

D R A F T  
FOR DISCUSSION ONLY

# REGULATION OF VIRTUAL CURRENCY BUSINESSES ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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October 28-29, 2016 Drafting Committee Meeting

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October 5, 2016

## **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. BUIREWEG, 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 05402, *President*

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

### **AMERICAN BAR ASSOCIATION ADVISOR**

STEPHEN MIDDLEBROOK, 4701 Creek Rd., Blue Ash, OH 45242-8398, *ABA Advisor*

### **EXECUTIVE DIRECTOR**

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

Copies of this Act may be obtained from:

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

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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. SCOPE.** This [act] governs the operation of a person, wherever located,  
7 that engages in or holds itself out as engaging in virtual currency business activity with a resident  
8 of this [state]. This [act] does not govern the operation of a person (1) that does not engage in  
9 virtual currency business activity on behalf of other persons; or (2) that (A) contributes  
10 connectivity software or computing power to a decentralized virtual currency; (B) provides data  
11 storage or security services for a virtual currency business and is not otherwise engaged in virtual  
12 currency business activity on behalf of other persons; (C) obtains virtual currency solely to  
13 purchase goods or services for one’s own purposes or receives virtual currency from the  
14 purchase or sale of goods or services; (D) obtains virtual currency for investment purposes; or  
15 (E) that holds a charter from this state or a charter recognized by this state to engage in the  
16 business of banking.

17   **Reporter’s Note on Section 102**

18                   The goal of this draft legislation is to regulate persons that issue virtual currencies or that  
19 provide services to others that allow the others to hold, make payments with, or utilize virtual  
20 currencies. There is no intention to regulate “virtual currencies” as such. But as a comment  
21 from an Observer early in the work of the Study Committee that preceded this Drafting  
22 Committee observed, if a person holds itself out as providing payment intermediary services to a  
23 holder of virtual currency that is comparable to a service that would be deemed “money  
24 transmission” under the Uniform Money Services Act or other state “money transmission”  
25 statutes, then that person should be regulated in a manner that affords comparable licensure and  
26 supervision and comparable consumer or user protections. Similarly, if a person offers to take  
27 custody of virtual currency for other persons, the custodian should be regulated in a manner  
28 similar to that governing custodial relationships in the states.  
29

1           Section 102 now includes numerous exclusions from this act that formerly were included  
2 in Section 103(27), the definition of the term “virtual currency business activity.” In addition to a  
3 final decision about the location of these exclusions, the remaining issues in the Scope involve  
4 (1) the need for trust companies that do not hold charters from this state or charters recognized  
5 by this state to comply with the requirements of this act before engaging in virtual currency  
6 business activity with residents of this state. This issue arises from differences in opinion among  
7 the states regarding the ability of trust companies and limited purpose chartered in one state to do  
8 business with residents of other states in which the trust company or limited purpose trust  
9 company does not hold a charter. It also speaks to the need for a charter to authorize the holder  
10 to engage in virtual currency business activity without special permission from the state issuing  
11 the charter.  
12

13           The Draft includes additional exclusions and exemptions in Sections 103 and 104. For  
14 example, although Section 102 might have included an exclusion of retail rewards or affinity  
15 programs in which the rewards or affinity points are not granted in and cannot be exchanged for  
16 legal tender, in this Draft, we have continued the exclusion as an exclusion from the definition of  
17 the term “virtual currency” in Section 103. This exclusion is consistent with the position taken  
18 in early 2016 by the Financial Crimes Enforcement Network (“FinCEN”), an agency under the  
19 United States Department of the Treasury, that such programs fall outside FinCEN’s definition  
20 of what constitutes “money transmission.” Fin. Crimes Enf. Network, No-action Letter, April  
21 2016 (provided by the Entertainment Software Association with its April 2016 comment on  
22 URVCBA Draft). The real question is whether the “reward” offered by a merchant or financial  
23 institution is redeemable for legal tender – or only for goods or services. If the reward may be  
24 redeemed for legal tender, the person offering the reward or the person handling the redemption  
25 for legal tender, or both, are engaged in virtual currency business activity as defined in Section  
26 103 and should be subject to this act. An exclusion of retail rewards or affinity programs from  
27 this act on this basis also is consistent with the exclusion of loyalty cards from the Unclaimed  
28 Property Act approved at the 2016 Annual Meeting, even if the terminology employed varies. As  
29 the Chair of the Unclaimed Property Act Drafting Committee observed during the First Reading  
30 of this act, the reason for the exclusions – wherever they appear in either act – is these “[rewards]  
31 cannot be monetized into legal tender.”  
32

### 33           **SECTION 103. DEFINITIONS.**

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

35           (2) “Bank” means a person engaged in the business of banking, including a savings bank,  
36 savings and loan association, or credit union. The term does not include a trust company, a  
37 limited purpose trust company, or an industrial loan company.

38           (3) “Control” means possession of sufficient virtual currency credentials or authority on a  
39 virtual currency network to execute unilaterally or prevent indefinitely virtual currency business

1 transactions. The term does not include possession, for a reasonably time-limited period, of  
2 virtual currency credentials sufficient to prevent virtual currency transactions to provide a service  
3 such as an escrow, if that the user is able to regain unilateral rights to execute transactions  
4 following the period in which the escrow was in effect.

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

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

7 or

8 (B) can be exchanged for a deposit denominated in legal tender.

9 (5) “Custody” means maintaining an account for one or more users to which virtual  
10 currency is or may be credited in accordance with an agreement under which the person  
11 maintaining the account undertakes to treat the user for which the account is maintained as  
12 entitled to the use and benefit of that virtual currency. A person has custody of virtual currency if  
13 the person:

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

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

19 (C) becomes obligated under other law to credit virtual currency to a virtual  
20 currency account of a user or other person.

21 (6) “Department” means the [name of state agency].

22 (7) “Exchange” means the sale, trade, or other conversion of virtual currency for legal  
23 tender or for one or more forms of virtual currency, or the sale, trade, or other conversion of legal



tender for one or more forms of virtual currency, if the exchanger, at least momentarily, has custody or control of the virtual currency being exchanged.

(8) “Executive officer” means a president, chair of the executive committee, chief financial officer, responsible individual, or other individual, regardless of title, who performs or has the authority to perform similar functions.

(9) “Law” means federal or state statutes, regulations, other administrative decisions, and case law that have binding legal effect.

(10) “Legal tender” means the medium of exchange or unit of value, including the coin or paper money of the United States, recognized by the United States government for the payment of taxes and as a lawful means for the discharge of debts.

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

(12) “Person” means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, estate, trust, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(13) “Provisional registrant” means a person that has registered with this state to conduct virtual currency business activity but whose volume of virtual currency business activity in this state is below the threshold required for licensure under Section 210.

[(14) “Qualified custodian” means a bank or other person that is approved by the department to hold permissible investments on behalf of a licensee.]

(15) “Reciprocity agreement” means an arrangement among two or more states that permits a licensee to engage in virtual currency business activity granted by one state and recognized by another state subject to any condition imposed by the arrangement if participation

1 in the reciprocity arrangement is approved by the department.

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

4 (17) “Registry” means the Nationwide Multistate Licensing System and Registry, a  
5 system of record for non-depository, financial services licensing or registration, that

6 (A) a [state] may require companies and individuals to use to apply for, amend,  
7 renew and surrender licenses granted by participating states; and

8 (B) is owned and operated by the State Regulatory Registry LLC (SRR)<sup>2</sup>.

9 (18) “Resident” means a person that resides, is physically located in for more than 183  
10 days of the prior 365 days, or has a place of business in this [state].

11 (19) “Responsible individual” means an individual who is employed by a licensee and has  
12 managerial authority over the licensee’s virtual currency business activity in this state.

13 (20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
14 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
15 the United States. The term [does] [does not] include a federally recognized Indian tribe.

16 (21) “Storage” means maintenance of custody or control of virtual currency on behalf of a  
17 user other than for the user’s own account.

18 (22) “Transfer” means assuming custody or control of virtual currency or virtual currency  
19 credentials from or on behalf of a user and

20 (A) crediting that virtual currency to the account of another user, moving the  
21 virtual currency from one account of a user to another account of the same user, or changing the  
22 location of virtual currency from one user to another or from one jurisdiction to another  
23 regardless of whether the same user is the owner of the virtual currency; or

1 (B) relinquishing control of virtual currency to another user.

2 (23) “Trust company” means a person licensed or chartered as a trust company or a  
3 limited purpose trust company by this state or any state with which this state has a reciprocity  
4 agreement.

5 (24) “User” means a person that utilizes a service provided by a person engaged in virtual  
6 currency business activity, including a person that obtains virtual currency to purchase goods or  
7 services on the user’s own behalf.

8 (25) “Virtual currency” means a digital representation of value that is used as a medium  
9 of exchange, a unit of account, or a store of value and that is not legal tender, whether or not it is  
10 denominated in legal tender. The term does not include:

11 (A) the software or protocols governing the transfer of the digital representation of  
12 value;

13 (B) stored value or digital units redeemable exclusively in goods or services  
14 limited to transactions involving a defined merchant, such as an affinity or rewards program;

15 (C) digital units used within a game or game platform; or

16 (D) digital units used within the same online gaming platform to purchase  
17 intangible goods or services used within the same closed platform.

18 (26) “Virtual currency administration” means issuing a virtual currency and having  
19 authority to redeem the currency or to withdraw the currency from circulation.

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

21 (A) virtual currency exchange, transfer, storage, or virtual currency  
22 administration;

23 (B) the exchange, transfer or storage of credentials that are sufficient to transact or

1 prevent the exchange, transfer or storage of virtual currency, whether by performing these  
2 activities alone or under an agreement with a virtual currency control services vendor;

3 (C) holding e-precious metals or e-certificates of precious metals on behalf of  
4 other persons or issuing shares or e-certificates representing interests in precious metals; or

5 (D) making a market in digital, in-game units outside the game or game platform from  
6 which the original digital units were received or facilitating person-to-person, player-to-player, or  
7 user-to-user exchanges of digital, in-game units in exchange for legal tender.

8 (28) “Virtual currency control services vendor” means a person who has control of virtual  
9 currency only pursuant to agreement with a person that assumes virtual currency custody or  
10 control on behalf of another.

### 11 **Reporter’s Note on Section 103**

12 The definitions are by far the most important and complex aspects of this drafting  
13 project. A handful of definitions are of primary importance – the definitions of “virtual  
14 currency,” “virtual currency business activity,” “custody” [of virtual currency], “control” [of  
15 virtual currency], “transfer,” “exchange,” “store,” and “convertible virtual currency.” For the  
16 purposes of this Annual Meeting draft, the following discussion proceeds with the most  
17 challenging choices faced so far by the Drafting Committee and, accordingly, is not in  
18 alphabetical order as the definitions themselves are.

19  
20 The definition of “virtual currency” closely tracks the definition urged by Conference of  
21 State Bank Supervisors (“CSBS”) in its September 15, 2015, Framework. This draft does not  
22 define the term “money,” as is the norm in the Uniform Law Commission draft legislation.  
23 Rather, it defines “legal tender” in order to accommodate the revised definition of the term  
24 “virtual currency” that more closely models the CSBS’ Framework. For more information, see  
25 Financial Action Task Force, VIRTUAL CURRENCIES –KEY DEFINITIONS AND  
26 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)  
27 [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)  
28 . Some observers have suggested that FATF’s definition should be used for this act. Other  
29 observers prefer the definition included in this draft, so long as the exclusions now incorporated in  
30 to Section 102 remain. Among the reasons are that the CSBS commissioners have approved the  
31 CSBS’s definition and that FATF’s definition would require states to determine whether a virtual  
32 currency is “legal tender” in any jurisdiction on a continuously updated basis that has little to do  
33 with how virtual currency businesses should be regulated in this country. One observer noted that  
34 issuers offer virtual currency denominated in U.S. dollars, thus raising issues not necessarily  
35 contemplated in FATF’s definition.

