided in this [act], to the extent necessary for a licensee or provisional registrant to satisfy all entitlements to virtual currency in the custody or control of the licensee or provisional registrant on behalf of residents, all interests of residents in virtual currency are pro rata property interests without regard to the time of acquisition by the licensee or provisional registrant or by the resident, and are:

- (1) held for the entitlement of the residents;
- (2) not the property of the licensee or provisional registrant; and
- (3) are not subject to the claims of creditors or purchasers of the licensee or registrant.

(b) The duties of a licensee or provisional registrant with regard to the interests of resident of this state in the virtual currency or virtual currency credentials held by the licensee or provisional registrant for the resident are as agreed by the resident with the licensee or provisional registrant to the extent that they are not inconsistent with this [act], or, in the absence of agreement, in accordance with commercial standards performed with due care and in good faith.

A licensee or provisional registrant that transfers an interest of a resident pursuant to an apparently valid order of a resident and otherwise in good faith is not liable to an adverse claimant to that interest unknown at the time of transfer or in the event that the adverse claim is made known to the licensee or provisional registrant too late to give the licensee or provisional registrant reasonable time to act.

1 (c) If a licensee or provisional registrant holds virtual currency or virtual currency  
2 credentials subject to this section and also virtual currency of the same type for its own account,  
3 the former to the extent necessary to satisfy the obligation of this section shall have priority.

4 **Alternative A-1**

5 (a) Except as otherwise provided in this [act], the virtual currency or virtual currency  
6 credentials in the custody or control of a licensee or provisional registrant on behalf of a resident:

7 (1) is held for the entitlement of the resident;

8 (2) is not the property of the licensee or provisional registrant; and

9 (3) is not subject to the claims of creditors or purchasers of the licensee or  
10 provisional registrant.

11 (b) The duties of a licensee or provisional registrant with regard to the interests of  
12 resident of this state in the virtual currency or virtual currency credentials held by the licensee or  
13 provisional registrant for the resident are as agreed by the resident with the licensee or  
14 provisional registrant to the extent that they are not inconsistent with this [act], or, in the absence  
15 of agreement, in accordance with commercial standards performed with due care and in good  
16 faith.

17 **Alternative B**

18 As a condition of licensure or of operation as a provisional registrant in this state, the  
19 licensee or provisional registrant shall opt-in to the protections afforded by Article 8, Part 5 of  
20 the Uniform Commercial Code as enacted by this state in all contracts/terms of service for its  
21 virtual currency business activity with residents and shall acknowledge that all virtual currency  
22 in the licensee's or provisional registrant's control or custody shall be treated as a financial asset  
23 under that article of the Uniform Commercial Code as enacted by this state.

1 **Alternative C**

2 As a condition of licensure or of operation as a provisional registrant in this state, the  
3 department shall consider whether the application for license or provisional registration contains  
4 a commitment that the person will opt-in to the protections afforded by Article 8, Part 5 of the  
5 Uniform Commercial Code as enacted by this state in all contracts/terms of service for its virtual  
6 currency business activity with residents and will acknowledge that all virtual currency in the  
7 licensee's or provisional registrant's control or custody will be treated as a financial asset under  
8 that article of the Uniform Commercial Code as enacted by this state.

9 **Reporter's Note**

10 The Drafting Committee debated how best to protect the virtual currency placed with  
11 virtual currency businesses from claims of creditors of or purchasers from the virtual currency  
12 businesses holding such virtual currency. One option – reflected in Alternative A-1 -- was  
13 developed following the October 2016 Drafting Committee meeting and modeled after U.C.C.  
14 §8-503 (Property Interest of Entitlement Holder in Financial Asset Held by Securities  
15 Intermediary). It does not mention pro rata treatment and it does not reflect the edits suggested  
16 by the Committee on Style in late January 2017.

17  
18 Official Comment 1 to 8-503 refers to as “the ordinary understanding” between holders  
19 of securities entitlements in the custody of a securities intermediary that the financial asset is not  
20 a general asset of the intermediary, and is therefore not available to the creditors of the  
21 intermediary. Unlike demand deposits, which create a debtor-creditor relationship between a  
22 bank and its customer-depositor, there is no such common understanding or tradition at this stage  
23 of the development of the virtual currency businesses. Thus, under this Alternative for Section  
24 503, virtual currency in the custody or control on behalf of users will not become the property of  
25 the licensee or provisional registrant and will not create a debtor-creditor relationship. This  
26 treatment of custody of virtual currency as a bailment as opposed to the custodian's property (in  
27 a creditor-debtor) relationship is important to the extent the Uniform Law Commission intends to  
28 reduce the requirements for minimum capital without decreasing the protections afforded to  
29 providers' customers.

