NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
NEW YORK CODES, RULES AND REGULATIONS

TITLE 23. DEPARTMENT OF FINANCIAL SERVICES
CHAPTER I. REGULATIONS OF THE SUPERINTENDENT OF FINANCIAL SERVICES
PART 200. VIRTUAL CURRENCIES

Section 200.1 Introduction
Section 200.2 Definitions
Section 200.3 License
Section 200.4 Application
Section 200.5 Application fees
Section 200.6 Action by superintendent
Section 200.7 Compliance
Section 200.8 Capital requirements
Section 200.9 Custody and protection of customer assets
Section 200.10 Material change to business
Section 200.11 Change of control; mergers and acquisitions
Section 200.12 Books and records
Section 200.13 Examinations
Section 200.14 Reports and financial disclosures
Section 200.15 Anti-money laundering program
Section 200.16 Cyber security program
Section 200.17 Business continuity and disaster recovery
Section 200.18 Advertising and marketing
Section 200.19 Consumer protection
Section 200.20 Complaints
Section 200.21 Transitional period

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
NEW YORK CODES, RULES AND REGULATIONS

TITLE 23. DEPARTMENT OF FINANCIAL SERVICES
CHAPTER I. REGULATIONS OF THE SUPERINTENDENT OF FINANCIAL SERVICES
PART 200. VIRTUAL CURRENCIES

Statutory Authority: Financial Services Law, sections 102,104, 201, 206, 301, 302, 309, and 408

Section 200.1 Introduction
This Part contains regulations relating to the conduct of business involving Virtual Currency, as defined herein, in accordance with the superintendent's powers pursuant to the above-stated

authority.

Section 200.2 Definitions

For purposes of this Part only, the following definitions shall apply:

a) *Affiliate* means any Person that directly or indirectly controls, is controlled by, or is under common control with, another Person;

b) *Control key(s)* mean (i) the unencrypted private keys or authorization codes that independently, or in combination are required to authorize the transmission of Virtual Currency, or (ii) having access to or the ability to recreate or access these unencrypted private keys or authorization codes.

a) *Control key liability means* (i) maintaining the direct or indirect control of or ability to recreate the control key(s) necessary to transmit the Virtual Currency, or (ii) having ever generated, transmitted, received, had custody of, contact with, or access to the control key(s) necessary to transmit the Virtual Currency at any time on directly or indirectly controlled systems.

c)

b)

c) (b) *Cyber Security Event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse a Licensee's electronic systems or information stored on such systems;

d) *Internal Cyber Security Event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse a Licensee's electronic systems or information stored on such systems by an employee or person with internal access to the Licensee's systems, regardless of whether the act or attempt occurred from inside or external to the Licensee's systems;

e) *External Cyber Security Event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse a Licensee's electronic systems or information stored on such systems where the act or attempt was committed by an external party without internal access to the Licensee's systems and this can be proven beyond a reasonable doubt.

(c) *Department* means the New York State Department of Financial Services;

f) (d) Fiat Currency means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law;

g) (e) *Licensee* means any Person duly licensed by the superintendent pursuant to this Part;

h) (f) *New York* means the State of New York;

i) *New York Resident* means any Person that resides, is located, has a place of business, or is

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Font: Italic

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: No bullets or numbering

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: No bullets or numbering

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Font: (Default) Times New Roman

Formatted: Font: Not Italic

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted ... [1]

Formatted ... [2]

conducting business in New York;

~~(h)~~ *Person* means an individual, partnership, corporation, association, joint stock association, trust, or other business combination or entity, however organized;

j) ~~(i)~~ *Principal Officer* means an executive officer of an entity, including, but not limited to, the chief executive, financial, operating, and compliance officers, president, general counsel, managing partner, general partner, controlling partner, and trustee, as applicable~~;~~;

k) ~~(j)~~ *Principal Stockholder* means any Person that directly or indirectly owns, controls, or holds with power to vote ten percent or more of any class of outstanding capital stock of a corporate entity or possesses the power to direct or cause the direction of the management or policies of the entity;

~~(k)~~ *Principal Beneficiary* means any Person entitled to ten percent or more of the benefits of a trust;

l)

m) ~~(l)~~ *Transmission* means the transfer, by or through a third party, of Virtual Currency from one Person to another Person, including the transfer from the account or storage repository of one Person to the account or storage repository of another Person;

n) ~~(m)~~ *Virtual Currency* means any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology. Virtual Currency shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort. Virtual Currency shall not be construed to include digital units that are used solely within online gaming platforms with no market or application outside of those gaming platforms, nor shall Virtual Currency be construed to include digital units that are used exclusively as part of a customer affinity or rewards program, and can be applied solely as payment for purchases with the issuer and/or other designated merchants, but cannot be converted into, or redeemed for, Fiat Currency;

~~(n) *Virtual Currency Business Activity* means the conduct of any one of the following types of activities involving New York or a New York Resident:~~

~~(1) receiving Virtual Currency for transmission or transmitting the same;~~

~~(2) securing, storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;~~

~~(3) buying and selling Virtual Currency as a customer business;~~

~~(4) performing retail conversion services, including the conversion or exchange of Fiat Currency or other value into Virtual Currency, the conversion or exchange of Virtual Currency into Fiat Currency or other value, or the conversion or exchange of one form of Virtual Currency into another form of Virtual Currency; or~~

~~(5) controlling, administering, or issuing a Virtual Currency.~~

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: No bullets or numbering

Formatted: Font: Italic

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Font: Italic

Formatted: Indent: Left: 2", No bullets or numbering

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Left: 0"

Commented [WEM1]: This is now redundant with p (1) and also would include mining a virtual currency or creating one on a home computer. NY residents don't need to be protected from bitcoin miners or developers who are creating new VC's.

If this here in order to prevent VC's from disintermediating underwriters issuing new securities, that should be separate and distinct from regulation that is meant to protect consumers.

