



New York Bankers Association

99 Park Avenue

New York, NY 10016-1502



October 21, 2014

Mr. Dana V. Syracuse
Office of the General Counsel
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Michael P. Smith
President and CEO

Dear Mr. Syracuse:

The New York Bankers Association (NYBA) submits this comment letter in response to the Department of Financial Services' (DFS) proposal regarding bitlicensing for virtual currencies (the "Bitlicense Regulations"). NYBA is comprised of 150 community, regional and money-center commercial banks and thrift institutions operating in New York State, with over 200,000 New York employees.

NYBA appreciates the leadership of DFS in taking on this important issue and is grateful for the opportunity to provide comments on the proposal, which contain key consumer protection, anti-money laundering and cyber security rules for this emerging industry. Given the significance of this new regulatory scheme, NYBA members have carefully considered the proposal and have two primary concerns: (1) the lack of an exemption from the Bitlicense Regulations for regulated financial institutions and (2) the need to further define virtual currency to ensure that the regulations do not inadvertently capture credit card rewards programs and other similar rewards programs.

1. Exemption of Regulated Financial Institutions

The BitLicense Regulations should exempt regulated financial institutions from this new regulatory regime. Though we understand and applaud the Department's desire to protect consumers, such financial institutions are highly regulated for the very same purposes through oversight by many federal and state agencies, including, among others, the Treasury Department, the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the Office of Foreign Assets Control (OFAC), and the Federal Deposit Insurance Corporation (FDIC), as well as DFS. Failure to comply with applicable laws and regulations can result in serious consequences to the integrity of the financial system and the penalties for banks which are deemed non-compliant can be staggering as well. As such, these regulated financial institutions are already subject to safeguards that are equivalent to those proposed in the Bitlicense Regulations, including safety and soundness, conduct, Anti-Money Laundering (AML) and Bank Secrecy Act (BSA), capital and liquidity and consumer protection requirements compliance at both the Federal and State levels.

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Accordingly, we ask that section 200.3(c) be amended to include a new paragraph (3) as follows:

Section 200.3(3) -- Institutions chartered by, or whose primary federal regulator is, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, and financial institutions who are chartered by the Department.

2. Definition of Virtual Currency

We are concerned that the broad definition of "virtual currency" in the BitLicense Regulations will inadvertently cover certain unintended products and services, including some credit card rewards programs that should be exempted. In this regard, we request a clarification in Section 200.2(m) that closed loop digital payment methods be excluded from the virtual currency definition. These should include rewards currencies/points that can be issued only in the context of a customer affinity or rewards program, including those offered to customers of regulated financial institutions, as these products already are highly regulated and offer substantial consumer protections.

Similarly, we believe that there should be an exclusion for prepaid access products and other units of digitally stored value that can be used only for purchases of goods or services at a specific merchant or defined group of affiliated merchants (i.e., electronic gift cards or digitally stored store credit provided after a return by a consumer), whether in fiat currency or an alternative currency. In this regard, we believe that Section 200.2(m) should make clear that fiat currency does not constitute Virtual Currency, even when digitally stored or represented as once again, these types of products are already subject to substantial regulation and consumer protections.

We appreciate the opportunity to comment on this important and innovative proposal. Thank you.

Sincerely,



Michael P. Smith