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Mr. Fred Miller, Chair
Prof. Sarah Jane Hughes, Reporter
Members, ABA and ALI Advisors and Observers
Drafting Committee for the Uniform Regulation of Virtual Currency Businesses Act
Uniform Law Commission

Re: Comments on the April 18, 2016 Draft of the Regulation of Virtual Currency Businesses Act and Related Issues Raised by the Reporter

Dear ULC Drafting Committee:

After having reviewed and discussed the April 18, 2016 draft of the Uniform Regulation of Virtual Currency Businesses Act ("URVCBA") with the full membership of the Chamber of Digital Commerce ("the Chamber"), I write on behalf of the Chamber to provide feedback on the draft from our viewpoint as an industry association for companies involved in digital assets and blockchain initiatives. Overall, we are quite impressed with the work of the committee in drafting a thoughtful regulatory approach to this emerging technology. The committee's commitment to understanding the technology underlying decentralized virtual currencies and considering the needs of industry actors is evident in many of the revisions contained in the April 18, 2016 draft. We appreciate the committee's hard work and commitment to excellence.

After first setting out the Chamber's perspective on state-by-state regulation in the United States, the comments below touch on the following aspects of the current URVCBA draft: the "on-ramp" provision and certain ambiguity in the application of the act's definitions of non-currency uses of virtual currency into regulation. We look forward to further discussing the issues presented below with the Committee as time allows, and would be happy to discuss further at your convenience.

A. Brief Introduction to the Chamber of Digital Commerce

The Chamber is the world's largest trade association representing the digital asset and blockchain industry. Our mission is to promote the acceptance and use of digital assets and blockchain-based technologies. Through education, advocacy, and working closely with policymakers, regulatory agencies and industry, our goal is to develop a pro-growth legal environment that fosters innovation, jobs and investment.

Our standing working groups and initiatives include:

- **Best Practices Working Group**, which is developing best practices and industry standards in areas including, consumer protection, BSA/AML compliance, data security and privacy, and others;
- **State Working Group**, advocates for both consistency and efficiency in the creation and application of new state and local laws and regulations;
- **Global Blockchain Forum**, an international initiative amongst the world's leading trade associations representing the digital asset and blockchain industries. Its mission is to develop industry best practices and help shape global regulatory interoperability;
- **Blockchain Alliance**, a public-private platform between the industry and law enforcement in order to help combat criminal activity on the blockchain; and
- **Digital Assets Accounting Consortium**, which is developing accounting standards for digital assets.

The Chamber's diverse membership represents the world's leading innovators, operators, and investors in the digital asset and blockchain technology ecosystem, including start-ups, software companies, global IT consultancies, financial institutions, and investment firms.

B. The Difficulty With a State-by-State Licensing Regime

The Chamber would like to begin these comments by noting that, in general, the Chamber and its membership views the current state-by-state regulatory approach in the United States as unnecessarily burdensome. To date, the state-by-state approach has stifled innovation. Although the state-by-state approach imposes a variety of challenges to industry actors, some of the key obstacles presented now include: (1) the fact that obtaining a license in one state does not give permission to operate in other states, and (2) the fact that the process of obtaining licenses in each state is an extremely costly and burdensome process. To elaborate, Chamber members who are pursuing licenses on the state level budget an estimated $2-5 million per year in compliance costs just to meet states' requirements. These amounts far exceed what many start-ups can afford. In comparison, we understand that Bitstamp spent less than $1 million over 2 years obtaining its Payment Instrument license in the EU.

In addition to the monetary cost of obtaining licenses, the laws of each state, as applied to the digital asset and blockchain industry, are not always clear in scope – leaving industry actors in a difficult position.

Today, many industry actors are faced with this dilemma: either they begin operating without licenses and risk enforcement actions at the state or federal level under ambiguous statutes (none of which contemplated this technology at the time they were drafted) because it is a federal crime to be engaged in business in a state without a license if that state requires a license, or they deny services to consumers and the markets while spending extraordinary amounts of money trying to obtain the necessary licenses (or exemptions) across the states – further holding back business developments in the United States. In many cases these business face the very real risk of simply going out of business because they cannot operate in enough markets at the outset to survive.

This process is a huge (and unnecessary) barrier to entry and has currently proven insurmountable, as not one digital currency company has successfully obtained licenses (or exemptions) in all 50 states. Ultimately, the United States market has suffered, lagging behind foreign markets in the pace of innovation in the digital asset and blockchain industry. The European Union, in particular, is advancing beyond the United States in terms of consumer access to these ground breaking financial technologies — with Bitstamp's recent news regarding their Payment Instrument license in Europe — where they applied for a license in Luxembourg and were then allowed to passport into all 28 European countries. The fact that European start-ups can obtain the necessary licenses to operate faster than American start-ups is troubling, especially in light of the fact that over seventy-five percent (75%) of investment funds into the blockchain industry come from American investors.