30  
31 At the conclusion of the October 2016 Drafting Committee meeting, the Chairman  
32 invited comments on the desirability of including more of the protections from UCC Article 8  
33 into this draft act. The Chair also asked Commissioner Edwin Smith to comment on the  
34 desirability of adopting the UCC Article 8-503 approach generally. Commissioner Smith's  
35 memorandum describing his views on this subject is being circulated with this draft of the  
36 URVCBA. Commissioner Smith laid out the various options for treatment of this subject, which  
37 essentially included: deleting Section 503 entirely; retaining Section 503 in some form; slightly

1 expanding Section 503 to incorporate some select additional U.C.C. Article 8 provisions but not  
2 incorporate all of Article 8's provisions; replicate all of U.C.C. Article 8; condition licensing on  
3 the applicant's agreement with its customers to "opt in" to U.C.C. Article 8 in toto; or instruct  
4 the department to consider the applicant's willingness to "opt in" to U.C.C. Article 8 in  
5 agreements with its customers, or to favor those applicants that will. His memorandum details  
6 specific benefits of relying on provisions of U.C.C. Article 8.

7 Because a licensee will have no title to the virtual currency in their custody or control,  
8 purchasers, secured parties, and lienors can take nothing and, accordingly, must take steps to  
9 protect themselves through other means, such as guarantees, warranties and the like running  
10 directly between the licensee or provisional registrant and its creditors, etc.

11  
12 The proposed treatment of virtual currency in the custody or control of the entity subject  
13 to this act is consistent with the proposed reduction in the net worth requirements for those  
14 entities under Article 2 of this act.

15  
16 The Drafting Committee has been briefed from time to time about the different  
17 approaches taken by federal securities, commodities, consumer protection agencies and the  
18 Internal Revenue Service on how to characterize virtual currency. The IRS, for example, took  
19 the position that virtual currency is "property" and not "currency" in 2014. In the second half of  
20 2016, the IRS subpoenaed records from Coinbase, a virtual currency exchange, relating to virtual-  
21 currency holdings going back some years. These differing characterizations are not conclusive as  
22 to how the Drafting Committee deals with the issues raised in Section 503.

23  
24 This draft provides a private right of action under Article 4 to customers of virtual  
25 currency businesses who fail to act or do not act with due diligence to follow the instructions  
26 received from their customers. Such private rights of action make sense in relationships in which  
27 a failure to follow instructions could cause significant harm to the customers in terms of lost deal  
28 benefits or losses associated with fluctuations in the value of the virtual currency they have placed  
29 in the custody or under the control of the virtual currency business.

30 Two final questions with respect to the scope of Section 503 arise in connection with the  
31 scope of Section 503. First, should the term "virtual currency credentials" be added to the term  
32 "virtual currency" as used in these Alternatives? The terms "control" (defined in Section 102) and  
33 "custody" (defined in Section 104 in this draft at the request of the Committee on Style) may  
34 make the addition of the term "virtual currency credentials" unnecessary and the treatment of  
35 credentials not suitable for Article 8-style treatment generally or pro rata distribution in the event  
36 of a shortfall specifically. Second, is there a more suitable way to identify the interest being  
37 described in this Section than that of "entitlement holder" borrowed from U.C.C. Section 8-503?  
38

1 [ARTICLE] 6

2 COMPLIANCE PROGRAMS AND POLICIES AND MONITORING

3 SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES  
4 AND MONITORING.

5 (a) A licensee and a provisional registrant, respectively, before the issuance of a license  
6 or the filing of a registration, shall create and maintain the following programs, policies, and  
7 monitoring procedures: a cybersecurity program, a business continuity program, a disaster  
8 recovery program, an anti-fraud program as required by Section 703, and an anti-money  
9 laundering and prevention of terrorist activity funding program. The licensee or provisional  
10 registrant shall keep and preserve records describing each program, policy, and monitoring  
11 procedures at all times.