1 The definitional issues have received considerable attention during the Drafting  
2 Committee’s meetings to this point, and were the subject of discussion at the First Reading of  
3 the act at the 2016 Annual Meeting. The line currently drawn carves out digital representations  
4 of bank money as may be loaded onto electronic travelers’ checks or credit cards in part because  
5 providers of those services are subject to longstanding regulation. The distinction between  
6 “virtual currency” and digital representations of “legal tender” as the terms are defined in this  
7 Draft lies in the fact that traditional demand deposit accounts are representations of legal tender  
8 or other “hard assets” in a manner that makes the account holder a creditor of a federally insured  
9 depository institution. FDIA, 12 U.S.C. 1813(l) (2013).

10  
11 Additionally, Native American tribes have issued “virtual currency” that they have  
12 deemed to be “legal tender” on their lands. Thus, the definition of what is not “legal tender in  
13 any jurisdiction” is already a complex question and is likely to grow more complex. The  
14 solution that enables this Draft to move towards completion, accordingly, relies on  
15 distinguishing between what the United States government deems to be “legal tender” and what  
16 any other sovereign deems for its own purposes to be “legal tender.”

17  
18 A final question about the contours of the term “virtual currency” involves whether  
19 anything denominated in U.S. dollars can fall under this definition. As explained above, some  
20 issuers offer virtual currencies that are denominated in dollars. Whether a unit of virtual  
21 currency is denominated in U.S. dollars or Yen is immaterial to the question of whether the  
22 person who issues it or holds themselves out as providing services connected to transfer,  
23 exchange, or storage of such virtual currency should be regulated under this act or regulated  
24 under state money services or money transmission statutes or regulated as an insured depository  
25 institution or other form of trusted intermediary. So long as the virtual currency is not deemed  
26 to be legal tender by a government for purposes of paying debts to that government, it is virtual  
27 currency for purposes of this draft legislation. The decision by a non-government issuer of  
28 “virtual currency” to denominate its exchange value in a particular fashion (USD, Yen, or  
29 Euros) should not be the controlling factor in determining coverage here.

30  
31 The definition of “virtual currency business activity” has been debated extensively since  
32 the first meeting of the Drafting Committee. The overall goal is to capture within the scope of  
33 this draft act those activities with sufficient similarity to money transmission or other money  
34 services as to become proper targets for regulation under this act, and to restrict the activity to  
35 that performed with or on behalf of residents of the jurisdiction that seeks to license the  
36 provision of such activities a jurisdiction in the United States, including persons in or offering  
37 services that meet the definition in tribal jurisdictions.

38  
39 The Annual Meeting draft included in the definition of “virtual currency” “e-precious  
40 metals” and e-certificates for precious metals” that can be transferred from one owner to another.  
41 FinCEN issued guidance in August 2015 that extended its March 2013 guidance, *see supra*,  
42 concerning what types of business activity with virtual currency render the business a “money  
43 services business” for the purposes of federal AML requirements under 31 C.F.R. Part X. Fin.  
44 Crimes Enf. Network, Application of FinCEN’s Regulations Pertaining to Persons Issuing  
45 Physical or Digital Negotiable Certificates of Ownership of Precious Metals, FIN-2015-R001,  
46 August 14, 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).

1 FinCEN's 2015 guidance concluded that e-precious metals and e-certificates for precious metals  
2 were "virtual currency" and persons offering them were engaged in "money transmission" for  
3 two reasons. The first is that e-precious metals are units of value held by intermediaries on  
4 behalf of others and, are not units of "legal tender." Thus, as the ABA's Advisor explained at  
5 the Annual Meeting, they are representations of value that underlie the virtual currency owned  
6 by another person. The second is that e-certificates for precious metals are similar to warehouse  
7 receipts in some ways, and are "negotiable" or transferable by one person to another, by one  
8 person from an account to another account that person owns, or by one jurisdiction to another.  
9 This draft includes both e-precious metals and e-certificates of precious metals in the definitions  
10 of "virtual currency" and treats persons engaged in business of the exchange of virtual currency  
11 for real currency, funds, or other virtual currency or of issuing a virtual currency that has  
12 authority to redeem the same virtual currency in the definition of the term "virtual currency  
13 business activity," primarily because FinCEN includes the same businesses under its "money  
14 transmission" and "money services business" regulations to the extent that the person is  
15 engaged in performing services for others.  
16

17 The definition of "virtual currency business activity" has received similarly extensive  
18 discussion in Drafting Committee meetings. The current version is not intended to create an  
19 expansive exemption for what the virtual currency community refers to as "multi-sig" – a term  
20 that refers to arrangements that require more than one credential-equivalent to be used to affect  
21 transactions. Inclusion of certain multi-sig arrangements in this draft is consistent with the  
22 notion of covering any intermediary whose business activity includes the power to transact,  
23 convert or redeem, or the power to prevent transactions, conversions or redemptions of virtual  
24 currency of others. The goal of the current definition was to exclude a virtual currency business  
25 whose service does not include the ability to transact unilaterally or to prevent transactions  
26 indefinitely.  
27

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

After considerable discussion, the draft relies on three active verbs – exchange, transfer, and store – as the core concepts animating what constitutes “virtual currency business activity.” This 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. The Drafting Committee preliminarily concluded that the verb “exchange” would include any sale or barter of virtual currency for, other virtual currency, or “real world” goods or services. It also determined that use of the word “exchange” would preserve for “miners” (persons that use computing power to create “nodes” on a distributed ledger or “blockchain” that expand the extant number of units of virtual currency in a decentralized currency such as Bitcoin) the same exemption that they currently enjoy under FinCEN’s guidance issued in March 2013 and since then so that the act of mining would not be included in 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 until they sell or barter their bitcoins for legal tender. It is important to note that although bitcoins are “mined” (a process yielding a “bitcoin” as 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 or other forms of trusted financial services intermediaries. Miners only qualify as engaging in virtual currency business activity if they later sell to or exchange the bitcoins with others.

This draft sets parameters for the terms “exchange, transfer, and store” used in the definition of the term “virtual currency business activity” by defining each term and a few additional terms such as “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 “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 historical concerns about changes in ownership or management that can affect adversely the operation of a business.

The definition of the term “exchange” is modified in this Draft from the version presented at the Annual Meeting and from suggestions made by Observers prior to the Annual Meeting Draft. The new definition now limits the term “exchange” to cases in which the exchanger, at least momentarily, has custody or control of the virtual currency being exchanged. To the extent that this definition expands to cover an individual operates equipment to perform a function or service on the individual’s own virtual currency, the intended limitation of this act to “virtual currency businesses” would be frustrated. Thus, if the intermediary virtual currency business lacks the ability to control virtual currency or lacks custody of virtual currency, as the

1 terms “control” and “custody” are defined in Section 103, then that person is not engaged in the  
2 “exchange” of virtual currency for purposes of this act.

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

9  
10 The definition of “virtual currency administration” comes from the definitions set forth in  
11 the 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.* A significant question of whether to require dual licensure – a virtual currency  
18 business license and a money services or money transmitter license – in the case of entities  
19 offering exchange of virtual currency to fiat currency or vice versa remains to be decided by the  
20 Drafting Committee between now and the time for submission for consideration at the Annual  
21 Meeting. The only State currently requiring both (but also allowing trust companies to get special  
22 virtual charters) is New York. For now, this issue is resolved in this draft with the key definitions  
23 premised on virtual currency businesses who can handle virtual-to-virtual currency transactions  
24 as well as virtual-to-fiat-or-fiat-to-virtual currency transactions. The sense of the Drafting  
25 Committee was to facilitate cross-satisfaction of requirements for both licenses if the jurisdiction  
26 elects to require both and to allow for easy on-boarding of virtual currency exchanges to licenses  
27 under the Uniform Money Services Act or the money transmitter statutes.

28  
29 The question of whether and how to include an “on-ramp” for new entrants to the virtual  
30 currency business industry has been discussed. Activities of businesses in the “on-ramp” will  
31 include those defined as “virtual currency business activity,” but these businesses will be allowed  
32 to operate under “provisional registrations” until they reach the threshold prescribed by the act.  
33 They will be expected to have registered with both the regulators in States and jurisdictions  
34 offering this “on-ramp” and with FinCEN to the degree that their activities meet the tests for  
35 “money service” businesses under FinCEN guidance. The draft includes trust companies as  
36 entities subject to separate licensure under this act if they engage in virtual currency business  
37 activities and do not hold charters in the state in which their customers reside, as that term is  
38 defined in this draft legislation. New York State issued a trust company charter to ItBit in 2015.  
39 ItBit’s ability to engage in transactions with residents of other States was challenged by other  
40 States. ItBit’s April 2016 decision to withdraw from offering its services to residents of Texas  
41 suggest that state regulators’ attitudes about licensure for trust companies is far from settled.

42  
43 This draft also excludes industrial loan companies from the definition of the term “bank.”  
44 ILC’s are regulated for many purposes as banks, but the scope of their permissible activities are  
45 not the same as banks and many states do not offer LLC charters at all. Thus, exclusion of ILC’s  
46 might complicate state regulation of their activities and the reciprocity provisions in Article 2.



1 The definition of the term “qualified custodian” has been amended to allow use of any bank  
2 acceptable to the State regulator in charge, regardless of the “home state” location of the bank to  
3 facilitate interstate activity. This term is frequently defined in the regulation of non-depository  
4 money services businesses, including in the Money Services Act.

5  
6 The definition of the term “state” does not include federally recognized Indian tribes. Any state  
7 that wished to grant reciprocity under Article 2 to virtual currency businesses licensed by  
8 federally recognized Indian tribes would adjust the definition of the term “state” accordingly.  
9

10 This draft does not define the terms “unfair and deceptive practices” and “unsafe and  
11 unsound practices.” Both terms have meanings articulated by federal and state regulatory  
12 agencies over the course of many years. For example, the FDIC’s standard for “unsafe or  
13 unsound practice” means “any action, or lack of action, which is contrary to generally accepted  
14 standards of prudent operation, the possible consequences of which, if continued, would result in  
15 abnormal risk of loss or damage to an institution, its shareholders, or the insurance fund  
16 administered by the FDIC.” Comments received on the February 2016 draft urged that later  
17 drafts not include a definition of “unsafe or unsound practice.”  
18

19 Various Commissioners suggested that additional terms be defined for the purposes of this  
20 act. Others suggested that explanations of terms be added to the Reporter’s Note for this Draft.  
21 The terms for which Commissioners requested definitions are included in an Issues Memorandum  
22 that will be distributed separately from this Draft. The Reporter’s Note also explain the presence  
23 or absence of certain definitions from this Draft to some extent. In some instances, however, this  
24 Draft does not include suggested additional definitions where it seemed that the definition  
25 requested was not sufficiently forward looking to be useful after enactment. The primary  
26 example of a definition not included in this Draft is of the term “miner.” Miners are used  
27 primarily in the Bitcoin system and as such relate only to one form of virtual currency and have  
28 little expected value as the technology becomes more widely deployed outside the arena of  
29 making payments with bitcoins.  
30

