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From: Peter Van Valkenburgh, Coin Center

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To: Sarah Jane Hughes, Members, and Observers; ULC Regulation of Virtual Currency Businesses Act Committee.

This letter offers Coin Center’s perspective and suggested language regarding three items that were not finalized in the recent meeting: (1) the choice of the term “control,” (2) a revised personal use exemption, and (3) an exclusion from the licensing requirement for licensed money transmitters. None of our suggestions offer substantive changes to the policy consensus we perceived at the recent meeting. Instead we merely suggest optimal means to obtain the desired policies in drafting.

What to call “control” if not “control”

As discussed in the recent meeting, the term “control” might be confusing because it relates both to control over the business as well as control of virtual currency. It was suggested that the term control be replaced with the term “custody” (to be defined identically to control in the current draft) because the term custody was no longer necessary given the incorporation of Article 8 provisions. We disagree with this choice and offer alternatives.

A plain language understanding of “custody” is protective care or guardianship over someone or something. It is a term with legal and social connotations rather than a mere physical or actual state of facts. In other words, one assumes custody over something by manifesting an intent to care for that thing and, generally, by receiving acknowledgement or recognition of that care by third parties.

Control, on the other hand, describes an objective factual state. This factual state is what we wish to describe in our definition. Some people can spend an amount of virtual currency while others cannot, all irrespective of any subjective, social, or legal opinion from third parties. Using the term custody confounds that interpretation.

To avoid confusion we propose defining the term: “control of virtual currency” rather than merely defining “control.” The definition would be as follows:

“Control of virtual currency” means possession of sufficient virtual currency credentials or authority on a virtual currency network to execute unilaterally or prevent indefinitely virtual currency transactions.

Then the regulated activities would be defined as follows:

(7) “Exchange” means to assume control of virtual currency from or on behalf of a resident, at least momentarily, in order to sell, trade, or convert:

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

or

(B) legal tender for one or more forms of virtual currency.

(20) “Storage” means maintaining control of virtual currency on behalf of a resident.”

(21) “Transfer” means to assume control of virtual currency from or on behalf of a resident and

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

(B) move the virtual currency from one account of a resident to another account of the same resident; or

(C) relinquish control of virtual currency to another resident.

Alternatively, the commission could define and use the term “power over virtual currency,” substituting that phrase for “control of virtual currency” above.

Revised and Unified Personal Use Exemption

As discussed in the recent meeting, we strongly agree with the substantive policy goal behind the exemptions at §103(5), (6), (10)(b), and (10)(c). Individuals should only be required to seek licenses when dealing with another person’s virtual currency and never when dealing merely with their own virtual currency (regardless of whether they obtained it via mining, investing, in return for the sale of a good or service, etc.). We believe that these four separate exemptions could be simplified into a single exemption to provide clarity with regard to this essential point. Our suggestion is as follows, §103 should include one passage (rather than four) which exempts:

(#) a person that mines, manufactures, buys, sells, exchanges, or otherwise obtains or relinquishes control of virtual currency solely for personal purposes if the person does not engage in any virtual currency business activity on another person’s behalf. Personal purposes include buying or selling virtual currency as an investment,

researching virtual currency or related technologies, and obtaining virtual currency as payment for the purchase or sale of goods or services.

Exclusion from licensure for licensed money transmitters

As discussed in the recent meeting, there is consensus that licensed money transmitters should not need to obtain a separate license under this act if they are both (1) authorized by the superintendent (or otherwise-titled head regulator) to engage in VCBA *and* (2) comply with the subsections of this act that differ substantially from money transmission requirements. We believe those differing sections are, in total, the disclosure requirements and UCC Article 8 requirements at Article 5, and the permissible investment requirements at Section 210.

Accordingly, section 201 should include the following addition, bolded and in italics:

SECTION 201. LICENSE. A person may not engage in virtual currency business activity, or 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 to conduct virtual currency business activity by a state with which this state has a reciprocity agreement;

(3) is a licensed money transmitter under [state's money transmission act], has been authorized by the [superintendent] to engage in virtual currency business activity, and complies with all material provisions of [Section] 210 and [Article] 5 of this Act.

~~(3)~~ (4) is a provisional registrant operating in compliance with Section 211 or has been operating under Section 211 and has pending an application to be licensed; or

~~(4)~~ (5) is exempt from this [act] under Section 103

Again, while we might reasonably expect state regulators who enforce both existing MTL law as well the RVCBA to consolidate their licensing and examination of exchanges into a single proceeding that results in two licenses, but this outcome should not be left to chance and regulatory discretion alone. The RVCBA should include the exclusion we've offered above.

Thank you for your time and please always feel free to email me at peter@coincenter.org if you have any questions.

Sincerely,

Peter Van Valkenburgh

Director of Research