Please use the alternative language found under (r) for this purpose instead, and strike (5) as it's highly deleterious to innovation, invention, or progress as written and appears designed to lock up any disruption or innovation that crypto can provide in systems of security exchange.

o) *Virtual Currency Retail or Investment Banking Activity* means the conduct of any one of the following types of activities involving New York or a New York Resident:

(1) securing, storing, holding, or maintaining custody or control of Virtual Currency on behalf of a Virtual Currency Depositor while possessing control key liability for Virtual Currency Desposits.

p) *Virtual Currency Retail or Exchange Service Activity*~~s~~ means the conduct of any of the following types of activities involving New York or a New York Resident:

(1) receiving Virtual Currency for transmission or transmitting the same;

(2) buying and selling Virtual Currency as a customer business; or

(3) performing retail conversion services, including the conversion or exchange of Fiat Currency or other value into Virtual Currency, the conversion or exchange of Virtual Currency into Fiat Currency or other value, or the conversion or exchange of one form of Virtual Currency into another form of Virtual Currency.

q) *Virtual Currency Depositor* means a Person who has transmitted Virtual currency to, or purchased Virtual Currency from an entity engaging in Virtual Currency Retail or Investment Banking Activity or Virtual Currency Wallet Hosting Activity.

Statutory Authority: Financial Services Law, sections 102, 201, 301, and 302
Section 200.3 License

(a) ~~License required~~ Virtual Currency Retail or Exchange Service License and Virtual Currency Retail or Investment Banking License. No Person shall, without an appropriate license obtained from the superintendent as provided in this Part, engage in any Virtual Currency ~~Business Activity~~ Retail or Exchange Service or Virtual Currency Retail or Investment Banking Activity.
(b) Unlicensed agents prohibited. Each Licensee is prohibited from conducting any Virtual Currency ~~Business Activity~~Retail or Exchange Service, or Retail or Investment Banking Activity through an agent or agency arrangement when the agent is not a Licensee.
(c) Exemption from licensing requirements. The following Persons are exempt from the licensing requirements otherwise applicable under this Part:
~~(1) Persons that are chartered under the New York Banking Law to conduct exchange services and are approved by the superintendent to engage in Virtual Currency Business Activity; and~~
(2) merchants and consumers that utilize Virtual Currency solely for the purchase or sale of goods or services, or to transmit Virtual Currency between consumers in amounts insufficient to define any transacting consumer as a money transmitter as defined under FinCEN guidelines.

Formatted: Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"

Formatted: Indent: Hanging: 0.25", No bullets or numbering

Formatted: Font: Font color: Auto

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: No bullets or numbering

Formatted: Font: Not Bold, Italic

Formatted: Font: Not Bold, Italic

Formatted: Default, Indent: Left: 0"

Formatted: Font: Not Italic

Formatted: Indent: Left: 0.25", No bullets or numbering

Commented [WEM2]: The requirements for those chartered under NY banking law are not designed to regulate virtual currency. Any rule or variation of an existing rule present in this document that is not in applicable banking regulation (e.g. extending data retention requirements from 5 years in BSA, 7 years in SOX to 10 years in this document for virtual currency businesses) must apply to those chartered under NY banking law. If this is not the case this document becomes anti-competitive, gives banks an unfair competitive advantage, puts NY consumers at risk, and contradicts the purpose of the NY DFS.

Statutory Authority: Financial Services Law, sections 102, 201, 301, and 302

Section 200.4 Application for Virtual Currency Retail or Exchange Service License and Virtual Currency Retail or Investment Banking License

(a) Application for a Virtual Currency Retail or Exchange Service License or Virtual Currency Retail or Investment Banking License ~~license~~ required under this Part shall be in writing, under oath, and in a form prescribed by the superintendent, and shall contain the following:

(1) the exact name of the applicant, including any doing business as (DBA) name, the form of organization, the date of organization, and the jurisdiction where organized or incorporated;

~~(2) a list of all of the applicant's Affiliates and an organization chart illustrating the relationship among the applicant and such Affiliates;~~

~~(3) a list of, and detailed biographical information for, each individual applicant and each director, Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, including such individual's name, physical and mailing addresses, and information and documentation regarding their personal history, experience, and qualification, which shall be accompanied by a form of authority, executed by such individual, to release information to the Department;~~

~~(4) a background report prepared by an independent investigatory agency acceptable to the superintendent for each individual applicant, and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable;~~

~~(5) for each individual applicant, and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, and for all individuals to be employed by the applicant: (i) a set of completed fingerprints, or a receipt indicating the vendor (which vendor must be acceptable to the superintendent) at which, and the date when, the fingerprints were taken, for submission to the State Division of Criminal Justice Services and the Federal Bureau of Investigation; (ii) if applicable, such processing fees as prescribed by the superintendent; and (iii) two portrait-style photographs of the individuals measuring not more than two inches by two inches;~~

Section 200.41 Application for Virtual Currency Retail or Investment Banking License required under this Part shall contain the following in addition to 200.4:

(2) a list of all of the applicant's Affiliates and an organization chart illustrating the relationship among the applicant and such Affiliates;

(3) a list of, and detailed biographical information for, each individual applicant and each director, Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, including such individual's name, physical and mailing addresses, and information and documentation regarding their personal history, experience, and qualification, which shall be accompanied by a form of authority, executed by such individual, to release information to the Department;

(4) a background report prepared by an independent investigatory agency acceptable to the superintendent for each individual applicant, and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable;

(5) for each individual applicant, and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, and for all individuals to be employed by

the applicant: (i) a set of completed fingerprints, or a receipt indicating the vendor (which vendor must be acceptable to the superintendent) at which, and the date when, the fingerprints were taken, for submission to the State Division of Criminal Justice Services and the Federal Bureau of Investigation; (ii) if applicable, such processing fees as prescribed by the superintendent; and (iii) two portrait-style photographs of the individuals measuring not more than two inches by two inches;

(6) an organization chart of the applicant and its management structure, including its Principal Officers or senior management, indicating lines of authority and the allocation of duties among its Principal Officers or senior management;

(7) a current financial statement for the applicant and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, and a projected pro forma balance sheet and income and expense statement for the next year of the applicant's operation;

(8) a description of the proposed, current, and historical business of the applicant, including detail on the products and services provided and to be provided, all associated website addresses, the jurisdictions in which the applicant is engaged in business, the principal place of business, the primary market of operation, the projected customer base, any specific marketing targets, and the physical address of any operation in New York;

(9) details of all banking arrangements;

(10) all written policies and procedures, including those required by this Part;

(11) an affidavit describing any administrative, civil, or criminal action, litigation, or proceeding before any governmental agency, court, or arbitration tribunal and any existing, pending, or threatened action, litigation, or proceeding against the applicant or any of its directors, Principal Officers, Principal Stockholders, and Principal Beneficiaries, as applicable, including the names of the parties, the nature of the proceeding, and the current status of the proceeding;

(12) if applicable, a copy of any insurance policies maintained for the benefit of the applicant, its directors or officers, or its customers;

(13) an explanation of the methodologies used to calculate the value of Virtual Currency in Fiat Currency; and

(14) such other additional information as the superintendent may require.

