October 16, 2014

DFS Office Of General Counsel
Dana V. Syracuse
New York State Department of Financial Services
One State Street, New York, NY 10004

Re: Proposed Regulations: Title 23, Chapter I, Part 200: Virtual Currencies

Dear Mr. Syracuse:

This letter is submitted on behalf of Circle Internet Financial, Inc. ("Circle") in response to the proposed Regulation of the Conduct of Virtual Currency Businesses specified in Rulemaking Notice, 236 N.Y. Reg. 14 (July 23, 2014) ("Proposed Rule") issued by the New York State Department of Financial Services ("NYDFS").

Circle was established in August 2013 and is located in Boston, Massachusetts. Circle was formed in order to offer a suite of services designed to make it simple and convenient for consumers to transact in digital currencies, in particular, Bitcoin. Bitcoin is a decentralized system based on open protocols that no government or corporation controls. There are numerous consumer benefits associated with this protocol, including the ability to send, receive and spend money in a faster, less expensive and more secure manner.

We appreciate the efforts of the NYDFS in attempting to establish a regulatory framework for digital currency[1] firms and welcome the opportunity to provide comments to the Proposed Rule. Establishing regulations for new technologies, such as Bitcoin, poses significant challenges for potential Licensees who will be required to implement policies and dedicate sufficient resources to comply with these laws. Similarly, the NYDFS will be tasked with gaining a further understanding of digital currency technology (and related products and services) and will need to dedicate staff to oversee potential Licensees. Because of the these implications, we believe that it is critical that the NYDFS move forward with the Proposed Rule in a thoughtful and deliberate manner and consider all factors, including the risks and benefits, before taking action.

For purposes of this letter, we have highlighted several high level areas of concern regarding the Proposed Rule followed by more detailed comments on various sections.

[1] For the purpose of this letter, we are using the phrases "digital currency" and "virtual currency" as interchangeable terms.

I. Overall Comments

Circle believes there are numerous areas in the Proposed Rule, which could negatively impact consumers and businesses that wish to utilize digital currencies. There are several requirements that are so burdensome (and in some cases nearly impossible to comply with) that if the Proposed Rule were to be enacted in its current form, Circle would have no choice but to exclude New York residents from its service.

A. The Proposed Rule casts too wide a net over "regulated" virtual currency firms

We believe the definition of Virtual Business Activity is too broad. We agree that digital currency firms that engage in certain activities should be regulated as money transmitters. A digital currency operator that acts as an intermediary, exchanger, and custodian of digital assets should be subject to oversight, however software companies, including open source server software, mining pool software providers, online wallet software, or other open source digital currency projects should be not be subject to regulatory review. The Proposed Rule's definition of Virtual Currency Business Activity appears to encompass all of these software categories. We feel that this casts too wide a net and would be detrimental to the development of the digital currency industry. Note, however, that we were pleased to see recent public comments by Superintendent Lawsky suggesting that these definitions would be changed to reflect this distinction.

B. The anti-money laundering ("AML") requirements are unnecessary and impractical

We believe the current AML regulatory framework at the federal level provides adequate oversight of digital currency firms and there is no need for some of the additional protections in the Proposed Rule. The Financial Crimes Enforcement Network ("FinCEN") finalized relevant guidance for virtual currency firms in March 2013. These guidelines classify which firms should be registered as money transmitters and requires those firms to follow applicable money service business regulations, which includes Know Your Customer ("KYC") protocols, transaction monitoring and regulatory reporting. The Proposed Rule outlines new state-specific AML requirements that are either duplicative and/or broader than FinCEN rules. The AML requirements in the Proposed Rule also outline recordkeeping requirements that are at best extremely onerous, but for the most part cannot be met under the current digital currency protocols. We request that the NYDFS re-consider these aspects of the Proposed Rule.

C. NYDFS is given too much discretion over business choices

The Proposed Rule imposes a wide range of requirements over key business decisions that will make it very difficult to build agile, innovative digital currency products. For example, the Proposed Rule states that businesses must submit new features and product changes to regulators for review and prior approval. Innovative companies in this space will be constantly developing and delivering new product features, especially as this technology and consumer needs evolve and mature. Requiring prior NYDFS approval on

new products could negatively impact the ability to bring new services to the market in an expeditious and efficient manner. In addition, it may be difficult for the NYDFS to allocate sufficient resources to handle what could be a large volume of requests and provide responses in a timely manner.

Other areas of concern include the scope of oversight and examination authority over Licensees and Affiliates, the ability of the Superintendent to set minimum capital/bond requirements and review certain business transactions. Further guidance on criteria for actions by the Superintendent are needed as are limits to this authority to ensure that the NYDFS doesn't arbitrarily regulate digital currency firms.

D. There is some question over the need for the Proposed Rule and its applicability to digital currency firms

We believe there is an open question as to the need for a separate BitLicense. Current state money transmitter laws may be adequate for digital currency firms, especially if they were amended to address risks associated with digital currency transactions. This is the approach that has been effectively taken by other states, such as Texas and should be considered by the NYDFS.

At the very least, we encourage the NYDFS to develop a regulatory framework that maintains a level playing field by establishing similar guidelines for both digital currency firms and other money transmitters. While we acknowledge there are some unique issues associated with digital currency due to the nature of the technology, many of the risks are similar to those posed by other regulated money transmitters. There are several areas in the Proposed Rule that go well beyond what is required for other money transmitters. Other requirements in the Proposed Rule may be relevant to traditional money transmitters, but are not covered by existing New York money transmitter laws (*i.e.* cyber-security requirements). These rules should be consistently applied to avoid regulating competition in the marketplace.