31 **SECTION 104. EXEMPTIONS.** This [act] does not apply the exchange, transfer, or  
32 storage of virtual currency to the extent governed by the Electronic Fund Transfers Act of 1978,  
33 15 U.S.C. Sections 1693 through 1693r, the Securities Exchange Act of 1934, 15 U.S.C. Section  
34 78m, or the Commodities Exchange Act of 1936, 7 U.S.C. Sections 1 through 27f, or “blue sky”  
35 laws enacted by this [state], or to activities by any of the following:

36 (1) the United States or a state, county, city or other governmental agency, subdivision,  
37 department, agency, or instrumentality;

38 (2) a bank;

1 (3) a person in a payment system to the extent that the person provides processing,  
2 clearing, or settlement services solely for transactions excluded by or between or among persons  
3 otherwise exempted from this [act];

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

6 (5) a person that obtains convertible virtual currency to the extent that the person uses it  
7 only to purchase real or virtual goods or services for personal purposes and not on behalf of  
8 others;

9 (6) a person that mines or manufactures virtual currency and uses it solely for personal  
10 purposes, such as to purchase goods and services for personal purposes, so long as the person  
11 does not engage in any virtual currency business activity on another person's behalf other than  
12 verification and recording of transfers of interests in virtual currency;

13 [(7) A person whose virtual currency business activity with residents of this state is  
14 valued, in the aggregate, at less than [dollar amount to be specified by Drafting Committee],  
15 according to a rolling 30-day average of outstanding balances as converted into a dollar amount  
16 utilizing each day's prevailing exchange rate if the person makes a provisional registration with  
17 this state, complies with the requirements of Section 210, and applies for a license under  
18 [Article] 2 before the time its virtual currency business activity reaches the threshold established  
19 in this section and if the department has not suspended or revoked the provisional registration,  
20 the registration has not expired, and the department has not denied a license under Article 2 to  
21 the person. A person that qualifies for the exemption under this paragraph must file an  
22 application for a license with this state or use the reciprocity provisions of [Article] 2 to retain  
23 the exemption to remain exempt during the processing of its application. A person that qualifies

1 for the exemption but does not obtain a license from this state is no longer exempt and shall halt  
2 all virtual currency business activity with residents of this state not later than 48 hours of being  
3 notified that its application for license was denied and shall assist the department in orderly  
4 winding up its virtual currency business activity in this state or otherwise affecting residents of  
5 this state. A person that registered as a provisional registrant under Section 210 may declare  
6 itself as no longer doing business in this state or jurisdiction or as being inactive in all states in  
7 the United States and no longer be subject to the requirements of this [act] by providing notice to  
8 the [department];

9 (8) lawyers and title insurance companies engaged in the provision of escrow services to  
10 users; [and

11 [(9) If the Drafting Committee decides to exempt state-chartered trust companies, or  
12 limited purpose trust companies, or both- whether only those chartered by this state or by any  
13 state, that exemption could go here in lieu of in Section 102.]

#### 14 **Reporter's Note**

15 The exemptions included in Section 104 – with one exception – are common in state  
16 statutes requiring licensure of “money services” and “money transmitter” businesses. The  
17 exception in subsection 7 is most challenging aspect of this section. The Drafting Committee was  
18 charged with drafting a licensure and prudentially “lite” regulatory scheme for virtual currency  
19 businesses with an additional instruction to facilitate innovation by virtual currency businesses.  
20 One of the most challenging tasks in this assignment is to frame an “on-ramp” for virtual  
21 currency businesses, one that postpones full licensure to the time at which the entity’s business in  
22 a State meets a threshold test.

23  
24 Legislation that was proposed in Pennsylvania in 2015 with a \$1 million threshold and  
25 drafted with the assistance of CoinCenter. The Pennsylvania bill allowed the exempt entity to  
26 remain exempt so long as the entity took “reasonably timely steps to seek a license.” The version  
27 presented varies the effect on the entity as the threshold dollar value is reached by requiring that  
28 it file as it approaches whatever threshold may be prescribed, and orders a prompt halt and  
29 assistance in the unwinding of the entity’s activity if its application is denied. Pennsylvania:  
30 House Bill No. 850, Printer’s No. 1029 (2015) has been in the Commerce Committee of the  
31 House of Representatives since March 26, 2015. *Bill Information*, Legislative Data Processing  
32 Website (2016).

1 The threshold test can be a dollar volume or it can be a test based on a number of  
2 transactions (regardless of dollar amounts involved) in a period (day, week, month or year) or a  
3 number of customers in a comparable time frame, but once the threshold is met, then the license  
4 application should ensue and subsequent fluctuations in dollar volumes or numbers of  
5 transactions in the period chosen would not affect the requirement to obtain and maintain the  
6 license in the States or other jurisdictions involved, like a “Hotel California” principle (you can  
7 check in but not check out except by selling or winding down the business) the ULC should  
8 publicize the need for on-ramp participants to register with FinCEN as money service businesses  
9 to the extent to which they engage in activities of the types that FinCEN has defined as “money  
10 services.”  
11

12 In connection with the threshold below which persons may be on the “on-ramp” and need  
13 not yet be fully licensed, the issues memorandum will point to the 2016 amendments to North  
14 Carolina’s “money transmitter” statute and to legislation pending in Washington State for useful  
15 approaches.  
16

17 In addition, the on-ramp is – like the definition of “virtual currency business activity” – a  
18 place where “facts and circumstances” approach is not wise. Without precise parameters that state  
19 regulators, and law enforcement officials, can look to, the on-ramp will not achieve the space for  
20 innovators that it is offered to achieve. Besides encouraging innovators, the on-ramp is intended  
21 to protect start-up businesses from inadvertently engaging in activity that should be licensed in  
22 order to avoid prosecution as an unlicensed money transmitter under 18 U.S.C. Section 1960. As  
23 such, the on-ramp is central to the goal of encouraging innovators in the virtual currency  
24 community whether the technology underlying virtual currencies such as Bitcoin remains the  
25 most active aspect of the universe or applications or launches future classes of distributed ledger  
26 business activity, as has been seen recently.  
27

28 The “on ramp” in this draft of the Act is in Section 210. The bracketed material in  
29 subsection 7, above, is intended to protect provisional registrants who have met the requirements  
30 of Section 210. The addition to subsection (7) was suggested in concept by an Observer in the  
31 period prior to the Annual Meeting draft, but not in time to be included in it. The Observer  
32 strongly favored an inactive-status option, as opposed to the “Hotel California” approach that the  
33 Drafting Committee previously discussed.  
34

35 In addition to the new exemption for lawyers and title insurance companies engaged in  
36 offering escrow services to their customers in subsection (8), one Commissioner suggested an  
37 exemption from this act for judgment creditors and foreclosing secured parties. As the other  
38 members of the Drafting Committee would not have had an opportunity to react to this  
39 suggestion, it is not included in this draft.  
40

41 FinCEN refined the definition of the term “currency dealer or exchanger” for purposes of  
42 31 C.F.R. Part X in 2011 to “a dealer in foreign exchange” to capture the exchange of money  
43 instruments as well as of other monetary instruments, funds, or other instruments denominated in  
44 currency. *See Bank Secrecy Act Regulations: Definitions and Other Regulations Relating to*  
45 *Money Services Businesses*, 76 Fed. Reg. 43585, 43589 & 43596 (July 21, 2011).  
46

Commissioners suggested deleting the reference to later amendments of federal statutes in the preamble to Section 104 because some states treat allowing a subsequently amended statute to apply is an unlawful delegation of state legislative power. That reference is deleted for this draft, but might be reinserted as the Drafting Committee may direct at a later time.

The term “bank” is defined in Section 103. One comment in the most recent round preferred the definition of “bank” found in Treasury Department regulations, 31 C.F.R. Section 1010.100(d). The reporter has no quarrel with this recommendation, but asks the Drafting Committee for instructions particularly with respect to whether the definition should adhere to that definition or definitions found in other banking statutes.

## **[ARTICLE] 2**

### **LICENSURE**

#### **SECTION 201. LICENSE.**

(a) A person may not engage in virtual currency business activity or otherwise hold itself out as being able to engage in virtual currency business activity with a resident of this state unless the person:

(1) is licensed under this [act];

(2) is licensed in a state under a law substantially similar to this act with adequate enforcement as determined by the department [and with which this state has a reciprocity agreement expressly for virtual currency business activity]; or

(3) is registered provisionally and operating in compliance with Section 210 or has been operating under Section 210 and has a pending application for a license from this state.

(b) A license issued under subsection (a)(1) is not transferable or assignable and does not represent a property right.

#### **Reporter’s Note**

A person engages in virtual currency business activity in this state if any part of the transaction is with a resident of this state, whether by means of a physical location such as a virtual currency “ATM” or of a virtual purposeful engagement with a resident of a state. An advertisement, solicitation or other holding out that comes in by newspaper, telephone, email, regular mail or otherwise, and whether or not seen by a resident or other person physically in this

1 state, is sufficient contact to generate the need for a license, either from this state or from the state  
2 agency of the person doing the advertising or soliciting's jurisdiction that qualifies pursuant to  
3 subsection (a)(2). Whether that jurisdiction should also have reciprocity is an issue to be decided  
4 before the act is final. Reciprocity under § 203 is possible and beneficial. No license issued by  
5 this state can be transferred or assigned except pursuant to law, and then only as long as the  
6 Department or other relevant State or federal regulator does not disapprove the transfer or  
7 assignment. Some states' money transmitter statutes, including California, allow licenses to be  
8 granted only if the applicant is organized under the laws of California. Others, such as Virginia,  
9 do not require incorporation in that State or even a physical presence in Virginia for a license to  
10 be issued. Given the online nature of virtual currency business, Section 201 does not contain a  
11 requirement for the applicant to have a corporate charter from a state in order to be licensed in  
12 that state or to maintain a physical location in that state.

## 13 14 **SECTION 202. APPLICATION FOR LICENSE.**

15 (a) An application for a license shall be made in a form and in a medium prescribed by  
16 the department or in the form prescribed by the registry if this state utilizes the registry. Subject  
17 to subsection (e), to the extent applicable, the application must provide:

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

21 (2) the legal names of the executive officers of the applicant or persons that  
22 exercise control over the applicant, their residential and business address, and any former names  
23 or fictitious names used by those persons;

24 (3) a description of the proposed, current, and historical business of the applicant  
25 for the past ten years, if applicable, including reasonable detail regarding the products and  
26 services, all associated website addresses, the principal place of business, the projected customer  
27 base, specific marketing targets, and the location of each current or proposed database server;

28 (4) a list of any other states in which the applicant is licensed to conduct business  
29 regulated by this [act] and of any license revocations, suspensions, or other disciplinary actions  
30 taken against the applicant in the other [jurisdiction], regardless of the nature of the license;

1 (5) criminal convictions involving the applicant and persons exercising control  
2 over applicant and of any deferred prosecution agreements between the applicant and any state or  
3 the United States government;

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

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

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

15 (9) a description of the sources of funds and credit to be used by the applicant to  
16 provide virtual currency business activity in this state and proof that the licensee has the  
17 minimum net worth specified in Section 207;

18 (10) the physical locations of servers that applicant uses or proposes to use in the  
19 conduct of its virtual currency business and the address to which communications from the  
20 department may be sent;

21 (11) the name and address of the applicant's registered agent in this state;

22 (12) money services or money transmitter licenses that the applicant holds in any  
23 other state and their dates of expiration;

1 (13) a description of other lines of business the applicant engages in, directly or  
2 indirectly, or expects to engage in in this state;

3 (14) if applicable, a copy of any liability, casualty, or business interruption  
4 insurance policy maintained by applicant for itself, its officers and directors, or its users;

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

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

13 (17) if the applicant is a wholly-owned subsidiary of a corporation publicly traded  
14 outside the United States, a copy of similar documentation similar to that required in paragraph  
15 (16) filed with the regulator of the parent corporation's domicile outside the United States;

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

18 (19) proof that the applicant has registered with the Department of the Treasury's  
19 Financial Crimes Enforcement Network as a "money service business" to the extent required by  
20 guidance issued by that agency;

21 (20) a set of fingerprints for each executive officer of the applicant, together with  
22 an employment history and history of any investigation or legal proceeding involving any  
23 executive officer for each for the past ten years, if available, as well as any additional information



1 that the department reasonably may prescribe by regulation; and

2 (21) other information that the department reasonably may require by regulation.