(b) As part of such application, the applicant shall demonstrate that it will be compliant with all of the requirements of this Part upon licensing.

(c) The superintendent may permit that any application for a license under this Part, or any other submission required by this Part, be made or executed by electronic means.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, and 302

Section 200.5 Application fees

As part of an application for licensing under this Part, each applicant must submit an initial application fee, in an amount prescribed by the superintendent, to cover the cost of processing the application, reviewing application materials, and investigating the financial condition and responsibility, financial and business experience, and character and general fitness of the applicant. If the application is denied or withdrawn, such fee shall not be refunded. Each

Licensee may be required to pay fees to the Department to process additional applications related to the license.

Statutory authority: Financial Services Law, sections 202, 206, 301, 302, and 304-a; State Administrative Procedures Act, section 102

Section 200.6 Action by superintendent

(a) Generally. Upon the filing of an application for licensing under this Part, payment of the required fee, and demonstration by the applicant of its ability to comply with the provisions of this Part, the superintendent shall investigate the financial condition and responsibility, financial and business experience, and character and general fitness of the applicant. If the superintendent finds these qualities are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this Part, and in a manner commanding the confidence and trust of the community, the superintendent shall advise the applicant in writing of his or her approval of the application, and shall issue to the applicant a license to conduct Virtual Currency Business Activity, subject to the provisions of this Part and such other conditions as the superintendent shall deem appropriate; or the superintendent may deny the application.

(b) Application processing. The superintendent shall review each application on a first in first out basis without exception. The list of applicants, DBA names, each date of application, the status of the application, and reasons for status change of an application will be listed publicly on the NY DFS website.

(c) ~~A~~Approval or denial of application. The superintendent shall approve or deny every application for a license hereunder within 90 days from the filing of an application deemed by the superintendent to be complete. ~~Such period of 90 days may be extended at the discretion of the superintendent for such additional reasonable period of time as may be required to enable compliance with this Part.~~ A license issued pursuant to this Part shall remain in full force and effect until it is surrendered by the Licensee or revoked or suspended as provided in this Part.

(c) Suspension or revocation of license. The superintendent may suspend or revoke a license issued under this Part on any ground on which the superintendent might refuse to issue an original license, for a violation of any provision of this Part, for good cause shown, or for failure of the Licensee to pay a judgment, recovered in any court, within or without this State, by a claimant or creditor in an action arising out of, or relating to, the Licensee's Virtual Currency Business Activity, within thirty days after the judgment becomes final or within thirty days after expiration or termination of a stay of execution thereon; provided, however, that if execution on

the judgment is stayed, by court order or operation of law or otherwise, then proceedings to suspend or revoke the license (for failure of the Licensee to pay such judgment) may not be commenced by the superintendent during the time of such stay, and for thirty days thereafter. "Good cause" shall exist when a Licensee has defaulted or is likely to default in performing its obligations or financial engagements or engages in unlawful, dishonest, wrongful, or inequitable conduct or practices that may cause harm to the public.

(d) Hearing. No license issued under this Part shall be revoked or suspended except after a hearing thereon. The superintendent shall give a Licensee no less than ten days' written notice

Commented [WEM3]: This must be transparent and public.

Formatted: Font: (Default) Times New Roman

Commented [WEM4]: Too vague. There should be quantifiable reasons for why a delay occurs.

of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such Licensee. Any order of the superintendent suspending or revoking such license shall state the grounds upon which it is based and be sent by registered or certified mail to the Licensee at its principal place of business as shown in the records of the Department.
(e) Preliminary injunction. The superintendent may, when deemed by the superintendent to be in the public interest, seek a preliminary injunction to restrain a Licensee from continuing to perform acts that violate any provision of this Part, the Financial Services Law, Banking Law, or Insurance Law.
(f) Preservation of powers. Nothing in this Part shall be construed as limiting any power granted to the superintendent under any other provision of the Banking Law, Insurance Law, or Financial Services Law, including any power to investigate possible violations of law, rule, or regulation or to impose penalties or take any other action against any Person for violation of such laws, rules, or regulations.

Statutory Authority: Financial Services Law, sections 102, 301, 302, 305, and 309

Section 200.7 ~~Compliance~~ Virtual Currency Retail or Exchange Service License or Virtual Currency Retail or Investment Banking License Compliance
(a) Generally. Each Licensee is required to comply with all applicable federal and state laws, rules, and regulations.

Section 200.71 Virtual Currency Retail or Investment Banking License Compliance shall include the following in addition to 200.7:

Formatted: No bullets or numbering

(b) Compliance officer. Each Licensee shall designate a qualified individual or individuals responsible for coordinating and monitoring compliance with this Part and all other applicable federal and state laws, rules, and regulations.
(c) Compliance policy. Each Licensee shall maintain and enforce written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, and any other policy required under this Part, which must be reviewed and approved by the Licensee's board of directors or an equivalent governing body.

Formatted: No bullets or numbering

~~(b) Compliance officer. Each Licensee shall designate a qualified individual or individuals responsible for coordinating and monitoring compliance with this Part and all other applicable federal and state laws, rules, and regulations.~~
~~(c) Compliance policy. Each Licensee shall maintain and enforce written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, and any other policy required under this Part, which must be reviewed and approved by the Licensee's board of directors or an equivalent governing body.~~

Statutory Authority: Financial Services Law, sections 102, 301, and 302

Section 200.8 Capital requirements for –Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee shall maintain at all times such capital as the superintendent determines is sufficient to ensure the financial integrity of the Licensee and its ongoing operations. In determining the minimum amount of capital that must be maintained by a Licensee, the superintendent will consider a variety of factors, including but not limited to:

(1) the composition of the Licensee's total assets, including the position, size, liquidity, risk exposure, and price volatility of each type of asset;

(2) the composition of the Licensee's total liabilities, including the size and repayment timing of each type of liability;

(3) the actual and expected volume of the Licensee's Virtual Currency Business Activity;

(4) whether the Licensee is already licensed or regulated by the superintendent under the Financial Services Law, Banking Law, or Insurance Law, or otherwise subject to such laws as a provider of a financial product or service, and whether the Licensee is in good standing in such capacity;

(5) the amount of leverage employed by the Licensee;

(6) the liquidity position of the Licensee; and

(7) the financial protection that the Licensee provides for its customers through its trust account or bond.

