

**Tagomi Trading LLC**  
201 Montgomery Street, 2nd Floor  
Jersey City, NJ 07302  
[legal@tagomi.com](mailto:legal@tagomi.com)

**New York State Department of Financial Services**  
1 State Street  
New York, NY 10004-1511  
[Innovation@dfs.ny.gov](mailto:Innovation@dfs.ny.gov)

**January 27, 2020**

***Re: Proposed Coin Listing Policy Framework***

To the New York State Department of Financial Services:

Tagomi Trading LLC (“Tagomi”) wishes to comment on the New York State Department of Financial Services recently issued *Proposed Guidance Regarding Adoption or Listing of Virtual Currencies* (Guidance Date: 12/11/2019). As background, Tagomi operates a virtual currency brokerage for sophisticated investors and is licensed with the DFS as a Virtual Currency Business and Money Transmitter (in addition, Tagomi is a licensed money transmitter in fifteen additional states and is registered with FinCEN as a money services business).

**Summary of Tagomi’s Support**

In its proposal, the DFS put forward two options for enhancing coin approvals for virtual currency licensees (“Licensees”):

- (1) A proposed DFS web-page containing coins permitted for the Virtual Currency Business Activities of Licensees (“DFS Approved Coins List”); and
- (2) The option for Licensees to self-certify the listing or adopting of new coins using their company coin-listing policy, based on the DFS’s proposed model framework (“Self-Certification Framework” and, collectively with DFS Approved Coins List, the “Proposed Options”).

We applaud the DFS for seeking to interact with the virtual currency business community as it considers implementing the Proposed Options. In particular, Tagomi supports the Self-Certification Framework. Tagomi believes that the DFS should adopt the Self-Certification Framework rather than the DFS Approved Coins List for the reasons set forth below.

We first explain our support for the Self-Certification Framework and then discuss our preference for the Self-Certification Framework over the DFS Approved Coins List.

### **Self-Certification Framework**

We believe that the Self-Certification Framework is a more appropriate path forward for Licensees, the DFS and the virtual currency business community. First, the Licensees themselves are the most appropriate party to provide industry-specific expertise and contribute business experience in developing, evaluating and applying a coin-listing policy. Second, we preliminarily believe that the DFS's model framework lists many of the relevant factors that a company coin-listing policy should incorporate. Lastly, the Self-Certification Framework will help ensure that Licensees are not subject to undue delay in expanding their business when they have concluded to add additional coins in accordance with their policies and framework.

That said, we believe that the DFS should not require an independent audit for a company coin-listing policy. In terms of a Licensee's resources, a coin-listing policy specific-audit will add financial strain and cause an administrative burden. Moreover, these costs will not be outweighed by the incremental value of an audit. There are few, if any, auditing companies that have the capabilities or expertise to appropriately evaluate a Licensee's company coin-listing policy. As described above, no entity can replace the on-the-ground expertise of a Licensee. That is not to say that Licensees are above second-guessing. In fact, we believe that the DFS (and not an auditor) should act as the appropriate entity to adjudicate the adequacy of a company coin-listing policy, as contemplated in the proposed Self-Certification Framework.

### **DFS Approved Coins List**

A single source for permitted coins that applies evenly across all Licensees will help create a level-playing field for regulated virtual currency companies. In addition, by publicly listing the permitted coins, existing and prospective Licensees and the digital asset community as a whole (including coin issuers) will have the opportunity to engage in a dialogue with the DFS on the need, if any, for expansion of the list. Given the rapid pace of growth in the number of virtual currencies that are of interest to investors and platforms alike, the DFS will maintain a critical voice in determining the legitimacy of coins that seek to be listed.

Although we commend the DFS for attempting to create a single, public source of permitted coins, we nevertheless urge the DFS to consider not implementing the DFS Approved Coins Site List. First, we ask the DFS to consider the economic impact of placing a coin on the DFS Approved Coins Site List. The number of virtual currencies that are of interest to investors and platforms alike is in a constant state of flux. A myriad of legitimate factors can impact a coin's ascendance in volume and popularity, including the strength of the coin's development team, the

rigor of its code testing, and the viability of real-world use cases. The listing of a coin by the DFS--a prominent state regulator and, in fact, a regulator that is charged with enforcing one of the only virtual currency specific regulations in the world--may act to tip the economic balance in favor of that coin, and may open the DFS to criticism that its listing of a coin on the DFS Approved Coins Site List is tantamount to an endorsement of that coin. In an industry where the listing of coins on platform is a distinguishing advantage, a coin on the DFS Approved Coins List would be provided with a competitive boost. The DFS should strongly consider whether it is appropriate for it to play the role of potential kingmaker among cryptocurrencies.

Second, although the DFS is demonstrating a laudable intention to interact with the virtual currency community regarding the list of prospective coins, we believe that in practice the DFS will be deluged by those wishing to have the DFS expand the DFS Approved Coins Site List. Given the large number of legitimate coins that are in circulation today and will continue to be launched in the future, the DFS may be challenged in allocating the appropriate amount of attention to these lobbying efforts. If the DFS cannot dedicate adequate resources to these matters, the virtual currency community may be restrained in their ability to expand their businesses. As such, the DFS should consider whether it has adequate resources to properly weigh the facts and circumstances of each coin that is presented for addition to the DFS Approved Coins List.

Lastly, the DFS should consider the regulatory and legal ramifications of adding coins to the DFS Approved Coins List. We note that at least one of the coins contemplated for the DFS Approved Coins List--Ripple--is currently the subject of a well-publicized lawsuit regarding its status as a security under U.S. federal law. By listing--or, for that matter, not listing--a coin on the DFS Approved Coins List, the DFS may be inadvertently wading into ongoing deliberations in our judiciary and the U.S. Securities and Exchange Commission on whether particular coins are classified as securities, commodities or some other pertinent classification. The DFS may wish to exercise caution in this regard, and we ask that it consider whether it may be exceeding its jurisdiction as a state regulator by creating and publishing a DFS Approved Coins List.

### **Conclusion and Contact**

We thank the DFS for the opportunity to provide our initial views on its Proposed Options. We would welcome further discussion on the Proposed Options. Please do not hesitate to reach us at [legal@tagomi.com](mailto:legal@tagomi.com).

Very Truly Yours,

Tagomi Trading LLC