New York State Department of Financial Services
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Re: Proposed Coin Listing Policy Framework

January 27, 2019

Thank you for your time and consideration in reviewing my comments on this proposal. The beliefs expressed here are solely my individual views. They in no shape or form represent the opinions or beliefs of our clients, potential clients, and other third parties that work with Dunsmoor Law.

New York State Department of Financial Services (DFS) has played a critical role in the development and, lack of development, of digital asset technology including Initial Coin Offerings (ICOs), Digital Securities Offerings (DSOs), and related asset cryptocurrency classes. These decisions, for better or worse, have put this state, as well as the startups and enterprise companies that work and develop within this state, at a significant disadvantage. I hope this is the beginning of a new, more engaging model to remedy the mistakes of the past and allow for this developing technology and the associated asset classes to flourish. Blockchain needs New York and New York needs blockchain.

These comments are designed to facilitate an ongoing discussion into the decision to make these changes. They are not, in and of themselves, conclusive and should not be taken as such. To make review of the subject matter easier, the proposed policy shall remain in italics with my comments below.

I. Governance

Governance is the most critical part of the blockchain development experience but, with various expansions into decentralized financial (DeFi) products, these rules need to take such developments into consideration especially regarding governance.

The board of directors of the VC licensee or an equivalent governing authority of the licensee approves the company coin-listing policy.
This policy concern should allow for a decentralized organization to rule in favor of listing a product. There needs to be more clarity into what an "equivalent governing authority" is. If that

is DFS, then this updated policy is useless and puts the State in a precarious position of determining which products to approve, again.

The board of directors of the VC licensee or an equivalent governing authority of the licensee reviews and independently makes decisions to approve or disapprove each new coin.
The term "coin" should be removed from all contexts. It confuses the issue and the industry has moved beyond that. The term "digital asset" would be more appropriate.

Any and all conflicts of interest in connection with any review and decision-making process with respect to coins are considered and addressed to ensure that those involved in the review and decision-making process regarding a particular coin have no conflicts of interest.
As stated above, for DeFi products this is difficult if not impossible. The use of conflicts of interest checks as a metric should be utilized as reasonably possible and a vague absolute of "no" conflicts of interest does not make sense—especially considering the products listed may be derivates of Ethereum.

There are minutes of the board of directors or equivalent governing authority of the licensee, including the names of the participants and all documents reviewed by the participants in connection with each approval or disapproval of coins, such as reviews and sign offs by all stakeholders, such as the legal, compliance, cybersecurity, and operations teams of the licensee, including an assessment of all associated risks;
Yes, this is ideal for enforcement but not practicality, yet. If there is accountability for the above listed stakeholders—legal, compliance, cybersecurity and operations—then what happens when one member fails to conform? Does legal or compliance have the right shut it all down? It should. If DFS would like to hold the above members responsible for the listing of an asset then it needs legal/compliance, cybersecurity and the board of directors/governing body to approve. Presumably operations will have wanted to list the asset months (if not years) ago.

The licensee keeps records of the application of the company coin-listing policy to each new coin, including minutes of the board of directors or the equivalent governing authority and all related documentation, such as the reviews and sign offs of all stakeholders, readily available for review by DFS.
For a seven-year period.

II. Risk

Before adopting or listing any new coin, a VC licensee should conduct and document a full risk assessment of such coin in a way that is entirely free of conflicts of interest, including the following risks:
As mentioned above, entirely free of conflicts of interest may be utterly impossible and prevent any derivative of a blockchain from being listed if the exchange or VC has any interest whatsoever in that asset. That being said, the use and listing of that asset if there is said interest should be permitted to other exchanges or VCs from utilizing the listing. There should be no monopolies in this industry.

Risks associated with the creation or issuance, governance, usage or design of any new coin through due diligence to ensure that any new coin is created or issued by a legitimate and reputable entity or entities for lawful and legitimate purposes and not for evading compliance with applicable laws and regulations, such as money laundering or other illegal activities, and that the process is subject to a strong governance and control framework;
Agreed.