3 (b) The applicant shall submit with the application a nonrefundable application fee of  
4 [amount to be prescribed by legislature or determined by department by regulation].

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

7 (d) The department, for good cause, may waive a requirement of subsection (a) or permit  
8 the applicant to submit other information in lieu of the required information.

### 9 **Reporter's Note**

10 With respect to a possible or optional “on-ramp” provision, which are referred to as  
11 provisional registrations in Section 201 below, it is important to note that the Conference of State  
12 Bank Supervisors Task Force supports the idea in concept in its September 2015 Framework, but  
13 has expressed concerns that any such provision not be phrased in such a manner as would convey  
14 a form of property interest that would be subject to the due process requirements applicable to  
15 license suspensions or revocations in many States. 9 The “on-ramp” or provisional registration in  
16 Section 210 does not give preferential status to holders of Money Services Act or Money  
17 Transmitter Act licensees. It is exclusively for virtual currency business activities whose  
18 providers’ estimates of transactions by dollar equivalent, numbers of transactions for the quarter  
19 following the registration or number of users for the same period do not exceed a threshold set by  
20 the Commission or individual States. Provisional registrants would not be able to engage in the  
21 exchange, transfer or storage of legal tender. The text in Section 203’s Alternative A, subsection  
22 (b), below, allows “provisional operation” by a person that has applied for reciprocal licensure  
23 under that section during the pendency of the licensure process. The term “provisional operation”  
24 should be distinguished from “provisional registration” under Section 201 or any comparable  
25 limited operating authority granted by the Department under this act. “Provisional operation”  
26 under Section 203 and “provisional registration” under Section 210 may be treated by the licensee  
27 or applicant as the equivalent of a property interest or recognized by courts as such. An applicant  
28 may use any common form application allowed by the department] under the Section 203,  
29 including forms utilized by the registry.

## 30 **SECTION 203. RECIPROCAL LICENSING.**

### 31 **Alternative A**

32 [Note: Alternative A is applicable only if the Department has agreed to participate in the  
33 Registry. This authority can be granted in the bracketed subsection (a) below, if needed. If the  
34

1 jurisdiction already participates in the NMLSR, the bracketed subsection (a) would be deleted  
2 from the legislation and the un-bracketed subsection (a) would begin this Alternative's provisions  
3 and, in either event, the subsections of this Section should be renumbered accordingly.] [(a)The  
4 department is authorized to use the registry for purposes of streamlining applications for licenses  
5 to be issued under this [act].]

6 [(a) A person seeking a license to engage in virtual currency business activity with  
7 residents of this state may file an application with the registry instead of the application that is  
8 prescribed in Section 202 and submit it together with the processing fee required by the registry.]

9 (b) At the time a person files an application for a license with the registry, the person shall  
10 provide notice to the department in a record that the person has submitted or intends to submit an  
11 application to the registry and:

12 (1) a certification of license history from the [responsible agency] in each state  
13 that has issued the person a license to conduct business governed by this [act];

14 (2) a reciprocal licensing application fee in an amount to be specified by the  
15 department; and

16 (3) a certification signed by an executive officer of the person affirming that the  
17 person will conduct its virtual currency business in this state in compliance with the requirements  
18 of this [act].

19 (c) A person may not engage in virtual currency business activity with residents of this  
20 state until a license granted or, if a provisional registration provided in Section 210, the  
21 requirements of Section 210 have been met.

22 (d) The department may permit provisional operation by a person that has complied with  
23 this section. Provisional operation permission under this subsection is separate from provisional

1 registration under Section 210. Provisional operation under this subsection does not convey the  
2 equivalent of a property interest on the person engaged in provisional operation.

3 **Alternative B**

4 (a) A person engaged in virtual currency business activity that is currently licensed to  
5 conduct activities that fall under that definition in Section 103 by at least one other state, may  
6 engage in virtual currency business activity [and other activity as this [act] may allow] with  
7 residents of this state without applying for a license under Section 202 if:

8 (1) the state where the person is licensed has enacted this [act] or has virtual  
9 currency business activity laws that are substantially similar to those imposed by the laws of this  
10 state, as determined by the department; and

11 (2) the person submits to the department at least 30 business days before the  
12 person intends to commence virtual currency business activity in this state:

13 (A) notice to the department of its intention to rely on reciprocal licensing,  
14 a certification of license history from the [responsible agency] in each state that has issued the  
15 person a license to conduct business allowed by this [act];

16 (B) a reciprocal license fee in the amount of [no more than [dollar amount]  
17 to be specified by the department] by regulation not later than 45 days following enactment of  
18 this [act];

19 (C) documentation demonstrating net worth and any security or bond  
20 maintained for the protection of users that are substantially similar to those required under this  
21 [act]; and

22 (D) a certification signed by an executive officer of the applicant affirming  
23 that the applicant will conduct its virtual currency business in this state in compliance with this

1 [act].

2 (3) the department] does not reject the applicant within 15 days following receipt  
3 of the items specified in paragraph (2);

4 (4) the person does not commence virtual currency business activity in this state  
5 until 31 calendar days after complying with paragraph (2).

6 (b) The department may permit provisional operation by a person that complies with  
7 subsection (a)(2) before the expiration of the 30-day notice period described in subsection (a)(2).  
8 Provisional operation under this subsection is not the equivalent of a property interest and is not  
9 subject to Section 210.

10 (c) The department may waive the security and net worth requirements otherwise require  
11 by this [act] for a license granted under this section if the state that granted the license on which  
12 reciprocity is based requires bonding and net worth requirements that are substantially similar to  
13 those required by this [act].

#### 14 **Alternative C**

15 (a) A person seeking a license to engage in virtual currency business activity with  
16 residents of this state that holds a license issued by another state may submit a copy of its license  
17 application to and current license issued by that state instead of submitting an application in the  
18 form prescribed in Section 202. The department shall accept the application from the other state  
19 as an application for license in this state if:

20 (1) the state that licensed the person has enacted this [act] or has virtual currency  
21 business activity laws that are substantially similar to those imposed by the laws of this state, as  
22 determined by the department;

23 (2) the application to the other state contains information substantially similar to

1 or is more comprehensive than that required in an application submitted to this state; and

2 (3) the applicant certifies that the information contained in the application to the  
3 other state remains accurate and that no material litigation or loss of assets that would affect the  
4 applicant's ability to perform its responsibilities under this [act] or its license in the other state  
5 has arisen since the time the applicant filed in the other state.

6 (b) The department may permit provisional operation by a person that has complied with  
7 subsection (a) or by a person that complies with Section 210. Provisional operation under this  
8 subsection is not the equivalent of a property interest but is otherwise not governed by Section  
9 210.

10 (c) The department may waive the security or net worth requirements otherwise required  
11 by this [act] for any license granted under this section if the state that granted the license on  
12 which reciprocity it based requires bonding and net worth requirements that are substantially  
13 similar to those required under this [act].

14 **End of Alternatives; each state or jurisdiction intending to authorize reciprocal licensure**  
15 **should select one of the Alternatives set forth in this Section.**

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

17 Alternative A is the option that relies on use of the NMLSR to facilitate reciprocal  
18 licensure or recognition of licensure by states other than the first state that licensed a virtual  
19 currency business under this [act]. The reference to "provisional operation" in Alternative A is  
20 intended to be limited to persons who have applied for reciprocal licenses under this section, and  
21 does not include any person who is operating under the provisional registration authority  
22 provided in section 210. The terms "provisional operation" and "provisional registration" are  
23 intended to be mutually exclusive. The order of the alternatives has been changed to make the  
24 NMLSR the first option. The text of Alternative B has been harmonized with that of  
25 Alternatives A and C with respect to the jurisdictional limits of reciprocity.

26  
27 Finally, this Draft continues to follow an approach for reciprocal licensure close to  
28 that used by the CSBS, instead of the Uniform Law Commission's Athlete Agents Act  
29 because non-depository providers of financial services are likely to be familiar with the  
30 CSBS model and not with the Athlete Agents Act. The Drafting Committee yet may

1 direct that the Athlete Agents Act be used instead of one of the alternatives.

2  
3 **SECTION 204. SECURITY.**

4 (a) Except as otherwise provided in subsection (b), a deposit of funds or investment  
5 property or other security acceptable to the department, in an amount and type given the nature  
6 and extent of risks in the applicant's business model, must be provided to the department before  
7 any license may be issued. The security need not be posted until a license has been approved.

8 (b) Security must be collectible by the state for the benefit of any claimant against the  
9 licensee to secure the faithful performance of the obligations of the licensee with respect to its  
10 virtual currency business activity. The department may not require a surety bond to satisfy this  
11 requirement.

12 (c) Security must cover claims for so long as the department specifies by regulation,  
13 including a period designated by the department after the licensee ceases to engage in virtual  
14 currency business activity in this state.

15 (d) The department may increase the amount of security required if the licensee's  
16 financial condition requires, as evidenced by reduction in net worth, financial losses, or other  
17 criteria to be prescribed by [regulation] by the department. Failure of the licensee to provide the  
18 additional security required by the department within a reasonable time is grounds for immediate  
19 suspension of a license or for commencement of a license revocation proceeding.

20 (e) The department may permit a licensee to substitute another form of security  
21 acceptable to the department for the security initially provided under subsection (a) so long as  
22 there is no time when the licensee's activity in this state is not covered by security acceptable to  
23 the department.

24 (f) The department shall exercise rights under any letter of credit or other security

1 provided under subsection (a). Any recovery may be retained to assure that all claimants have  
2 access to relief from the security.

3 (g) A claimant does not have a direct right against the security.

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

5 Surety bonds are not available at this time for virtual currency start-ups and even longer-  
6 lived virtual currency businesses have trouble finding a surety bond for their operations.  
7 Accordingly, the security described in Section 204 does not and should not include surety bonds  
8 because such a requirement effectively prevents most virtual currency businesses from being  
9 licensed at this time. The market may improve as surety bond companies are more familiar with  
10 the operations of virtual currency businesses and as states clarify their positions on licensure and  
11 regulation of virtual currency businesses and the relationship of virtual currency businesses to  
12 traditional money services and money transmission that states otherwise regulate. But, lacking a  
13 market today for bonds to issue, this act does not require them as a form of security – no matter  
14 how common or appropriate they may be for other forms of licensees to offer to regulators.

15  
16 At the suggestion of a Commissioner, we have deleted a reference to “letter of credit” as  
17 forms of security and replaced that reference with “a deposit of funds or investment property.”  
18 The primary reason for the Commissioner’s suggestion is that although it may be easier to  
19 obtain a letter of credit than a surety bond, banks have their own credential requirements for  
20 issuing letters of credit. The Commissioner also observed that she would not wish to convey a  
21 sense that there is something wrong with a start-up virtual currency business if it could not  
22 obtain a letter of credit or surety bond.

