



NORTHERN CALIFORNIA FRAUD PREVENTION SOLUTIONS

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Ms. Dana M. Syracuse
NYFS Office of General Counsel
New York Department of Financial Services
One State Street
New York, NY 10004-1531
August 13, 2014

Dear Ms. Syracuse:

I am pleased to offer this commentary on DFS-29-14-00015-P, "Regulation of the conduct of virtual currency businesses." I am sure that, by now, the NYDFS has received much feedback on its proposed regulations.

I would like to submit, for your consideration, a number of concerns that I have identified in the proposed regulations. I believe that I might possess somewhat of a unique background (for someone so heavily involved in the "virtual currency" industry), at least among those who have taken the time to submit comments.¹ I do hope that my

¹ Currently, I am Principal of San Francisco-based, NCFPS-Digital Currency AML Consultants. I hold a Juris Doctor degree from the University of Pennsylvania Law School after earning my Bachelor's degree from Howard University (magna cum laude). I am member of the State Bar of Georgia, in good standing (inactive). I hold the certifications of Certified Anti-Money Laundering Specialist and Certified Fraud Examiner and am active in both associations.

I served for nearly a decade as a Special Agent with the federal Office of Labor Racketeering, where I investigated cases pertaining to the influence of organized crime in labor unions and related pension funds. Many of these investigations were complex financial investigations and involved money laundering violations.

After leaving government service, I embarked on a career in teaching and have taught at several institutions of higher learning, including California State University, Long Beach, Chapman University College and Dominican University of California. Since 2010, I have been a full-time faculty member at Chapman University-affiliated, Brandman University in Walnut Creek, CA where I teach in the Criminal Justice and Legal Studies departments and coordinate both programs.

Early on in my career, I served as a judicial law clerk to the late Honorable Clifford Scott Green of the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia. I later practiced commercial and insurance litigation with the Atlanta law firm of Branch, Pike, Ganz & O'Callaghan (now Holland & Knight).

Aside from the alternatives to identity verification offered by technology, the proposal seems to ignore the fact that truly effective anti-money laundering programs are "risk-based." Interestingly enough, though the proposal correctly calls for the development of robust AML/KYC programs, it hastily discards the necessity of requiring effective AML programs based on robust risk assessments. In other words, it requires risk-based (presumably) AML programs and then departs from a risk-based approach by requiring a physical address for all parties to a transaction, without regard to the risk presented.

Even disregarding for a moment the technological "substitutes" for a physical address, a risk-based approach could be drawn to be sensitive to the types of customer verification protocols customarily accepted in a given country. Absent that, why not consider simply recommending, as part of a risk-based analysis, lower maximum transaction thresholds and limiting the number of daily transactions available to those who are unable to furnish a physical address, or consider a combination of both? All of these assessments are properly made within the context of a risk-based AML/CFT program. In short, there are a number of other ways to more reasonably address the risks presented absent a "one-size fits all" mandate. Such is the antithesis of the risk-based approach adopted by the Financial Action Task Force to which the United States is a member.

Thank you for providing the opportunity to comment and for your consideration of the views expressed herein.

Sincerely,

David Long

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