Operational risks associated with any new coin, including the resulting demands on the licensee's resources, infrastructure, and personnel, as well as operational capacity for continued customer on-boarding and customer support based on reasonable forecasts considering the overall operations of the licensee;
Agreed with the caveat of a reasonable person standard.

Risks associated with any technology or systems enhancements or modification requirements necessary to ensure timely adoption or listing of any new coin;
Agreed.

Cyber security risk, or risks relating to theft;
All listed assets must have undergone a cyber security audit by a reputable firm.

Market risks, including concentration of coin holdings or control by a small number of individuals or entities, price manipulation, and fraud;
Agreed.

Risks relating to code defects and breaches and other threats concerning any new coin and its supporting blockchain, practices and protocols that apply to them, including an escalation process to report such defects, breaches and threats to the senior management and the board of directors or an equivalent governing authority for further action;
Agreed.

Risks relating to potential non-compliance with the requirements of the VC licensee's supervisory agreement with DFS as a result of the adoption of new coins, including the capital requirement of the licensee in accordance with 23 NYCRR 200.8;
Agreed.

Legal risks associated with any new coin, including any pending or potential regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the new coin, such as actions relating to coins that may facilitate the obfuscation or concealment of the identity of a customer or counterparty, or coins used to circumvent laws and regulations;
This provision needs to include any and all jurisdictions in which the asset is listed.

Regulatory risks, including risks related to compliance with all applicable laws, rules and regulatory guidances, such as guidances issued by the U.S. Securities and Exchange

Commission, the U.S. Commodity Futures Trading Commission, and the U.S. Department of the Treasury's Financial Crimes Enforcement Network;
These entities are at odds with several different positions within this industry. Legal and compliance should note this when considering the asset.

VC licensees should ensure that an independent audit review of all associated risks relating to a new coin is conducted to ensure that all risks have been assessed and addressed.
What type of independent audit? If cyber security, absolutely. If legal and compliance, absolutely. This audit needs to be defined.

III. Monitoring

Monitoring is arguably more important than listing for just like in the traditional capital markets, the fraud and/or misrepresentation is generally discovered years after the product has been properly listed.

After a new coin is adopted or listed, the VC licensee should have policies and procedures in place to monitor the newly adopted or listed coin, to ensure that the licensee's continued adoption or listing of the coin remains prudent. This includes:
Agreed.

Periodic re-evaluation of the coin, including whether material changes have occurred, with a frequency and level of scrutiny tailored to the risk level of the particular coin;
Yearly re-evaluation of the asset unless material evidence has been discovered that warrants immediate action under these provisions.

Adoption, documentation, and implementation of control measures to manage risks associated with the coin; and
Agreed but "risks" needs further refinement.

The existence of a process for de-listing the coin, with respect to some or all Virtual Currency Business Activities of the licensee, including notice to affected customers and counterparts in the case of such de-listing.
Agreed and the appropriate news release accompany the delisting and notification to DFS of such delisting.

Lastly, Dunsmoor Law understands this model framework is not intended to be exhaustive, may be updated from time to time in response to new information, evolving markets, and additional experience and DFS retains the right to object to the adoption or listing of any self-certified coin before or after the listing goes into effect, and to require that they be delisted. The role and responsibility of DFS will only increase with time as these digital assets grow in popularity and the use of them become more ubiquitous. This means that billions if not trillions of dollars and thousands of jobs are on the line for the people in New York. That message cannot be understated. Countries around the world are rewriting their laws, as are other states in this nation, to formulate an appropriate response to this revolution. We humbly request that DFS stay vigilant and ask the responsible fiduciaries for comments as the industry continues to grow and mature.

Thank you for your time and consideration. Your work is critical to the infrastructure of blockchain.

Sincerely,

[redacted]