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

#### 37 38 **SECTION 205. ISSUANCE OF LICENSE.**

39 (a) When an application is filed under Section 202, the department shall investigate the  
40 applicant’s financial condition and responsibility, financial and business experience, character

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

3 (b) The department may conduct an investigation of the applicant's business premises as  
4 it deems necessary, including an investigation of facilities at and devices to store virtual currency  
5 or credentials for use in virtual currency or for use in virtual currency business activity and the  
6 protection of data associate with it. The applicant shall pay the reasonable costs of the  
7 investigation.

8 (c) No original application under Section 202 shall be considered complete until the  
9 department has all of the information required by this [act] or the registry, and has completed any  
10 investigation allowed by subsection (b).

11 (d) When an original application under Section 202 is complete, the department shall  
12 notify the applicant in a record within [30] business days of its decision to approve or deny the  
13 application. If the department does not notify the applicant of approval or denial by the [31<sup>st</sup>]  
14 business day after application was complete subject to subsection (c), the application is deemed  
15 approved and the department shall issue the license. The license shall take effect on the first  
16 business day following:

17 (1) the expiration of the [30] business-day period if the applicant by that time has  
18 complied with the security requirements of Section 204; or

19 (2) the applicant's compliance with the security requirements of Section 204.

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

21 (1) the applicant has fulfilled all of the conditions set forth in Section 202 and 204;

22 (2) the applicant has complied with Section 203 and fulfilled the security  
23 requirements of Section 204; or (3) subsection (d) is applicable.



1 (f) An applicant whose application is denied may appeal the denial within [30] calendar  
2 days following receipt of the notice of denial, and may request a hearing in conjunction with its  
3 appeal in accordance with the [state administrative procedures act].

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

5 The addition of the phrase "absent good cause shown" to subsection (e) grants discretion  
6 to deny an application if the applicant has been allegedly engaged in violations of federal anti-  
7 money-laundering or other regulations. Considering that there is a right to appeal denial of the  
8 application, this power was suggested. This phrase is not included in subsection (d) because its  
9 second sentence is intended to require prompt attention to applications. The recommendation of  
10 30 business days for the approval or rejection of an application after the application is deemed  
11 complete is intended to address complaints from stakeholders in the money services and virtual  
12 currency communities that approvals take far too long.

#### 13 14 **SECTION 206. RENEWAL OF LICENSE.**

15 (a) At least [15] business days before the anniversary of license issuance, the licensee  
16 shall pay a renewal fee set by the Department by regulation of:

17 (1) [decide amount or maximum percentage] of its [dollar or transaction] volume  
18 in this state for the prior fiscal year measured as of its anniversary date if the [sum or number of  
19 transactions] was less; or

20 (2) [decide higher amount of fee] if its volume in this state for the same period  
21 was greater than [dollar amount or number of transactions].

22 (b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a  
23 form and in a medium prescribed by the department. The renewal report must state or contain as  
24 applicable:

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

26 (A) reviewed annual financial statement if the licensee's virtual currency  
27 business activity in this state amounted to [dollar amount or transaction number] or less in the  
28 prior fiscal year measured as of its anniversary date;

1 (B) audited annual financial statement if the licensee's virtual currency  
2 business activity in this state amounted to more than [dollar amount or number of transactions] in  
3 the prior fiscal year measured as of its anniversary date; or

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

6 (2) a description of any material change in the licensee's financial condition, any  
7 material litigation involving the licensee, any license suspension or revocation proceeding  
8 commenced or other action involving a license issued by another state on which reciprocal  
9 licensing was based, any investigation by a federal, state or jurisdiction governmental unit or  
10 agency involving the licensee, any data security breach, or any change in information since the  
11 date of the reviewed or audited financial statement submitted under paragraph (1) that has not  
12 been reported to the department] or reported on a required report or a copy of any report  
13 submitted under Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78m [as  
14 amended];

15 (3) the number of virtual currency business transactions engaged in by the licensee  
16 on behalf of persons in this state and the number of user's private keys or other credentials  
17 received by the licensee for custody or control for the period since the license was first issued or  
18 since the last renewal report if applicable;

19 (4) the dollar-equivalent of virtual currency in the custody or control of the  
20 licensee as of the end of the month at least [30 calendar days] prior to the date of the renewal  
21 report and the total number of users for whom the licensee had custody or control of virtual  
22 currency on the same date;

23 (5) proof that the licensee continues to maintain the virtual currency necessary to

1 satisfy the mandate of Section 503, including permissible investments in accordance with any  
2 regulation of the department issued under Section 208, a listing of each such investment and the  
3 name of the qualified custodian holding the investment;

4 (6) proof that the licensee continues to meet the requirements of Section 207 for  
5 minimum net worth;

6 (7) proof that the licensee continues to maintain adequate security as required by  
7 Section 204; and

8 (8) A list of any locations in this state where the licensee operates its business or  
9 where it operates any server related to its conduct of its virtual currency business activity.

10 (c) If a licensee does not pay its renewal fee or file its renewal report by the renewal date,  
11 or by the end of any extension of time granted by the department, the license is suspended  
12 automatically and the licensee's authority to engage in virtual currency business activity in this  
13 state ceases. A notice or hearing may not be required for a license suspension for failure to pay a  
14 renewal fee or to file a renewal report. The department shall lift the suspension if, not later than  
15 20 calendar days after the license was suspended, the licensee:

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

17 (2) pays a fine not to exceed [\$500] for each day after suspension and before the  
18 date that the licensee files the report and pays the renewal fee.

19 (d) The department shall provide prompt notice to the licensee of the lifting of any  
20 suspension after the licensee has complied with subsection (c) (1) and (2). If the suspension is  
21 lifted, all transfers made while the license was suspended remain valid.

22 (e) The department for good cause may grant an extension of the renewal date.

23 (f) The department shall review the renewal of a license issued under Section 203 by this

1 state to ensure that the state that issued the original license has not revoked, suspended or  
2 otherwise limited the license it granted.

### 3 **Reporter's Note**

4 This draft contains a new provision, recommended by a member of the Drafting  
5 Committee, that is similar to U.C.C. §8-503 that provides that the virtual currency in a licensee's  
6 or provisional registrant's custody or control is not subject to claims of the licensee's or  
7 registrant's creditors. See Section 503 of this act. In subparagraph (b)(1), the prospect arises that  
8 a small entity will not be required to have or have an audited financial statement. In these cases,  
9 the entity may have a "reviewed" financial statement and should provide it in lieu of a fully  
10 audited financial statement. In subparagraph (b)(2), a clause has been added to clarify that any  
11 change in a license issued by another state or jurisdiction that was the basis for reciprocal  
12 licensure under this act needs to be disclosed in the renewal report, if not previously disclosed to  
13 the Department in this state. In subparagraph (b)(8), it may not be possible or practical to provide  
14 all addresses at which the licensee or provisional registrant operates servers for its virtual  
15 currency business. This draft retains this requirement for the purposes of eliciting comments on  
16 the practicality of this requirement.

### 17 18 **SECTION 207. NET WORTH AND MINIMUM CAPITAL REQUIREMENTS;** 19 **PERMISSIBLE INVESTMENTS.**

20 [(a)] A licensee must provide proof of and maintain a minimum net worth of [\$35,000]  
21 [or [two to five]] per cent of its proposed virtual currency business activity] for the purposes of  
22 ensuring ongoing business operations and a sufficient reserve for winding down operations  
23 without undue risk to users. 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 involves but not the virtual currency assets  
26 over which it has custody or control pursuant to Section 503.

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

30 (A) any complex corporate structure and services of a corporate applicant,

1 with specific information about shared services and the extent to which capital is maintained on a  
2 separate basis for one or more virtual currency businesses in the structure and the extent to which  
3 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 any commitments for  
8 funding in hand; and

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

10 [(b) A provisional registrant under Section 210 must 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 proposed to conduct as well as to wind up its operations. The department may not  
13 require the same level of net worth for a provisional registrant under Section 210 as it requires for  
14 a licensee, but may require the provisional registrant demonstrate that it holds [two to five]  
15 percent of estimated average amount of virtual currency business activity before the provisional  
16 registrant commences virtual currency business activity in this state. The department may require  
17 additional net worth to be demonstrated if the department deems the provisional registrant's  
18 virtual currency business activity to be growing at a rate faster than can be protected by the [two  
19 to five] percent otherwise required by this subsection.]

## 20 **SECTION 208. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

21 (a) A licensee shall maintain, in addition to that amount of virtual currency to satisfy the  
22 interests of all users that have given custody or control of virtual currency to the licensee pursuant  
23 to Section 503, its permissible investments that have a value equal to at least 10 and one half per

cent of the value of the virtual currency over which the licensee has custody or control on behalf of users for the purposes of ensuring ongoing business operations and a sufficient reserve for winding up operations without risk to users. The value must be recomputed at the end of each three calendar months.

(b) Virtual currency in the custody or control of a licensee on behalf of others may not be invested by the licensee.

(c) The department, by regulation, may:

(1) limit the extent to which a type of investment within a class of permissible investments for licenses engaged in virtual currency business activities may be considered a permissible investment, except for fiat money and certificates of deposit issued by a bank, but shall allow the licensee to hold [percentage to be determined] of its permissible investments in the type or types of virtual currency in which it deals in the ordinary course of business; and

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

(d) The department may prescribed by regulation the requirements for entities to be qualified custodians of investments required by this [act.]

**SECTION 209. TYPES OF PERMISSIBLE INVESTMENTS.** The department, by Regulation, may specify the types of permissible investments that licensees and provisional registrants shall hold so long as it permits licensees and provisional registrants to hold virtual currency of the type or types over which they have custody or control on behalf of others or in which they conduct virtual currency exchange activity under this [act]. The permissible investments specified must include highly liquid investments.

## Reporter's Note on Sections 207 to 209

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

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

2. Only a minimal net worth requirement has been suggested because net worth is used as an additional requirement to make sure that license applicants and licensees have some resources for commencing and operating a money transmission business. Section 207 has been bracketed because some States use net worth as part of the safety and soundness mechanisms whereas other States rely on bonding/security and permissible investment requirements instead. This Act gives States the option of choosing between a combination of security, net worth and permissible investment requirements as prudential measures for Article 2 licensees. UNIFORM MONEY SERVICES ACT (2004), *available at* [http://www.uniformlaws.org/shared/docs/money%20services/umsa\\_final04.pdf](http://www.uniformlaws.org/shared/docs/money%20services/umsa_final04.pdf). The Uniform Money Services Act specified a minimum net worth of \$25,000, *id.* at 38, which may need to be adjusted for the purposes of this act. A virtual currency business may be expected to hold as part of its capital virtual currency in the form in which it transacts business for its users, as well as other capital required for its operations and the winding down of operations. Technology start-up companies often go through more than one level of capital funding in their early years. This draft makes no recommendation as to how the requirement to maintain a specific net worth should be managed as a new entrant goes through its early capital. The Drafting Committee should discuss the pros and cons of allowing a portion of net worth requirements in virtual currency, given the price volatility to which virtual currency has been subject. A “mark-to-market” style requirement could be particularly onerous for smaller virtual currency licensees and new entrants and appears unnecessary for a regulated entity that holds its customers’ funds in trust and not subject to the claims of its creditors. The Drafting Committee considered a formula for minimum capital requirements is based on the formula adopted for banks under Basel III, which requires at least 6 percent capital for ongoing operations and 4.5 percent capital for winding down, based in part on the risk assessment of the nature of the business activities of the licensee. The licensee will be required to have this capital without regard to the value of the virtual currency over which it has custody or control on behalf of users. For licensees and provisional registrants, an additional capital requirement of 2 per cent of transaction value is specified to ensure that licensees have sufficient means to meet obligations to their customers. The issue of what is an appropriate minimum net worth for virtual currency businesses may depend on many factors, including the nature of the services or products provided, and relates to the recommendation in Section 503 of this draft that the virtual currency in the custody or control of the licensee or provisional registrant is a bailment, not the property of the licensee or provisional registrant and specifically is not subject to the claims of the creditors of the licensee or provisional registrant pursuant to Section 503. As such, the Drafting Committee heard discussion of what was suitable for this

1 purpose, including a well-framed suggestion that a Basel III approach of a specific percentage  
2 based on the dollar equivalent of the virtual currency under custody or control for ongoing  
3 operations as well as a smaller percentage for winding down operations. In the most recent round  
4 of comments, Observers questioned whether a Basel III approach was suitable for businesses  
5 operating other than on a fractional reserve basis and also whether the percentages suggested –  
6 respectively of 6 and 4.5 – were not too great to encourage innovation in virtual currency  
7 businesses. As a result, a range of possible net worth requirements is included in this Draft,  
8 including a 2% figure for provisional registrants and a minimum of \$35,000 or a percentage for  
9 licensees.