With this state of the industry and the role that the state-by-state licensing regimes play in mind, the Chamber's comments below seek to highlight the importance of certain aspects of the April 18, 2016 draft that may alleviate the burden that the state-by-state regulatory approach in the United States has imposed to date. In particular, and as further detailed below, the Chamber (1) supports the Committee's inclusion of an on-ramp provision, (2) urges the committee not to require licensure under both the URVCBA and any traditional money transmitter statute that a state may already have in place, and (3) urges the Committee to further ensure that certain definitions and scope provisions clearly exempt nonfinancial uses of virtual currency, and the technology underlying virtual currencies, from regulation.

C. Aspects of the April 18, 2016 Draft the Chamber Views as Important for Lessening the Impact of a State-by-State Licensing Approach

1. The "On-Ramp" Provision

In light of the impact of a state-by-state approach to regulation in the United States, the Chamber considers inclusion of a provisional license feature integral to encouraging industry innovation. The Chamber applauds the Committee's inclusion of an "on-ramp" provision in the URVCBA. However, we note that the Committee has reserved its decision about whether to require dual licensure for certain or all-virtual currency businesses that would be covered by the URVCBA. We encourage the committee not to require dual licensure for such entities. If an entity is required to be licensed by the URVCBA adopted by a state, it should not also need a money transmission license under the Uniform Money Services Act ("**UMSA**") or other state money transmitter statute. Dual licensure requirements would undermine many of the advances made in this draft toward the goal of encouraging industry innovation, including the inclusion of an "on-ramp" provision in the first place. If dual licensure is required, the "on-ramp" provision will do very little to alleviate the burden, cost, and barriers to innovation discussed above. Furthermore, the Chamber is concerned that industry actors licensed under the URVCPA without a provision making it clear that such licensees, whether full or provisional, are exempt from the requirements of the state's broader money transmitting business regime, will face significant risk of enforcement under 18 U.S.C. § 1960. We therefore encourage the Committee to include such an

exception for all licensees, full and provisional, and not require dual licensure at any stage, in order to eliminate that risk.

2. Excluding the Underlying Technology from Regulations

The Chamber concurs with other commenters that the April 18, 2016 definitions are significantly improved over the prior draft. That said, the April 18, 2016 draft URVCBA contains several definitions worth further discussion and refinement. First, and most pressingly, the definitions in Section 103(25) and 103(27) may capture digital assets not used as currency (as opposed to the Blockchain or other distributed ledger underlying the currency). We raise this issue for the Committee's consideration because the Committee has clearly stated in the commentary to the URVCBA that it does not intend to regulate non-currency uses of the technology, but the definitions do not clearly agree with this statement. While the definitions clearly exclude the networks underlying virtual currencies, it is not clear that when "currencies" such as bitcoin are repurposed to enable other use cases (decentralized notarization, decentralized intellectual property ledgers, etc.), that such use cases will not be covered by the URVCBA.

As an example, the company GoCoin has introduced a new blockchain-based product called GoPoints. These are reward points used within the "GoPayWin" merchant network that are tracked on a public blockchain to ensure authenticity. When the customer of a GoPayWin merchant successfully completes a checkout process, the customer is awarded GoPoints, which can be redeemed for discounts toward future purchases at any other GoPayWin merchant. Under the current URVCBA draft, GoPoints would fit within the definition of virtual currency, even though they are essentially blockchain-based tokens that should be outside the URVCBA's regulatory purview. Although this particular product could be excluded (as we believe it should) by revising the exclusion for rewards programs in Section 103(25)(b),[1] it serves as a cautionary illustration of how the current, broadly-phrased definitions of "virtual currency" and "virtual currency business activities" may unintentionally sweep in future products and services that should not be regulated. Once the URVCBA is finalized, it will not be as easy to expand exclusions on an *ad hoc* basis to carve out new products or services that should not be regulated but appear to fall within the scope of the very broad definitions in the statute.

The simplest way to resolve this issue may be to create an additional carve out in Section 104(7) for companies that use virtual currencies solely to facilitate the provision of services unrelated to the exchange, transfer, or storage of virtual currencies on behalf of others. Such a carve out would mirror the exemption from the regulations enforced by the Financial Crimes Enforcement Network ("**FinCEN**") for money transmission integral to the sale of goods and services other than money transmission. In so doing, the URVCBA would promote uniformity in U.S. law to

[1] Specifically, we suggest revising Section 103(25)(b) to refer to "transactions involving defined merchants" rather than "transactions involving a defined merchant." This would exclude network-based affinity programs such as GoPoints in addition to merchant-specific affinity programs. In our view, the policy rationale for excluding merchant-specific affinity programs (i.e., that the stored value is redeemable exclusively within the program) applies with equal force to network-based affinity programs.

an even further extent by harmonizing a small portion of the state and federal regulatory approach to the industry.

D. Conclusion

We thank the Committee for the opportunity to highlight further possibilities for refining the URVCBA. The Committee has been charged with the difficult task of creating a model law that both protects consumers and promotes innovation. We thank the Committee for its diligent, thorough and thoughtful work on this legislation. Should you have any further questions about these or other topics, please do not hesitate to contact me at Perianne@digitalchamber.org.

Respectfully Submitted,

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Chamber of Digital Commerce