

Marwan Forzley
Align Commerce Corporation

[REDACTED]
[REDACTED]
[REDACTED]

8/25/2014

Mr. Benjamin M. Lawsky
Superintendent of Financial Services
New York Department of Financial Services
One State Street, New York, NY 10004-1511

Mr. Dana V. Syracuse
Office of General Counsel
New York State Department of Financial Services
One State Street, New York, NY 10004
Tel: [REDACTED]
Email: dana.syracuse@dfs.ny.gov

Re: Regulation of the Conduct of Virtual Currency Businesses – Addition of Part 200 to Title 23 NYCRR

Dear Mr. Lawsky and Mr. Syracuse:

My name is Marwan Forzley. I am the CEO and founder of a company in payment processing focused on merchant services. We use crypto-currency protocols (e.g. bitcoin) as a settlement rail to move funds from consumers and small businesses to businesses for purchases of goods and services online. We believe that cross border eCommerce payments are high friction / high cost and we believe that bitcoin and crypto-currencies more broadly can simplify payments and deliver economics advantages to all parties involved (consumers, merchants and banks). In our use case, bitcoin is transparent to both the payer and the payee and used as a transportation mechanism.. This letter is in response to the virtual currency regulation recently proposed by New York Department of Financial Services.
<http://www.dfs.ny.gov/about/press2014/pr1407171-vc.pdf>

First off, I commend NY DFS for its leadership with respect to regulating bitcoin and crypto more broadly. It is a step in the right direction and a valuable proposal for all stakeholders involved.

The proposal states that merchants accepting bitcoin/crypto – currencies are exempt from licensing requirements. This is appropriate based on past precedent – merchants have never been subject to any type of licensing for accepting payment for their goods / services sold, regardless of the nature of the payment.

Similarly, merchant processors - acting as the agent and on behalf of the merchant - to process the payments received as the agent of the merchant have NOT been subjected to licensing by any state under money transmitter or similar statutes and they have NOT been required by the Financial Crimes Enforcement Network to register as a money services business. I believe that DFS should clarify that the regulation does not require a merchant's payment processor for crypto currency payments or using crypto-currency as a rail, to be licensed for the following reasons:

When merchants hire payment processors to handle their crypto currency payment, the merchants are outsourcing the function of payments processing to specialized companies that have technology designed specifically for this purpose; the payment processor is under a contract with the merchant to process the merchant's payments.

The Crypto-currency payment processor should be treated at parity with traditional merchant payment processors that are designated as Payment Service Providers (PSPs) and don't operate as money service businesses. Example: Card and ACH processors.

As noted above, merchant payment processors are exempted under FinCEN regulations. FinCEN exempts from the definition of money transmitter any person

“(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;”

It is very important to control the edges of the bitcoin / crypto networks to ensure that the right KYC / AML policies are in place to protect the consumer. Having payment processor that are focused on merchant services be treated like a money service business will increase the overall cost of payments and adds a layer of complexity where the same work is being done multiple times by various participants in the value chain.

In conclusion, I respectfully request that the DFS clarify that merchant payment processors for crypto currencies or using crypto currencies as a settlement rail, are exempt from the virtual currency regulation. I appreciate the opportunity to provide comments on this proposal. I can be reached at [REDACTED] Again, I do appreciate the importance of this regulation to all stakeholders and I am thankful that New York is leading the way on this topic.

Sincerely



Marwan Forzley
Align Commerce Corporation
CEO

[REDACTED]