10  
11 **SECTION 210. PROVISIONAL REGISTRATION; REGISTRATION FEE; AND**  
12 **REQUIREMENTS.**

13 (a) A person may engage in virtual currency business activity in this state without first  
14 obtaining a license under Section 201 if its volume of activity projected for the quarter that  
15 follows does not exceed [dollar equivalence, number of transactions, or number of users to be  
16 decided] and the person:

17 (1) files with the department a notice in the form prescribed by the department by  
18 regulation of its intention to engage in virtual currency business activity in this state and reciting  
19 the anticipated activity for its next fiscal quarter;

20 (2) pays a registration fee of \$[250] to the department;

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

26 (4) agrees not to invest or pledge virtual currency in its custody or control on  
27 behalf of others or to engage in the exchange or transfer of legal tender other than to pay for its  
28 own operating expenses; and



(5) proves that it has policies and procedures in place to comply with [Articles] 3, 5, and 6.

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

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

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

(2) the [second] anniversary date of the provisional registration unless the virtual currency of the provisional registrant remains below [75] percent of the estimated volume declared in the original provisional registration under subsection (a)(1).

(d) The department for cause shown may suspend or revoke a provisional registration or refuse to license a person that had filed a provisional registration under, or use any other authority the department has under the laws of this state.

(e) Provisional registration is not a property right and is not a right subject to due process.

### **Reporter's Note**

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

1 urged that a threshold of \$1 million be established for this purpose. Contrarians might observe  
2 that that figure is significantly greater than would be tolerated under the Uniform Money Services  
3 Act or state money transmitter statutes. To the extent that the goal of Section 210 is to promote  
4 innovation and allow both academic research and beta testing to occur without the necessity of  
5 full licensure or the risks of being prosecuted for engaging in unlicensed money transmission or  
6 prepaid access activity under state laws or 18 U.S.C. Section 1960, a \$1 million threshold may be  
7 too high. Some Observers also disagreed with the proposed dual licensure – separating for this  
8 purpose licenses to engage in traditional money transmission and virtual currency business  
9 activity – approach taken in this draft. Others supported it.

10  
11 FinCEN’s guidance on the application of its “money service business” definition to  
12 persons engaged in virtual currency business activity employs a “facts and circumstances”  
13 approach. Some Observers favored using a “facts and circumstances” approach for determining  
14 eligibility for “provisional registration,” but more Observers objected approach because it would  
15 not afford sufficient clarity for start-up businesses. For this reason, no facts and circumstances  
16 approach is included in this Section.

17  
18 Subsection (a)(4) has been revised: a Commissioner pointed out the necessity of allowing  
19 a provisional registrant to transfer legal tender to pay its own operating expenses. Subsection (c)  
20 prohibits the assignment or transfer of a “provisional registration,” which means that in advance  
21 of an acquisition or merger of a virtual currency business operating under a provisional  
22 registration under this section, the acquiring or surviving entity must register as a provisional  
23 registrant and meet the other requirements for such status under this act, or be a person holding a  
24 license under this act, or be an applicant for a license under this act in a state that permits  
25 provisional operation by persons who have applied for full licensure under this article. The  
26 primary reason for this prohibition is found in subsection (e) – provisional registrations are not  
27 “property rights” and more specifically is not a “right subject to due process.” This provision is  
28 included at the suggestion of the CSBS in order to avoid the necessity for its members to go  
29 through due process to terminate a privilege offered on a provisional basis in the “on-ramp.”  
30

### 31 [ARTICLE] 3

## 32 EXAMINATIONS, REPORTS, RECORDS, COOPERATION AND DATA-SHARING, 33 INTERIM REPORTS, CHANGE IN CONTROL, MERGER AND ACQUISITION, AND 34 ADVANCE NOTICE OF OTHER PROPOSED CHANGES

### 35 SECTION 301. AUTHORITY TO CONDUCT EXAMINATIONS.

36 (a) The department may conduct an annual examination of a licensee or of any of a  
37 licensee’s facilities or servers wherever located upon [five] business days prior notice to the  
38 licensee.

1 (b) The department may examine a licensee at any time, without advance notice.

2 (c) The licensee shall pay the reasonable costs of the examination.

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

5 **SECTION 302. REPORTS AND RECORDS.**

6 (a) For purposes of this Section, the term “licensee” shall include licensees and  
7 provisional registrants.

8 (b) A licensee shall maintain a record of every virtual currency business transaction in  
9 which it has engaged for a period of [five] years following the date of their creation and in a  
10 condition that will allow the department to determine whether the licensee is complying with all  
11 applicable laws, regulations, and orders. The books and records maintained by each licensee  
12 shall include:

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

20 (2) a record of the aggregate number of transactions and aggregate dollar values of  
21 transactions by the licensee on behalf of a user or for the licensee’s own account in this state for  
22 the time period when the licensee holds a license from this state.

23 (3) a record of each transaction in which one form of virtual currency is

1     exchanged for legal tender or for another form of virtual currency.

2                   (4) a general ledger posted at least monthly containing all asset, liability, capital,  
3     income, and expense accounts for the licensee;

4                   (5) a copy of each business call report that the licensee may be required to create  
5     or provide to the department under any requirement of this state or of the registry;

6                   (6) bank statements and bank reconciliation records for the licensee and the name,  
7     account number, and physical address of each bank used by the licensee in the conduct of its  
8     virtual currency business, regardless of the physical location of the bank; and

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

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

13           (d) If records are maintained outside this state, the licensee must make them available to  
14    the department on [three] business-days' notice communicated in a record.

15           (e) All records maintained by the licensee that are required by this [act] shall be open to  
16    inspection by the department under this [act] or a regulation or order adopted pursuant to it,  
17    regardless of their location.

### 18           **SECTION 303. COOPERATION AND DATA-SHARING AUTHORITY.**

19           (a) Subject to Section 305 and under terms consistent with applicable laws concerning  
20    privacy, consumer financial privacy, data protection, privilege, and confidentiality of any  
21    applicable state and of the United States, the department may cooperate, coordinate, jointly  
22    examine, consult, and share records and information with the [regulatory agency] of another state,  
23    a relevant self-regulatory organization, or a federal or state regulator of banking or non-

1 depository providers, concerning the affairs and conduct of any licensee or provisional registrant.  
2 The non-public personally identifiable information contained in transaction records of consumer  
3 users of the licensee or provisional registrant may not be shared unless the sharing would be  
4 permissible under 15 U.S.C. Section 6802(e)(5) or (e)(8) or 18 U.S.C. Sections 3401 et seq., or  
5 the consumer expressly consents.

6 (b) The department, absent good cause shown to the contrary, shall establish or participate  
7 with other states in a central depository for filings required; cooperate in the development and  
8 implementation of uniform forms for applications and renewal reports and the conduct of joint  
9 administrative hearings or proceedings and civil actions; formulate joint regulations, statements  
10 of policy, guidance and interpretative opinions and releases, and common systems and  
11 procedures; and engage in joint notices of proposed regulations, forms, statements of policy or  
12 guidance. The department shall not establish or participate in, directly or indirectly, any central  
13 depository of consumer users' non-public personally identifiable information that would be  
14 eligible for protection under 15 U.S.C. Section 6802(e)(5) or (e)(8) or 18 U.S.C. Sections 3401 et  
15 seq. [as amended].

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

18 (1) maximizing effectiveness and uniformity of regulation and examination and  
19 their implementation and enforcement for the benefit of users and licensees; and

20 (2) minimizing burdens on licensees without adversely affecting user protection  
21 goals.

## 22 **Reporter's Note**

23 References to 15 U.S.C. § 6802(e)(5),(e)(8), and to 18 U.S.C. §§3401 et seq. were added  
24 at the suggestion of attendees at the April 2016 Drafting Committee meeting. They are intended

1 to provide financial privacy protection equal to what consumer and non-consumer customers of  
2 other depository and non-depository providers of financial services enjoy.

3  
4 The scope of Section 303 may be broader than comparable provisions applicable to  
5 depository and other non-depository providers and thus may require further revisions.

6  
7 **SECTION 304. CONFIDENTIALITY.**

8 (a) Except as otherwise provided in subsection (b), all information or reports obtained by  
9 the department from an applicant or licensee and all information contained in or related to an  
10 examination, investigation, operating or condition report prepared by, on behalf of, or for the use  
11 of the department, trade secrets, and other financial and operational information not contained in  
12 a report not otherwise available to the public, are confidential and are not subject to disclosure  
13 under this state's [open records] law or the [open records] laws of a reciprocal licensing state. If  
14 the department determines that a reciprocal licensing state cannot provide this protection, then, to  
15 that extent, the records may not be released.

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

19 **SECTION 305. INTERIM REPORTS AND ADVANCE NOTICE OF OTHER**  
20 **PROPOSED CHANGES.**

21 (a) A licensee shall file with the department within 15 business days a report detailing any  
22 material change in information provided in the licensee's application or most recent renewal  
23 report to the department, consistent with the requirements of Section 13 of the Securities  
24 Exchange Act of 1934, 15 U.S.C. Section 78m [as amended].

25 (b) A licensee shall file with the department a report within 15 business days of any of:  
26 (1) a change in physical location or the physical location of a server or of the

entity providing cloud computing or software as a service used in the licensee’s virtual currency business;

(2) an additional persons providing cloud computing or software as a service to the licensee entity’s physical location and server location;

(3) a material change in the licensee’s business model to conduct its virtual currency business;

(4) a change in the officers, directors, responsible individuals or principal shareholders of the licensee’s virtual currency business activity; and

(5) the name, physical address, and fingerprints of each new individual in the capacity under paragraph (4).

#### **SECTION 306. CHANGE IN CONTROL.**

(a) In this section, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of stock of the licensee, the stock of any person that possesses the power, or otherwise, and including a consolidation or entity conversion. Control shall be presumed to exist if a person, directly or indirectly, owns, or holds with power to vote at least [ten] percent of the voting stock of a licensee or of a person that owns, or holds with power to vote at least ten percent of the voting stock of the licensee, except in the case of a licensee whose total volume of virtual currency business activity does not exceed [specify a threshold] the power to vote at least [30 to 50] per cent of the voting stock of the licensee. A person shall not be deemed to control another person solely by reason of being an officer or director of the other person.

(b) A licensee shall notify the department of any proposed change of control of or merger or acquisition of a substantial portion of the assets of the licensee’s virtual currency business

1 activity not less than 30 days prior to the proposed change. Prior to a change of control, the  
2 person seeking to acquire control of a licensee shall submit an application to the department in a  
3 record that meets the form acceptable to and provides the information required by this [act] or  
4 regulations adopted pursuant to this [act], including detailed information about the applicant and  
5 all directors, principal officers, principal stockholders, and principal beneficiaries of the applicant.