(b) Each Licensee shall be permitted to invest its retained earnings and profits in only the following high-quality, investment-grade permissible investments with maturities of up to one year and denominated in United States dollars:

(1) certificates of deposit issued by financial institutions that are regulated by a United States federal or state regulatory agency;

(2) money market funds;

(3) state or municipal bonds;

(4) United States government securities; or

(5) United States government agency securities.

Statutory Authority: Financial Services Law, sections 102, 202, 301, and 302

Section 200.9 Custody and protection of customer assets for Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee shall maintain a bond or trust account in United States dollars for the benefit of its customers in such form and amount as is acceptable to the superintendent for the protection of the Licensee's customers.

(b) To the extent a Licensee secures, stores, holds, or maintains custody or control of Virtual Currency on behalf of another Person, such Licensee shall hold Virtual Currency of the same type and amount as that which is owed or obligated to such other Person.

(c) Each Licensee is prohibited from selling, transferring, assigning, lending, hypothecating, pledging, or otherwise using or encumbering assets, including Virtual Currency, held, stored, or maintained by, or under the custody or control of, such Licensee on behalf of another Person.

Statutory Authority: Financial Services Law, sections 102, 202, 301, and 302

Section 200.10 Material change to business for Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee must obtain the superintendent's prior written approval for any plan or proposal to introduce or offer a new product, service, or activity, or to make a material change to an existing product, service, or activity, involving New York or New York Residents.
(b) A "material change" may occur where:
(1) a change is proposed to an existing product, service, or activity that may cause such product, service, or activity to be materially different from that previously listed on the application for licensing by the superintendent;
(2) the proposed change may raise a legal or regulatory issue about the permissibility of the product, service, or activity; or
(3) the proposed change may raise safety and soundness or operational concerns.
(c) The Licensee shall submit a written plan describing the proposed material change, including a detailed description of the business operations, compliance policies, and the impact on the overall business of the Licensee, as well as such other information as requested by the superintendent.

Statutory Authority: Financial Services Law, sections 102, 202, 301, and 302

Section 200.11 Change of control; mergers and acquisitions for Virtual Currency Retail or Investment Banking License Holders

(a) Change of Control. No action shall be taken, except with the prior written approval of the superintendent, that may result in a change of control of a Licensee.
(1) Prior to any change of control, the Person seeking to acquire control of a Licensee shall submit a written application to the superintendent in a form and substance acceptable to the superintendent, including detailed information about the applicant and all directors, Principal Officers, Principal Stockholders, and Principal Beneficiaries of the applicant, as applicable.
(2) For purposes of this Section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Licensee whether through the ownership of stock of such Licensee or the stock of any Person that possesses such power. Control shall be presumed to exist if a Person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of a Licensee or of any Person that owns, controls, or holds with power to vote ten percent or more of the voting stock of such Licensee.
(3) The superintendent shall approve or deny every application for a change of control of a Licensee hereunder within 120 days from the filing of an application deemed by the superintendent to be complete. Such period of 120 days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable

compliance with the requirements and conditions of this Part.

(4) In determining whether to approve a proposed change of control, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.

(b) Mergers and Acquisitions. No action shall be taken, except with the prior written approval of the superintendent, that may result in a merger or acquisition of all or a substantial part of the assets of a Licensee.

(1) Prior to any such merger or acquisition, an application containing a written plan of merger or acquisition shall be submitted to the superintendent by the entities that are to merge or by the acquiring entity, as applicable. Such plan shall be in form and substance satisfactory to the superintendent, and shall specify each entity to be merged, the entity that is to receive into itself the merging entity, or the entity acquiring all or substantially all of the assets of the Licensee, as applicable, and shall describe the terms and conditions of the merger or acquisition and the mode of carrying it into effect.

(2) The superintendent shall approve or deny a proposed merger or a proposed acquisition of all or a substantial part of the assets of a Licensee within 120 days after the submission of the proposed plan to the Department. Such period of 120 days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable compliance with the requirements and conditions of this Part.

(3) In determining whether to so approve a proposed merger or acquisition, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.

Statutory authority: Financial Services Law, sections 102, 202, 301, and 302

Section 200.12 Books and records for Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee shall, in connection with its Virtual Currency Business Activity, make, keep, and preserve all of its books and records in their original form or native file format for a period of at least ten years from the date of their creation and in a condition that will allow the superintendent to determine whether the Licensee is complying with all applicable laws, rules, and regulations. The books and records maintained by each Licensee shall, without limitation, include:

(1) for each transaction, the amount, date, and precise time of the transaction, any payment instructions, the total amount of fees and charges received and paid to, by, or on behalf of the Licensee, and the names, account numbers, and physical addresses of the parties to the transaction;

(2) a general ledger containing all assets, liabilities, capital, income, expense accounts, and profit and loss accounts;

(3) bank statements and bank reconciliation records;

(4) any statements or valuations sent or provided to customers and counterparties;

(5) records or minutes of meetings of the board of directors or an equivalent governing

body;

(6) records demonstrating compliance with applicable state and federal anti-money laundering laws, rules, and regulations, including customer identification and verification documents, records linking customers to their respective accounts and balances, and a record of all compliance breaches;

(7) communications and documentation related to investigations of customer complaints and transaction error resolution or concerning facts giving rise to possible violations of laws, rules, or regulations;

(8) all other records required to be maintained in accordance with this Part; and

(9) all other records as the superintendent may require.

(b) Each Licensee shall provide the Department, upon request, immediate access to all facilities, books, records, documents, or other information maintained by the Licensee or its Affiliates, wherever located.

(c) Records of non-completed, outstanding, or inactive Virtual Currency accounts or transactions shall be maintained for at least five years after the time when any such Virtual Currency has been deemed, under the Abandoned Property Law, to be abandoned property.

Statutory authority: Financial Services Law, sections 102, 202, 301, 302, and 306

Section 200.13 Examinations for Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee shall permit and assist the superintendent to examine the Licensee whenever in the superintendent's judgment such examination is necessary or advisable, but not less than once every two calendar years, including, without limitation, to determine:

(1) the financial condition of the Licensee;

(2) the safety and soundness of the conduct of its business;

(3) the policies of its management;

(4) whether the requirements of laws, rules, and regulations have been complied with in the administration of its affairs; and

(5) such other matters as the superintendent may determine, including, but not limited to, any activities of the Licensee outside the State of New York if in the opinion of the superintendent such activities may affect the Licensee's business involving New York or New York Residents.

(b) Each Licensee shall permit and assist the superintendent at any time to examine all of the Licensee's books, records, accounts, documents, and other information.