12 (b) Each program, policy, or procedure under subsection (a) must be designed to be  
13 adequate for the licensee's or provisional registrant's contemplated virtual currency business  
14 activity with residents of this state, considering all the circumstances of the participants,  
15 including residents, that may be involved and the safe operation of the virtual currency business  
16 activity involved. Each program, policy, or procedure of the licensee or provisional registrant  
17 must be compatible with other programs, policies, and procedures and not conflict with  
18 regulations applicable to the licensee or provisional registrant under other applicable law. A  
19 program, policy, or procedure, if adequate, may be a program, policy, or procedure already in  
20 existence at the licensee's or provisional registrant's virtual currency business, whether adopted  
21 by the licensee or provisional registrant on its own or under other law.

22 (c) After the programs, policies, and procedures required by subsection (a) are created  
23 and approved by the department and officers of the licensee or provisional registrant, the licensee

1 or provisional registrant must employ a program director with adequate authority and experience  
2 to monitor each program, publicize it as appropriate, recommend changes as desirable, and  
3 enforce such programs.

4 (d) A licensee or provisional registrant may:

5 (1) request advice from the department or another appropriate source as to  
6 compliance with this section; and

7 (2) with the department's approval, outsource, except for enforcement, the  
8 functions in subsection (c).

9 (e) The fact that a particular program, policy, or procedure fails in a given instance or  
10 instances to meet its goals is not a ground for liability if the program, policy, or procedure was  
11 properly created and operated, provided however that repeated failures are evidence of a failure  
12 to monitor operations properly.

## 13 **SECTION 602. MANDATED COMPLIANCE POLICY.**

14 (a) A licensee before submitting its application for license, and a provisional registrant at  
15 the time of its registration, must establish and maintain a compliance policy in a record designed  
16 to ensure, to the extent reasonable, compliance with:

17 (1) this [act]; and

18 (2) another state law if:

19 (A) the other law is relevant to the virtual currency business activity  
20 contemplated by the licensee or provisional registrant, or is relevant to the scope of this act; or

21 (B) this [act] could assist in the purpose of the other law because violation  
22 of that other law has a remedy under this [act].

23 (b) A policy under subsection (a) must be compatible and not conflict with requirements



1 applicable to the licensee or provisional registrant under other applicable state or federal law.

2 The policy, if adequate, may be a policy in existence at the licensee's or provisional registrant's  
3 business, whether adopted by the licensee or provisional registrant on its own or under other law.

4 (c) A licensee or provisional registrant may:

5 (1) request advice from the department or another source as appropriate as to  
6 compliance with this section; and

7 (2) with department approval, outsource, except for enforcement, the functions in  
8 subsection (d).

9 (d) After the policy in subsection (a) is created and approved by the department and  
10 officers and directors of the licensee or provisional registrant, the licensee or provisional  
11 registrant shall employ a policy director with adequate authority and experience to monitor the  
12 policy, publicize it as appropriate, recommend changes as desirable, and enforce it.

13 (e) The fact that the policy fails in a given instance or instances to meet its goals is not a  
14 ground for liability if it was properly created and operated provided however that repeated  
15 failures are evidence of a failure to monitor operations properly.

### 16 **SECTION 603. POLICIES AND PROCEDURES TO DETECT AND DETER**

17 **FRAUD.** Each licensee's or provisional registrant's policies for detecting and deterring fraud, at  
18 a minimum, must include:

19 (1) the identification and assessment of the material risks of its virtual currency business  
20 operations related to fraud;

21 (2) procedures and controls to protect against other material risks identified by the  
22 department or the licensee or provisional registrant; and

23 (3) procedures for periodic evaluation and revision of the anti-fraud procedures, controls,

1 and monitoring mechanisms.

2           **SECTION 604. POLICIES AND PROCEDURES TO DETECT AND DETER USE**  
3 **OF ITS BUSINESS OPERATIONS FOR MONEY LAUNDERING AND TERRORIST**  
4 **FINANCING PURPOSES.**

5           (a) Each licensee's or provisional registrant's policies for detecting and deterring money  
6 laundering and terrorist financing, at a minimum, must include:

7                   (1) The identification and assessment of the risks of its virtual currency business  
8 operations related to money laundering and terrorist financing;

9                   (2) Procedures and controls to ensure that, to the extent mandated by federal law  
10 or guidance published by federal agencies responsible for enforcing federal laws, all reports  
11 specified by federal currency reporting, record keeping, and suspicious transaction reporting  
12 requirements as set forth in 31 U.S.C. Section 5311, or 31 C.F.R. Part X, and any other federal or  
13 state laws pertaining to deterrence or detection of money laundering or terrorist financing are  
14 filed on a timely basis.