6 (c) The department may determine upon application that a person does not, or will not  
7 upon the taking of some proposed action, control another person. The determination shall be  
8 made within 30 calendar days or such further period as the department may prescribe.

9 (d) The filing of an application under this section in good faith by any person shall relieve  
10 the applicant from any obligation or liability imposed by this Section with respect to the subject  
11 of the application until the department has acted upon the application. The department may  
12 revoke or modify the determination under subsection (c), after notice and opportunity to be heard,  
13 whenever in its judgment revocation or modification is consistent with this [article].

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

16 (1) the person's purchase of common stock is made solely for investment purposes  
17 and not to acquire control over the Licensee;

18 (2) the person could direct, or cause the direction of, the management or policies  
19 of the licensee;

20 (3) the person could propose directors in opposition to nominees proposed by the  
21 management or board of directors of the licensee;

22 (4) the person could seek or accept representation on the board of directors of the  
23 licensee;



1 (5) the person could solicit or participate in soliciting proxy votes with respect to a  
2 matter presented to the shareholders of the licensee;

3 (6) any other factor indicates that the person would or would not exercise control;  
4 and

5 (7) the public interest and the convenience and needs of the public would be  
6 served if the person had control of the licensee.

7 (f) The department shall approve or deny every application for a change of control of a  
8 licensee not later than [30] calendar days from the filing of an application deemed by the  
9 department to be complete. The time period may be extended by the department, for good cause  
10 shown, for additional reasonable time to enable compliance with the requirements and conditions  
11 of this [act].

#### 12 **Reporter's Note**

13 The percentage of voting power required to trigger this provision has been the subject of  
14 comments from Observers. Although 10 per cent is a recognized trigger for other purposes, it has  
15 been suggested that a threshold of 30 to 50 per cent is more appropriate for smaller companies.  
16 For these reasons, all thresholds in this section are bracketed.

#### 17 **SECTION 307. MERGERS AND ACQUISITIONS.**

18  
19 (a) Except with the prior approval of the department evidenced in a record, no action shall  
20 be taken that may result in a merger or acquisition of all or a substantial part of the assets of a  
21 licensee or in a consolidation or entity conversion of a licensee.

22 (b) Prior to a merger or acquisition and unless waived for cause by the department after  
23 receiving requested relevant information, an application containing a plan of merger or  
24 acquisition shall be submitted to the department by the persons that are to merge or by the  
25 acquiring or resulting person, as applicable. The plan must:

26 (1) be in form and substance satisfactory to the department;

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

4                   (3) describe the terms and conditions of the merger or acquisition and the mode of  
5 carrying it into effect, including any necessary changes to the cybersecurity programs of the  
6 persons.

7           (c) The department shall approve or deny a proposed merger or a proposed acquisition of  
8 all or a substantial part of the assets of a licensee, or consolidation or conversion as promptly as  
9 possible, but no later than [30] calendar days after the application that is deemed by the  
10 department to be complete. The time period may be extended by the department, for good cause  
11 shown, for additional reasonable time to enable compliance with the requirements and conditions  
12 of this [act].

13           (d) In determining whether to approve a proposed merger or acquisition, consolidation or  
14 conversion, the department shall consider whether:

15                   (1) the person's purchase of common stock is made solely for investment purposes  
16 and not to acquire control over the licensee;

17                   (2) the person could direct, or cause the direction of, the management or policies  
18 of the licensee;

19                   (3) the person could propose directors in opposition to nominees proposed by the  
20 management or board of directors of the licensee;

21                   (4) the person could seek or accept representation on the board of directors of the  
22 licensee;

23                   (5) the person could solicit or participate in soliciting proxy votes with respect to

1 any matter presented to the shareholders of the licensee;

2 (6) any other factor indicates that the person would or would not exercise control  
3 of the licensee; and

4 (7) the public interest and the convenience and needs of the public are met.

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

6 This provision is closely modeled after, but is not a verbatim adoption of, Section 200.11  
7 of the New York State Department of Financial Services' June 2015 Virtual Currencies  
8 regulation. The "convenience and needs" factor is a common means of approving mergers under  
9 the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., because it allows regulators  
10 to approve a combination that otherwise may exceed standards articulated first by the Supreme  
11 Court in *Philadelphia National Bank* (1963) and the horizontal merger guidelines first adopted by  
12 the Department of Justice roughly 30 years ago. Given the tendency of new entrants in the  
13 technology industry to be acquired by other, more established market participants, we have  
14 included changes of control and merger or acquisitions of provisional registrants in the scope of  
15 Article 3.

#### 16 **[ARTICLE] 4**

#### 17 **ENFORCEMENT**

#### 18 **SECTION 401. SUSPENSION AND REVOCATION AND POWER TO APPOINT** 19 **RECEIVER FOR LICENSEES.**

20 (a) The department may suspend or revoke a license or place a licensee in receivership on  
21 an emergency basis if warranted, after prior notice and an opportunity to be heard, if the licensee:

22 (1) violates a material provision of this [act], a regulation or rule adopted or an  
23 order issued under this [act] or other law applicable to virtual currency business activity;

24 (2) does not cooperate when legally required and after notice with an examination  
25 or investigation by the department;

26 (3) engages in any [material] unsafe or unsound act or practice in the conduct of  
27 its business affairs with residents of this state;

28 (4) engages in fraud, intentional misrepresentation or deception, or an unfair or

1     deceptive act or practice with residents of this state;

2                     (5) suffers the suspension or revocation of its license in one or more other states;

3                     (6) is convicted in this state or another state for felonious conduct related to its  
4     virtual currency business activity or other payment or trust activity with residents of this state;

5                     (7) is determined to have engaged in or does not contest a determination that it  
6     engaged in unsafe or unsound practices with residents of this state; or

7                     (8) becomes insolvent, suspends payments of its obligations otherwise than due to  
8     a natural disaster and only for so long as is necessary to restore operations, makes a general  
9     assignment for the benefit of its creditors, or files for protection under the federal bankruptcy or  
10    state insolvency statute.

11           (b) The department shall by regulation specify what conduct or legal regulation is material  
12    for the purposes of this [act].

13           (c) In determining whether a licensee is engaging in an unsafe or unsound act or practice  
14    with resident of this state, the department may consider the size and condition of the licensee's  
15    virtual currency business activity with residents of this state, the magnitude of any loss  
16    experienced, the gravity of the act or practice or other violation of this [act], and the previous  
17    conduct of the person involved.

18           (d) Except as set forth in subsection (e), an order revoking a license to engage in virtual  
19    currency business activity shall be effective [one business day] after the order is served on the  
20    licensee.

21           (e) An order to suspend virtual currency business activity shall be effective upon issuance  
22    if the department finds a threat of imminent or irreparable harm to the public or the licensee.

23           (f) A license suspension or revocation, or a receivership, is subject to appeal to a court of

appropriate jurisdiction.

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

In subsection 401(d), this draft reduces the time that an order to suspend activity takes effective from 10 business days to 1 business day. If the Department has grounds to suspend activity under a license, there is no reason not to make the suspension effective quickly.

**[SECTION 402. SUSPENSION AND POWER TO APPOINT RECEIVER FOR PROVISIONAL REGISTRANTS.** The department may suspend a provisional registrant's operation to do business with residents of this state or place a provisional registrant in receivership on an emergency basis if warranted, after prior notice and an opportunity to be heard, on the same basis and subject to the same conditions and rights as are provided in Section 401.]

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

If a state enacts bracketed section 402, above, the remaining section of article 4 should be renumbered.

#### **SECTION [403] [402]. ORDERS TO CEASE AND DESIST.**

(a) If the department determines that a person is engaging in virtual currency business activity with residents of this state without holding a license from this state or is otherwise operating illegally, or is engaging in unfair or deceptive acts or practices in its virtual currency business activities, or in unsafe or unsound acts or practices in its virtual currency business activities with residents of this state, the department may issue an order requiring the person to cease and desist from engaging in virtual currency business activity in this state. The order becomes effective upon service of it on the person. A person that is served with a cease and desist order under this subsection may petition the [appropriate court], for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order.

(b) An order to cease and desist issued under this section remains effective and

1 enforceable pending the completion of an administrative proceeding under the [citation to state  
2 administrative procedure statute] or judicial order setting aside, limiting or suspending the  
3 enforcement, operation or effectiveness of the order.

4 (c) An order to cease and desist expires unless the department commences an  
5 administrative proceeding under the [citation to state administrative procedure statute] within [ten  
6 business days] after the order is issued.

7 (d) A licensee or provisional registrant that is served with an order to cease and desist  
8 may petition the [appropriate court] for a judicial order setting aside, limiting or suspending the  
9 enforcement, operation, or effectiveness of the order pending completing of an administrative  
10 proceeding under the [citation to state administrative procedure statute].

11 **SECTION [404] [403]. HEARINGS.** Except as otherwise provided in this [act], the  
12 department may not suspend or revoke a license, place a licensee in receivership, issue an order  
13 to cease and desist, or assess a civil penalty without notice and an opportunity to be heard.

14 **SECTION [405] [404]. CONSENT ORDERS.**

15 (a) The department may enter into a consent order at any time with a person to resolve a  
16 matter arising under this [act], a regulation or rule adopted or an order issued under this [act]. A  
17 consent order must be signed by the person to whom it is issued or by the person's authorized  
18 representative, and must indicate agreement with the terms contained in the order.

19 (b) A consent order may provide that it does not constitute an admission by a person of a  
20 violation of this [act] or a regulation adopted or an order issued under this [act].

21 **SECTION [406] [405]. CIVIL PENALTIES.**

22 (a) The department may assess a civil penalty, in an amount not to exceed [the amount it  
23 deems suitable] [\$10,000] [per calendar day] [per violation] for [each calendar day] [each

violation] the violation is outstanding, against a person that:

(1) violates this [act] or a regulation or rule adopted or an order issued under this [act];

(2) engages in unfair or deceptive acts or practices in its virtual currency activities with residents of this state; or

(3) engages in unsafe or unsound acts or practices in its virtual currency business activities with residents of this state.

(b) In a proceeding under subsection (a), the department may assess against the person the costs and expenses for the investigation and prosecution and reasonable attorney's fees.

(c) The department may assess a civil penalty, in an amount [it deems suitable] [not to exceed [\$50,000] per day] for each calendar day a person engages in virtual currency business activity with residents of this state without holding a license from this state or being registered as a provisional registrant in this state under Section 210.

**SECTION 406. NO PRIVATE RIGHT OF ACTION.** There is no individual right of action for violations of this [act].

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

The provisions of Article 4 are closely modeled after the 2004 amendments to the Uniform Money Services Act ("UMSA"). The order of presentation has been changed slightly from the UMSA. However, there is no provision for criminal penalties or on authority to remove officers and directors in this Draft.

#### **[ARTICLE] 5**

### **DISCLOSURES AND OTHER USER PROTECTIONS**

#### **SECTION 501. REQUIRED DISCLOSURES.**

(a) Each licensee and provisional registrant shall provide to any person seeking to use the licensee's products or services the disclosures required by subsection (b) and any additional

1 disclosures that the department deems reasonably necessary for user protection and prescribe by  
2 regulation under this section as to the times and the form required. Disclosures required by this  
3 [Article] shall be made separately from any other information provided by the licensee and in a  
4 clear and conspicuous manner in a record. Licensees may propose alternate disclosures more  
5 appropriate for the licensee's virtual currency business activity for the department's approval.