(c) Each Licensee shall permit and assist the superintendent to make such special investigations as the superintendent shall deem necessary to determine whether a Licensee has violated any provision of the applicable laws, rules, or regulations and to the extent necessary shall permit and assist the superintendent to examine all relevant facilities, books, records, accounts, documents, and other information.

(d) For the purpose of determining the financial condition of the Licensee or its safety and soundness practices, the Licensee shall permit and assist the superintendent, when in the superintendent's judgment it is necessary or advisable, to examine an Affiliate of the Licensee.

Statutory authority: Financial Services Law, sections 102, 202, 301, and 302
Section 200.14 Reports and financial disclosures for Virtual Currency Retail or Investment Banking License Holders

(a) Each Licensee shall submit to the superintendent quarterly financial statements within 45 days following the close of the Licensee's fiscal quarter in the form, and containing such information, as the superintendent shall prescribe, including without limitation, the following information:
(1) a statement of the financial condition of the Licensee, including a complete balance sheet, income statement, profit and loss statement, statement of retained earnings, statement of net liquid assets, statement of net worth, statement of cash flows, and statement of change in ownership equity;
(2) a statement demonstrating compliance with any financial requirements established under this Part;
(3) financial projections and strategic business plans;
(4) a list of all off-balance sheet items;
(5) a chart of accounts, including a description of each account; and
(6) a report of permissible investments by the Licensee as permitted under this Part.
(b) Each Licensee shall submit audited annual financial statements, prepared in accordance with generally accepted accounting principles, together with an opinion of an independent certified public accountant and an evaluation by such accountant of the accounting procedures and internal controls of the Licensee within one hundred and twenty days of its fiscal year end. All such annual financial statements shall include:
(1) a statement of management's responsibilities for preparing the Licensee's annual financial statements, establishing and maintaining adequate internal controls and procedures for financial reporting, and complying with all applicable laws, rules, and regulations;
(2) an assessment by management of the Licensee's compliance with such applicable laws, rules, and regulations during the fiscal year covered by the financial statements, including management's conclusion as to whether the Licensee has complied with those laws, rules, and regulations during such period; and

(3) certification of the financial statements by an officer or director of the Licensee attesting to the truth and correctness of those statements.
(c) Each Licensee shall notify the superintendent in writing of any criminal action or insolvency proceeding against the Licensee or any of its directors, Principal Stockholders, Principal Officers, and Principal Beneficiaries, as applicable, immediately after the commencement of any such action or proceeding.
(d) Each Licensee shall notify the superintendent in writing of any proposed change to the methodology used to calculate the value of Virtual Currency in Fiat Currency that was submitted to the Department in accordance with Section 200.4 or this Subsection.
(e) Each Licensee shall submit a report to the superintendent immediately upon the discovery of any violation or breach of law, rule, or regulation related to the conduct of activity licensed under this Part.
(f) Each Licensee shall make additional special reports to the superintendent, at such times and in such form, as the superintendent shall prescribe.

Statutory authority: Financial Services Law, sections 102, 202, 301, 302, and 306

Section 200.15 Anti-money laundering program for all license types

All values in United States dollars referenced herein must be calculated using the methodology to determine the value of Virtual Currency in Fiat Currency that was approved by the Department under this Part.

(a) Each Licensee shall conduct an initial risk assessment that will consider legal, compliance, financial, and reputational risks associated with the Licensee's activities, services, customers, counterparties, and geographic location and shall establish, maintain, and enforce an anti-money laundering program based thereon. The Licensee shall conduct additional assessments on an annual basis, or more frequently as risks change, and shall modify its anti-money laundering program as appropriate to reflect any such changes.

(b) The anti-money laundering program shall, at a minimum:

(1) provide for a system of internal controls, policies, and procedures designed to ensure ongoing compliance with all applicable anti-money laundering laws, rules, and regulations;

(2) provide for independent testing for compliance with, and the effectiveness of, the anti-money laundering program to be conducted by qualified personnel of the Licensee or by a qualified outside party, at least annually, the findings of which shall be summarized in a written report submitted to the superintendent;

(3) designate a qualified individual or individuals in compliance responsible for coordinating and monitoring day-to-day compliance with the anti-money laundering program; and

(4) provide ongoing training for appropriate personnel to ensure they have a fulsome understanding of anti-money laundering requirements and to enable them to identify transactions required to be reported and maintain records required to be kept in accordance with this Part.

(c) The anti-money laundering program shall include a written anti-money laundering policy reviewed and approved by the Licensee's board of directors or equivalent governing body.

(d) Each Licensee, as part of its anti-money laundering program, shall maintain records and make reports in the manner set forth below.

(1) Licensees must comply with customer identification, verification, transaction recording, reporting, and data retention rules for money service businesses acting as money transmitters under the Bank Secrecy Act if such laws apply to their business activities as defined under those rules. ~~(1) Records of Virtual Currency transactions. Each Licensee shall maintain the following information for all transactions involving the payment, receipt, exchange or conversion, purchase, sale, transfer, or transmission of Virtual Currency: the identity and physical addresses of the parties involved, the amount or value of the transaction, including in what denomination purchased, sold, or transferred, the method of payment, the date(s) on which the transaction was initiated and completed, and a description of the transaction.~~

~~(2) Reports on transactions. When a Licensee is involved in a transaction or series of transactions for the receipt, exchange, conversion, purchase, sale, transfer, or transmission of Virtual Currency, in an aggregate amount exceeding the United States dollar value of $10,000 in one day, by one Person, the Licensee shall notify the Department, in a manner prescribed by the superintendent, within 24 hours.~~

~~(3) Reporting of Suspicious Activity. Each Licensee shall monitor for transactions that might~~

Commented [WEM5]: This paragraph is literally a national security threat. This is incredibly dangerous language. Virtual currencies run from public transaction ledgers. If there is an information leak, everyones' private banking history will be viewable by their employers, ex-spouses, children, foreign intelligence agencies, or grand parents.

This is also redundant with rules already present in the Patriot Act for customer identification programs. We are creating redundancies and complexities that are expensive to comply with and favor large companies. Not acceptable.

Commented [WEM6]: Redundant with the BSA rules that apply to virtual currency businesses as money transmitters. Why does this document contain redundant rules? This creates a hostile and redundant regulatory environment that favors large companies. It's also wasteful and inefficient.

