The Surety & Fidelity Association of America

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Via Electronic Mail

Office of General Counsel –
New York State Department of Financial Services
One State Street, New York, NY 10004
Attn: Dana V. Syracuse

Re: Proposed Regulations
New York Codes, Rules and Regulations
Title 23 Department of Financial Services
Chapter 1, Part 200 Virtual Currencies

The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the United States. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The vast majority of bonds that secure licensing and regulatory obligations are provided by SFAA members. We have had an opportunity to review the captioned proposed regulations regarding the regulation of and establishment of a licensing scheme for businesses involving Virtual Currency. We note that proposed § 200.9 requires licensees to "maintain a bond or trust account in United States dollars for the benefit of its customers."

Considering that the regulations set forth the bond requirement only in general terms and the specific "form and amount" is established by the Superintendent, we offer the guidance of SFAA to work with the Department in developing a meaningful bond requirement that is reasonably available in the market. For the present, we present the following points for the Department's consideration.

First, the Department must decide whether the bond it is seeking is a fidelity bond or a surety bond. A fidelity bond is a form of two party insurance by which the insurer covers losses incurred by the insured caused by the dishonesty or theft of the insured's employees. Thus, the protection is for the insured's losses. A surety bond is a three party agreement by which the surety secures an obligation that is owed by one party (the bond principal) to another party (the obligee). Thus, under a surety bond, the protected party is the obligee, or protection is afforded to the obligee for the benefit of some other third party.

If the Department is considering a surety bond, it should be aware that the scope of the obligation and the size of the obligation will affect the availability of the bond. If the obligation that the surety is securing (as stated in the condition of the bond) is clear, well-defined, and capable of being underwritten, then availability should be affected favorably. In addition, the required amount of the bond should be reasonable. Unlike other forms of insurance, in the event the surety must pay a loss, it has the right to seek indemnity from the principal. Therefore, part of the surety's underwriting involves a financial assessment of the principal. The surety will require a certain threshold of financial strength relative to the bond amount – the higher the bond amount, the higher the threshold. An unduly high bond amount might prevent otherwise capable business from obtaining the bond.

We thank you for your consideration. We would be happy to discuss our guidance further with you in order to develop a workable bond requirement that provides meaningful coverage to the Department and is reasonably available in the market.

Sincerely,

Robert J. Duke