6 (b) Prior to establishing a relationship with a resident of this state or a person located in  
7 this state, the licensee and provisional registrant shall make at least the following disclosures to  
8 the extent that they are applicable to the virtual currency business activity being undertaken by  
9 the licensee or provisional registrant and the resident in this state:

10 (1) A schedule of all fees and charges that the licensee may assess against users,  
11 the manner that fees and charges will be calculated if not set in advance and disclosed, and, if  
12 relevant, the timing of such fees and charges.

13 (2) Whether the product or service provided by the licensee or provisional  
14 registrant is covered by a form of insurance or otherwise guaranteed against loss by an agency of  
15 the United States, including the Federal Deposit insurance Corporation or the Securities Investor  
16 Protection Corporation, up to the full equivalent in United States dollars of the virtual currency  
17 placed under the custody or control of or purchased from the licensee on the date of the  
18 placement or purchase or by private insurance against theft or loss, including cyber theft or theft  
19 by other means.

20 (3) A notice that transfer of virtual currency or digital units is irrevocable and any  
21 exception to the irrevocability of transfer.

22 (4) A notice describing the licensee's liability for unauthorized, mistaken, or  
23 accidental transfers and, for the purposes of enabling users to obtain relief, describing the user's



responsibility for providing notice to the licensee of transfer together with a description of the basis for any recovery by the user from the licensee and of general error-resolution rights applicable to any transaction.

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

(6) Whether the user has a right to stop a pre-authorized transfer of virtual currency transfer and the procedure to initiate a stop-payment order or to revoke the authorization for subsequent transfers.

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

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

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

(c) At the conclusion of a virtual currency or digital unit transfer or transaction involving a resident of this state or a person located in this state, the licensee or provisional registrant shall furnish to the user a confirmation in a record that contains:

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

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

(3) The fee charged to the user, including any charge for conversion of virtual

1 currency to another virtual currency or to money.

2 A licensee or provisional registrant may elect to furnish a single, daily confirmation for all  
3 transactions on that day in lieu of a per-transaction confirmation if the licensee or provisional  
4 registrant discloses its decision to furnish a daily confirmation to the user in the initial disclosures  
5 provided under this section.

6 **SECTION 502. USER PROTECTION POLICIES AND PROCEDURES.**

7 (a) A licensee and provisional registrant shall establish and maintain user protection  
8 policies and procedures in a record available to users and the department] and shall implement  
9 the user protection and disclosure requirements of Section 501. The policies and procedures  
10 required by this section shall include:

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

14 (2) procedures for resolving disputes between the licensee and users;

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

16 and

17 (4) procedures for users to report unauthorized, mistaken, or accidental transfers  
18 or transactions.

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

23 (c) A licensee and a provisional registrant shall establish and maintain policies and

1 procedures to resolve complaints in a fair and timely manner and shall provide a notice of  
2 resolution and the reasons for it to the complainant.

3 (d) A licensee and a provisional registrant shall make policies and procedures under  
4 subsection (c) available in a clear and conspicuous manner separately from other disclosures  
5 made to users and in the medium through which the user contacted the licensee or provisional  
6 registrant. At a minimum, these disclosures shall include:

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

10 (2) a statement that users may bring complaints to the attention of the department;

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

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

14 (e) For [five] years from the date of the resolution of a complaint, a licensee shall retain a  
15 record of the complaint, resolution of the complaint, and notice to the user regarding the  
16 resolution of the complaint. For three years from the date of resolution of a complaint, a  
17 provisional registrant shall retain a record of the complaint, resolution of the complaint, and  
18 notice to the user regarding the resolution of the complaint.

19 (f) A licensee and a provisional registrants shall maintain records so that user's virtual  
20 currency or virtual currency credentials are separately identifiable from the virtual currency or  
21 credentials of the licensee or provisional registrant.

22 **SECTION 503. VIRTUAL CURRENCY IN CUSTODY OR CONTROL OF**  
23 **LICENSEE AND PROVISIONAL REGISTRANT.** Except as otherwise provided in this

1 [act], an interest in virtual currency in the custody or control of a licensee or provisional registrant  
2 on behalf of a user:

3 (1) is held for the entitlement of the user;

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

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

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

7 This provision was recommended by a member of the Drafting Committee and was  
8 closely modeled after U.C.C. §8-503. Unlike demand deposits, the virtual currency in the  
9 custody or control on behalf of users is not the property of the licensee or provisional registrant.  
10 The proposed treatment of virtual currency in the custody or control of the entity subject to this  
11 act should allow some reduction in the net worth requirements for those entities under this act. A  
12 separate rationale for this treatment of the virtual currency relates to the declarations by agencies  
13 of the United States Government, and some judges, that virtual currency is “property” and not  
14 “currency.”  
15

16 In the most recent round of comments, one Observer suggested the addition of a provision  
17 parallel to U.C.C. § 8-511, which deals with priority disputes between the owner of the virtual  
18 currency and the licensee’s creditors. This Draft does not include a provision parallel to U.C.C.  
19 § 8-511 because Section 503 makes it clear that virtual currency held in the custody or control of  
20 the licensee or provisional resident is not subject to the claims of the creditors of the licensee or  
21 provisional registrant. Because a licensee has no title to the virtual currency in their custody or  
22 control, purchasers, secured parties, and lienors can take nothing and, accordingly, must take  
23 steps to protect themselves with guarantees, warranties and the like.  
24

#### 25 **[ARTICLE] 6**

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

#### 27 **SECTION 601. MANDATED COMPLIANCE PROGRAMS AND POLICIES** 28 **AND MONITORING.**

29 (a) A licensee and a provisional registrant shall create and maintain at the times,  
30 respectively, before the issuance of a license or the filing of the registration, the following  
31 programs, policies, and monitoring procedures: a cybersecurity program, a business continuity  
32 program, a disaster recovery program, an anti-fraud program as required by Section 703, and an

1 anti-money laundering and prevention of terrorist activity funding program, and shall maintain  
2 records containing each program, policy, and monitoring procedures at all times.

3 (b) Each program, policy, or procedure under subsection (a)(2) must be designed to be  
4 adequate for the licensee's or provisional registrant's contemplated virtual currency business  
5 activity with residents of this state, considering all the circumstances of the participants, including  
6 users, that may be involved and the safe operation of the businesses involved. Each program,  
7 policy, or procedure must be compatible with other programs, policies, and procedures and not  
8 conflict with regulations applicable to the licensee or provisional registrant under other applicable  
9 law. A program, policy, or procedure, if adequate, may be a program, policy, or procedure  
10 already in existence at the licensee's or provisional registrant's business, whether adopted by the  
11 licensee or provisional registrant on its own or under another law.

12 (c) After the programs, policies, and procedures required by subsection (a)(2) are created  
13 and approved by the appropriate authority and officers of the licensee or provisional registrant, a  
14 program director with adequate authority and experience must be employed to monitor each  
15 program, publicize it as appropriate, recommend changes as desirable, and enforce it.

16 (d) A licensee or provisional registrant may:  
17 (1) request advice as to compliance with this section;  
18 (2) acquire advice from appropriate other sources; and  
19 (3) with the department's approval, outsource, except for enforcement, the  
20 functions in subsection (c).

21 (e) The fact that a particular program, policy, or procedure fails in a given instance or  
22 instances to meet its goals is not a ground for liability if the program, policy, or procedure was  
23 properly created and operated. Repeated failures are evidence of a failure to monitor operations

properly.

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

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

(1) this [act]; and

(2) another state law if:

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

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

(b) A policy under subsection (a) must be compatible and not conflict with requirements applicable to the licensee or provisional registrant under other applicable state or federal law. The policy, if adequate, may be a policy in existence at the licensee's or provisional registrant's business, whether adopted by the licensee or provisional registrant on its own or under other law.

(c) A licensee or provisional registrant may:

(1) request advice as to compliance with this section;

(2) acquire advice from appropriate other sources; and

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

(d) After the policy in subsection (a) is created and approved by the directors of the licensee, a policy director, who also may be the program director under Section 801, with adequate authority and experience shall be employed to monitor the policy, publicize it as

appropriate, recommend changes as desirable, and enforce it.

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

**SECTION 603. POLICIES AND PROCEDURES TO DETECT AND DETER FRAUD.** Each licensee's or provisional registrant's policies for detecting and deterring fraud, at a minimum, must include:

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

(2) procedures and controls to protect against other identified material risks; and

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

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

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

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

(2) Procedures and controls to ensure that, to the extent mandated by federal law or guidance published by federal agencies responsible for enforcing such law, all reports specified by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 [as amended], or 31 C.F.R. Part X [as

1 amended}, and any other federal or state laws pertaining to deterrence or detection of money  
2 laundering or terrorist financing are filed on a timely basis.

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

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

7 The substance of Section 604, added to article 7 in this Annual Meeting Draft, was  
8 derived from Article 6 of the previous Draft. The previous requirement to file all reports required  
9 by federal law or regulations with the Attorney General of the state for anti-money- laundering or  
10 prevention-of-terrorist-financing purposes was deleted in favor of a standard that requires  
11 duplicate report filing only when the licensee or provisional registrant is required to file  
12 duplicates after a specific regulation or order mandates the duplicate filing. The goal is to require  
13 full compliance with these important requirements without adding to the compliance burdens of  
14 licensees and provisional registrants.

### 15 **[ARTICLE] 7**

## 16 **MISCELLANEOUS PROVISIONS**

17 **SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
18 applying and construing this [act], consideration shall be given to the need to promote uniformity  
19 of the law with respect to its subject matter among the [jurisdictions] that enact it.

20 **SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
21 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the  
22 Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001, et seq.)  
23 [as amended] but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.  
24 Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b)  
25 of that act (15 U.S.C. Section 103(b)) [as amended].

### 26 **SECTION 703. SAVING AND TRANSITIONAL PROVISIONS.**

27 (a) A license issued under [name of state's existing Money Services Act or Money



Transmitter Act] that is in effect immediately before the effective date of this [act] remains in effect as a license for its original purposes for its original duration unless revoked or suspended by the department. A licensee under [name of state's existing Money Services or Money Transmitter Act] that does not intend to engage in virtual currency business activity under this [act] is not required to inform the department of its intention. The department may deny a license under this [act] to conduct virtual currency business activity if it finds that the licensee cannot meet the requirements of this [act] but may not use the denial as grounds for suspension or revocation of a license granted under the [Money Services Act or Money Transmitter Act] unless the grounds independently provide a basis for action against that license. If the department denies a license, it must notify a licensee within 30 business days of the department's receipt of the licensee's notice of intent to engage in virtual currency business activity. The licensee is entitled to appeal a denial to a court of appropriate jurisdiction within 60 calendar days after receipt of the notice of denial.

(b) This [act] applies to virtual currency business activity on or after the effective date of the [act]. A person engaged in virtual currency business activity after the effective date of this [act] that does not hold a license issued under this [act], that is not is not exempt from this [act] under Section 104], and that has not applied for a license or filed a provisional registration under this [act], including a person that has obtained a license under the [Money Services Act or Money Transmitter Act] [and a person that holds a charter as a trust company from this state] is deemed to be conducting unlicensed virtual currency business activity in violation of this [act].

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

If the jurisdiction enacting this act allows chartered trust companies or limited purpose trust companies to engage in activities that would be governed by this act, a separate savings or transitional subsection should be added to this [article]. Such a new subsection should specify any limitations on the powers of the trust company or limited purpose trust company as well as

1 its preference on reciprocal licensing of trust companies or limited purpose trust companies, or of  
2 recognizing cross-border activities of chartered trust companies or limited purpose trust  
3 companies not domiciled in this jurisdiction.  
4

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

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

10 (1) . . . .

11 (2) . . . .

12 (3) . . . .

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