15           (b) No licensee or provisional registrant shall be required to file copies of reports it may  
16 make to federal authorities unless specifically required to do so by a regulation adopted or order  
17 issued by the department.

18                                   **Reporter's Note**

19           The substance of Section 604 was derived from Article 6 of the previous Draft. The  
20 previous requirement to file all reports required by federal law or regulations with the Attorney  
21 General of the state for anti-money-laundering or prevention-of-terrorist-financing purposes was  
22 deleted in favor of a standard that requires duplicate report filing only when the licensee or  
23 provisional registrant is required to file duplicates after a specific regulation or order mandates  
24 the duplicate filing. The goal is to require full compliance with these important requirements  
25 without adding to the compliance burdens of licensees and provisional registrants.

1 [ARTICLE] 7

2 MISCELLANEOUS PROVISIONS

3 SECTION 701. 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 702. 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 [as amended] but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.  
10 Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b)  
11 of that act (15 U.S.C. Section 103(b)).

12 SECTION 703. SAVING AND TRANSITIONAL PROVISIONS.

13 (a) A license issued under [name of state's existing Money Services Act or Money  
14 Transmitter Act] that is in effect immediately before the effective date of this [act] remains in  
15 effect as a license for its purposes for its duration unless revoked or suspended by the department.  
16 A licensee under [name of state's existing Money Services or Money Transmitter Act] that does  
17 not intend to engage in virtual currency business activity under this [act] is not required to inform  
18 the department of its intention.

19 (b) The department may deny a license or provisional registration under this [act] to  
20 conduct virtual currency business activity with residents of this state if the department finds that  
21 the licensee or provisional registrant cannot meet the requirements of this [act] but may not use  
22 the denial as grounds for suspension or revocation of a license granted under the [Money Services  
23 Act or Money Transmitter Act] unless the grounds in that [act] independently provide a basis for

1 action against that licensee or provisional registrant. If the department denies a license or  
2 provisional registrant, it must notify a licensee or provisional registrant within 30 days of the  
3 department's receipt of the applicant's notice of intent to engage in virtual currency business  
4 activity with residents of this state. The applicant or provisional registrant is entitled to appeal a  
5 denial to a court of appropriate jurisdiction within 60 days after receipt of the notice of denial.

6 (c) This [act] applies to virtual currency business activity with residents of this state on or  
7 after the effective date of the [act]. A person engaged in virtual currency business activity after  
8 the effective date of this [act] that does not hold a license issued or recognized under this [act],  
9 that is not exempt from this [act], and that has not applied for a license or filed a provisional  
10 registration under this [act], including a person that has obtained a license under the [Money  
11 Services Act or Money Transmitter Act of this state whether or not that act covers virtual  
12 currency business activity] [or a person that holds a charter as a trust company from this state] is  
13 deemed to be conducting unlicensed virtual currency business activity in this state in violation of  
14 this [act].

#### 15 **Reporter's Note**

16 If the jurisdiction enacting this act allows chartered trust companies or limited purpose  
17 trust companies to engage in activities that would be governed by this act, a separate savings or  
18 transitional subsection should be added to this [article]. Such a new subsection should specify  
19 any limitations on the powers of the trust company or limited purpose trust company as well as  
20 its preference on reciprocal licensing of trust companies or limited purpose trust companies, or of  
21 recognizing cross-border activities of chartered trust companies or limited purpose trust  
22 companies not domiciled in this jurisdiction.

23  
24 **SECTION 704. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
25 application to any person or circumstance is held invalid, the invalidity does not affect other  
26 provisions or applicability of this [act], which can be given effect without the invalid provision or  
27 application, and to this end the provisions of this [act] are severable.

1        **SECTION 705. REPEALS.**   The following Acts and parts of Acts are repealed:

2        (1) . . . . .

3        (2) . . . . .

4        (3) . . . . .

5        **SECTION 706. EFFECTIVE DATE.**   This [act] takes effect....