~~signify money laundering, tax evasion, or other illegal or criminal activity and notify the Department, in a manner prescribed by the superintendent, immediately upon detection of such a transaction(s).~~

~~(i) Each Licensee shall file Suspicious Activity Reports ("SARs") in accordance with applicable federal laws, rules, and regulations.~~

~~(ii) Each Licensee that is not required to file SARs under federal law shall file with the superintendent, in a form prescribed by the superintendent, reports of transactions that indicate a possible violation of law or regulation within 30 days from the detection of the facts that constitute a need for filing. Continuing suspicious activity shall be reviewed on an ongoing basis and a suspicious activity report shall be filed within 120 days of the last filing describing continuing activity.~~

~~(e) No Licensee shall structure transactions, or assist in the structuring of transactions, to evade reporting requirements under this Part.~~

~~(f) No Licensee shall engage in, facilitate, or knowingly allow the transfer or transmission of Virtual Currency when such action will obfuscate the identity of an individual customer or counterparty. Nothing in~~

~~this Section, however, shall be construed to require a Licensee to make available to the general public the fact or nature of the movement of Virtual Currency by individual customers or counterparties.~~

(g) Each Licensee shall comply with all aspects of the US Patriot Act, and specifically the Customer Identification Program components of the Act, if such rules apply to the licensee's specific business activities as defined in this Act. ~~also maintain, as part of its anti-money laundering program, a customer identification program.~~

~~(1) Identification and verification of account holders. When opening an account for a customer, each Licensee must, at a minimum, verify the customer's identity, to the extent reasonable and practicable, maintain records of the information used to verify such identity, including name, physical address, and other identifying information, and check customers against the Specially Designated Nationals ("SDNs") list maintained by the Office of Foreign Asset Control ("OFAC"), a part of the U.S. Treasury Department. Enhanced due diligence may be required based on additional factors, such as for high risk customers, high-volume accounts, or accounts on which a suspicious activity report has been filed.~~

~~(2) Enhanced due diligence for accounts involving foreign entities. Licensees that maintain accounts for non-U.S. Persons and non-U.S. Licensees must establish enhanced due diligence policies, procedures, and controls to detect money laundering, including assessing the risk presented by such accounts based on the nature of the foreign business, the type and purpose of the activity, and the anti-money laundering and supervisory regime of the foreign jurisdiction.~~

~~(3) Prohibition on accounts with foreign shell entities. Licensees are prohibited from maintaining relationships of any type in connection with their Virtual Currency Business Activity with entities that do not have a physical presence in any country.~~

~~(4) Identification required for large transactions. Each Licensee must require verification of accountholders initiating transactions having a value greater than $3,000.~~

~~(h) Each Licensee shall demonstrate that it has risk-based policies, procedures, and practices to ensure, to the maximum extent practicable, compliance with applicable regulations issued by OFAC.~~

Commented [WEM7]: Again, this entire section is redundant with the BSA. Just say that NY licensees must comply with the BSA as if they were money transmitters...

Formatted

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0" + Indent at: 0"

~~(i) Each Licensee shall have in place appropriate policies and procedures to block or reject specific or impermissible transactions that violate federal or state laws, rules, or regulations.~~
~~(j) The individual(s) designated by the Licensee, pursuant to Subsection 200.15(b)(3), shall be responsible for day-to-day operations of the anti-money laundering program and shall, at a minimum:~~
~~(1) Monitor changes in anti-money laundering laws, including updated OFAC and SDN lists, and update the program accordingly;~~
~~(2) Maintain all records required to be maintained under this Section;~~
~~(3) Review all filings required under this Section before submission;~~
~~(4) Escalate matters to the board of directors, senior management, or appropriate governing body and seek outside counsel, as appropriate;~~
~~(5) Provide periodic reporting, at least annually, to the board of directors, senior management, or appropriate governing body; and~~
~~(6) Ensure compliance with relevant training requirements.~~

Statutory authority: Financial Services Law, sections 201, 202, 302, and 404
Section 200.16 Cyber security program

Virtual Currency Retail or Investment Banking License Holders must obtain 3rd party insurance with policies fully covering the US dollar equivalent of all fiat and virtual currency deposits.
~~(a) Generally. Each Licensee shall establish and maintain an effective cyber security program to ensure the availability and functionality of the Licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering. The cyber security program shall be designed to perform the following five core cyber security functions:~~
~~(1) identify internal and external cyber risks by, at a minimum, identifying the information stored on the Licensee's systems, the sensitivity of such information, and how and by whom such information may be accessed;~~
~~(2) protect the Licensee's electronic systems, and the information stored on those systems, from unauthorized access, use, or other malicious acts through the use of defensive infrastructure and the implementation of policies and procedures;~~
~~(3) detect systems intrusions, data breaches, unauthorized access to systems or information, malware, and other Cyber Security Events;~~
~~(4) respond to detected Cyber Security Events to mitigate any negative effects; and~~
~~(5) recover from Cyber Security Events and restore normal operations and services.~~
~~(b) Policy. Each Licensee shall implement a written cyber security policy setting forth the Licensee's policies and procedures for the protection of its electronic systems and customer and counterparty data stored on those systems, which shall be reviewed and approved by the Licensee's board of directors or equivalent governing body at least annually. The cyber security policy must address the following areas:~~
~~(1) information security;~~
~~(2) data governance and classification;~~
~~(3) access controls;~~
~~(4) business continuity and disaster recovery planning and resources;~~

Commented [WEM8]: Again, this is redundant with CIP in the patriot act. If each US state repeats a variation of this type of rule making, it will be economically impossible for any non-fortune 500 company to comply due to the expense.

This entire document needs to be rethought with competitive fairness and efficiency in mind, and also with regard to existing regulation that is already in effect for these companies. This is the biggest opportunity when revising this document.

Commented [WEM9]: Attempts to regulate something as mercurial as information security is as tragic as it is hilarious.

This section is 100% political and will do nothing to increase consumer security. Technology evolves faster than regulation. This isn't going to play well with voters anyway, it's silly and dishonest.

Simply require insurance for banking license holders with control key liability and explain how that will help cyber security. That is actually a good idea.

If upon reviewing Licensee's information security systems insurers require premiums that are too expensive because of weak security, this will naturally enforce "cyber security", whatever that is.

Most hackers are really employees who are either exploiting weaknesses they know about from inside knowledge, owners, or employees who are actually agents working for crime rings. Let insurers figure this out.

Formatted: Superscript

~~(5) capacity and performance planning;~~
~~(6) systems operations and availability concerns;~~
~~(7) systems and network security;~~
~~(8) systems and application development and quality assurance;~~
~~(9) physical security and environmental controls;~~
~~(10) customer data privacy;~~
~~(11) vendor and third-party service provider management;~~
~~(12) monitoring and implementing changes to core protocols not directly controlled by the Licensee, as applicable; and~~
~~(13) incident response.~~
~~(c) Chief Information Security Officer. Each Licensee shall designate a qualified employee to serve as the Licensee's Chief Information Security Officer ("CISO") responsible for overseeing and implementing the Licensee's cyber security program and enforcing its cyber security policy.~~
~~(d) Reporting. Each Licensee shall submit to the Department a report, prepared by the CISO and presented to the Licensee's board of directors or equivalent governing body, at least annually, assessing the availability, functionality, and integrity of the Licensee's electronic systems, identifying relevant cyber risks to the Licensee, assessing the Licensee's cyber security program, and proposing steps for the redress of any inadequacies identified therein.~~
~~(e) Audit. Each Licensee's cyber security program shall, at a minimum, include audit functions as set forth below.~~
~~(1) Penetration testing. Each Licensee shall conduct penetration testing of its electronic systems, at least annually, and vulnerability assessment of those systems, at least quarterly.~~
~~(2) Audit trail. Each Licensee shall maintain audit trail systems that:~~

~~(i) track and maintain data that allows for the complete and accurate reconstruction of all financial transactions and accounting;~~
~~(ii) protect the integrity of data stored and maintained as part of the audit trail from alteration or tampering;~~
~~(iii) protect the integrity of hardware from alteration or tampering, including by limiting access permissions to hardware, enclosing hardware in locked cages, and maintaining logs of physical access to hardware that allows for event reconstruction;~~
~~(iv) log system events including, at minimum, access and alterations made to the audit trail systems by the systems or by an authorized user, and all system administrator functions performed on the systems; and~~
~~(v) maintain records produced as part of the audit trail for a period of ten years in accordance with the recordkeeping requirements set forth in this Part.~~
~~(3) Source code reviews. Each Licensee shall have an independent, qualified third party conduct a source code review of any internally developed proprietary software used in the Licensee's business operations, at least annually.~~
~~(f) Personnel and Intelligence. Each Licensee shall:~~
~~(1) employ cyber security personnel adequate to manage the Licensee's cyber security risks and to perform the core cyber security functions specified in Subsection 200.16(a)(1)-(5);~~
~~(2) provide and require cyber security personnel to attend regular cyber security update and training sessions; and~~
~~(3) require key cyber security personnel to take steps to stay abreast of changing cyber security threats and countermeasures.~~

~~Statutory Authority: Financial Services Law, sections 102, 202, 301, and 302~~
~~Section 200.17 Business continuity and disaster recovery~~

~~(a) Each Licensee shall establish and maintain a written business continuity and disaster recovery ("BCDR") plan reasonably designed to ensure the availability and functionality of the Licensee's services in the event of an emergency or other disruption to the Licensee's normal business activities. The BCDR plan, at minimum, shall:~~

~~(1) identify documents, data, facilities, infrastructure, personnel, and competencies essential to the continued operations of the Licensee's business;~~

~~(2) identify the supervisory personnel responsible for implementing each aspect of the BCDR plan;~~

~~(3) include a plan to communicate with essential Persons in the event of an emergency or other disruption to the operations of the Licensee, including employees, counterparties, regulatory authorities, data and communication providers, disaster recovery specialists, and any other Persons essential to the recovery of documentation and data and the resumption of operations;~~

~~(4) include procedures for the maintenance of back-up facilities, systems, and infrastructure as well as alternative staffing and other resources to enable the timely recovery of data and documentation and to resume operations as soon as reasonably possible following a disruption to normal business activities;~~

~~(5) include procedures for the back-up or copying, with sufficient frequency, of documents and data essential to the operations of the Licensee and storing of the information off site; and~~

~~(6) identify third parties that are necessary to the continued operations of the Licensee's business.~~

~~(b) Each Licensee shall distribute a copy of the BCDR plan, and any revisions thereto, to all relevant employees and shall maintain copies of the BCDR plan at one or more accessible off-site locations.~~

~~(c) Each Licensee shall provide relevant training to all employees responsible for implementing the BCDR plan regarding their roles and responsibilities.~~

~~(d) Each Licensee shall promptly notify the superintendent of any emergency or other disruption to its operations that may affect its ability to fulfill regulatory obligations or that may have a significant adverse effect on the Licensee, its counterparties, or the market.~~

~~(e) The BCDR plan shall be tested at least annually by qualified, independent internal personnel or a qualified third party, and revised accordingly.~~

Statutory Authority: Financial Services Law, sections 102, 202, 301, and 302
Section 200.18 Advertising and marketing
(a) Each Licensee engaged in Virtual Currency Business Activity shall not advertise its products, services, or activities in New York or to New York Residents without including the name of the Licensee and the legend that such Licensee is "Licensed to engage in Virtual Currency Business Activity by the New York State Department of Financial Services."

Commented [WEM10]: Fine. I'm all for protecting end consumers from deceptive marketing. This is what is good about this doc.

(b) Each Licensee shall maintain, for examination by the superintendent, all advertising and marketing materials, including but not limited to print media, internet media (including websites), radio and television advertising, road show materials, presentations, and brochures. Each Licensee shall maintain hard copy, website captures, and audio and video scripts of its advertising and marketing materials, as applicable.
(c) In all advertising and marketing materials, each Licensee shall comply with all disclosure requirements under federal and state laws, rules, and regulations.
(d) In all advertising and marketing materials, each Licensee and any person or entity acting on its behalf, shall not, directly or by implication, make any false, misleading, or deceptive representations or omissions.

Statutory authority: Financial Services Law, sections 102, 202, 301, and 302
Section 200.19 Consumer protection
(a) Disclosure of material risks. As part of establishing a relationship with a customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each Licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of the Licensee, all material risks associated with its products, services, and activities and Virtual Currency generally, including at a minimum, the following:

(1) virtual currency is not legal tender, is not backed by the government, and accounts and value balances are not subject to Federal Deposit Insurance Corporation or Securities Investor Protection Corporation protections;

(2) legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of Virtual Currency;

(3) transactions in Virtual Currency are generally irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;

(4) some Virtual Currency transactions shall be deemed to be made when recorded on a "block chain" ledger, which is not necessarily the date or time that the customer initiates the transaction;

(5) the value of Virtual Currency is derived from the continued willingness of market participants to exchange Fiat Currency for Virtual Currency, which may result in the potential for permanent and total loss of value of a particular Virtual Currency should the market for that Virtual Currency disappear;

(6) there is no assurance that a Person who accepts a Virtual Currency as payment today will continue to do so in the future;

(7) the volatility and unpredictability of the price of Virtual Currency relative to Fiat Currency may result in significant loss or tax liability over a short period of time;

(8) the nature of Virtual Currency may lead to an increased risk of fraud or cyber attack;

(9) the nature of Virtual Currency means that any technological difficulties experienced by the Licensee may prevent the access or use of a customer's Virtual Currency; and
~~(10) any bond or trust account for the benefit of customers may not be sufficient to cover any and all losses incurred by customers.~~
(b) Disclosure of general terms and conditions. When opening an account for a new customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each

Commented [WEM11]: Good. This is what the document should focus on.

Commented [WEM12]: UNACCEPTABLE. Banking licensees with control key liability MUST pay for private insurance that 100% covers all customer deposits. You need to be harder on these companies like Gox. 100% not ok. This is the risk that NY FDS should be attacking first.

Licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of the Licensee, all relevant terms and conditions associated with its products, services, and activities and Virtual Currency generally, including at a minimum, the following, as applicable:
(1) the customer's liability for unauthorized Virtual Currency transactions;
(2_ the customer's right to cancel transactions that are scheduled but not authorized and / or transmitted and the procedure and lead time requirements to initiate such a cancelation. ~~(2) the customer's right to stop payment of a preauthorized Virtual Currency transfer and the procedure to initiate such a stop-payment order;~~
(3) the Licensee's liability to the customer under any applicable federal or state laws, rules, or regulations;
(4) under what circumstances the Licensee will, absent a court or government order, disclose information concerning the customer's account to third parties;

~~(5) the customer's right to receive periodic account statements and valuations from the Licensee;~~
(6) the customer's right to receive a receipt, trade ticket, or other evidence of a transaction;
(7) the customer's right to prior notice of a change in the Licensee's rules or policies; and
(8) such other disclosures as are customarily given in connection with the opening of customer accounts.
(c) Disclosures of the terms of transactions. Prior to each transaction in Virtual Currency, for, on behalf of, or with a customer, each Licensee shall furnish to each such customer a written disclosure in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of

the Licensee, containing the terms and conditions of the transaction, which shall include, at a minimum, to the extent applicable:
(1) the amount of the transaction;
(2) any fees, expenses, and charges borne by the customer, including applicable exchange rates;
(3) the type and nature of the Virtual Currency transaction;
(4) a warning that once executed the transaction may not be undone, if applicable; and
(5) such other disclosures as are customarily given in connection with a transaction of this nature.
(d) Acknowledgement of disclosures. Each Licensee shall ensure that all disclosures required in this Section are acknowledged as received by customers.
(e) Receipts. Upon completion of any transaction, each Licensee shall provide to a customer a receipt containing the following information:
(1) the name and contact information of the Licensee, including a telephone number established by the Licensee to answer questions and register complaints;
(2) the type, value, date, and precise time of the transaction;
(3) the fee charged;
(4) the exchange rate, if applicable;
(5) a statement of the liability of the Licensee for non-delivery or delayed delivery;
(6) a statement of the refund policy of the Licensee; and
(7) any additional information the superintendent may require.

Commented [WEM13]: This isn't possible. There are no stop payment orders or preauthorized transactions in the bitcoin protocol. Reword as I have written.

Formatted: No bullets or numbering

(f) Each Licensee shall make available to the Department, upon request, the form of the receipts it is required to provide to customers in accordance with Subsection 200.19(e).
(g) Prevention of fraud. Licensees are prohibited from engaging in fraudulent activity and customers of Licensees that are victims of fraud shall be entitled to claim compensation from any trust account, bond, or

insurance policy maintained by the Licensee. Additionally, each Licensee shall take reasonable steps to detect and prevent fraud, including by establishing and maintaining a written anti-fraud policy. The anti-fraud policy shall, at a minimum, include:

(1) the identification and assessment of fraud-related risk areas;
(2) procedures and controls to protect against identified risks;
(3) allocation of responsibility for monitoring risks; and
(4) procedures for the periodic evaluation and revision of the anti-fraud procedures, controls, and monitoring mechanisms.

Section 200.19Consumer protection applying to for Virtual Currency Retail or Investment Banking License Holders

(5) the customer's right to receive periodic account statements and valuations from the Licensee;

Statutory Authority: Financial Services Law, sections 102, 201, 202, 301, 302, 306, and 404
Section 200.20 Complaints

(a) Each licensee must comply with all recent amendments to the Remittance Transfer Rule requiring new protections, including disclosure requirements, and error resolution and cancellation rights.

~~(a) Each Licensee shall establish and maintain written policies and procedures to fairly and timely resolve complaints.~~
~~(b) Each Licensee must provide, in a clear and conspicuous manner, on its website(s), in any physical location(s), and in any other location as the superintendent may prescribe, the following disclosures:~~
~~(1) the Licensee's mailing address, email address, and telephone number for the receipt of complaints;~~
~~(2) a statement that the complainant may also bring his or her complaint to the attention of the Department;~~
~~(3) the Department's mailing address, website, and telephone number; and~~
~~(4) such other information as the superintendent may require.~~
~~(c) Each Licensee shall report to the superintendent any change in the Licensee's complaint policies or procedures within seven days.~~

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, and 302
Section 200.21 Transitional Period
A Person already engaged in Virtual Currency Business Activity must apply for a license in accordance with this Part within 45 days of the effective date of this regulation. In doing so, such applicant shall be deemed in compliance with the licensure requirements of this Part until it

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Commented [WEM14]: This section is redundant with Dodd Frank error reporting, and notification requirements. Duplicating rules slightly differently is anti-competitive and unnecessary.

has been notified by the superintendent that its application has been denied, in which case it shall immediately cease operation in this state. Any Person engaged in Virtual Currency Business Activity that fails to submit an application for a license within 45 days of the effective date of this regulation shall be deemed to be conducting unlicensed Virtual Currency Business Activity.

Statutory authority: Financial Services Law, sections 202, 206, 302, 303, 305, 306, 309, 404, and 408; Executive Law, section 63.

Page 2: [1] Formatted	William Madden	7/24/2014 8:14:00 AM

Indent: Left: 0.25", No bullets or numbering

Page 2: [2] Formatted	William Madden	7/18/2014 9:35:00 AM

Indent: Left: 0", Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 2" + Indent at: 2.25"