In addition, many digital currency firms have other product offerings that may trigger existing money transmitter licensing requirements. Given that the Proposed Rule includes most of the traditional money transmitter requirements, the NYDFS should clarify that firms with a BitLicense do not need to have a separate money transmission license.

E. NYDFS should take a principles-based approach and foster innovation for firms of all sizes

While we believe there is a need for regulatory protections for consumers, any rules enacted should be risk-based and not adversely impact the consumer benefits associated with digital currency technology. In considering new regulations, the NYDFS should focus on principles-based regulations that address the relevant risks instead of prescriptive rules, which may quickly become outdated given the fast-changing technology. Under a principles-based approach, the NYDFS would still maintain adequate authority to use its

examination and enforcement powers to impose more prescriptive requirements on firms on an as-needed basis and hold these firms accountable for compliance with relevant rules. The NYDFS could then adjust the rules as a result of these actions and adjust the framework as a more mature digital currency ecosystem develops.

We feel it is important that innovation is not stifled by regulatory burdens. An analogy can be drawn to the development and implementation of credit cards, which dates back to the 1950s and 1960s. It took many years for credit cards to achieve consumer and merchant adoption. Since the early adoption of credit cards, consumer laws relating to these products and services evolved over an extended period to address emerging risks. When new technology that impacted cards emerged, such as the Internet, additional rules were needed to address issues not previously contemplated. In addition to new regulations, industry organizations, such as Mastercard and Visa, developed their own rules to provide further governance over participants in the network and transactions. We believe that similar types of activity will take place as the digital currency industry matures, including the emergence of self-regulatory organizations. We believe that the NYDFS should take the lessons learned from these experiences, as well as those from more recent emerging payments, and apply the same type of principles-based approach in developing regulations for this dynamic industry.

We believe that the NYDFS should consider some safeguards for smaller start up organizations or make some distinction as to the applicability of the regulations for these firms that may pose less risk to consumers. For this technology to develop, it is important for entrepreneurs to be encouraged to enter into the marketplace. As currently constructed, the Proposed Rule provides a barrier to entry for smaller firms due to the onerous requirements around capital, AML, etc.

II. Comments on Specific Sections

Section 200.2(n) – Definition of "Virtual Currency Business Activity"

Blockchain and public ledger technology have many use cases outside of payments. The proposed definition of "Virtual Currency Business Activity" is extremely broad and should exclude non-financial activity to avoid imposing unnecessary regulation upon those companies wishing to utilize the unique elements of the digital currency protocols. There are many firms in this emerging ecosystem that will not seek to interface with traditional financial services firms and therefore do not pose similar risks. NYDFS should consider either narrowing the definition or adding additional exemptions for those businesses which do not pose undue risks and do not provide hosted storage or exchange services. For example, the NYDFS should exclude software that allows customers to manage their own digital currency. NYDFS should look to guidance, such as that enacted by FinCEN, which appropriately classifies the parties, which constitute the greatest risks, including "administrators" and "exchangers" which have a direct correlation with the exchange of fiat currency.

Section 200.3(b) – Prohibition of Unlicensed Agents

This section prohibits licensed digital currency businesses from conducting any business activity through unlicensed agents. This is different from the rules that apply to other licensed money transmitters. These rules should be applied consistently to digital currency firms with these Licensees maintaining full responsibility for their agents' actions similar to traditional money transmitters. It is possible that additional clarification is needed as to the scope and intent of this prohibition as well.

Section 200.4 – Application

The Proposed Rule outlines some provisions around Licensee applications that are more burdensome than requirements for traditional money transmitters. The Proposed Rule requires fingerprinting and photographs of all employees, which is unlike money transmitter rules, which only require similar information for officers and principal shareholders. In addition, the requirement for copies of all written policies and procedures in connection with the initial application should be limited to material policies or those related to a specific area. We believe the application process for digital currency firms should mirror that of other money transmitters.

200.6 – Actions of the Superintendent

The Proposed Rule grants considerable discretion to the Superintendent's office with respect to licensing, bonding and capital requirements. We believe that this discretion could provide for an inconsistent regulatory regime, burdens for digital currency firms over and above those of other money transmitters and an unclear understanding of the requirements. In some areas, such as capital requirements, outlining minimum and maximum requirements would be helpful to prevent regulatory arbitrage and a potential negative impact on businesses and competition in the marketplace. Also, it would be helpful to have some criteria to be able to appeal decisions and to be able to seek a review after a certain time period to avoid undue restrictions that may be placed on firms by actions of the Superintendent.

Section 200.8 – Capital Requirements

The Proposed Rule grants the NYDFS a lot of discretion to come up with minimum capital requirements for firms without providing a limit or other clear guidelines. The guidelines in this section could negatively impact digital currency firms' capital and strategic planning and the ability to build and grow a business though reinvestments and proper allocation of resources. The NYDFS should further clarify the methodology on how capital requirements are established. Under the Proposed Rule, capital is based on a variety of factors including business projections, liquidity and the composition of a firm's assets and liabilities. This type of balance sheet management and projection of volumes is difficult for

start up firms in a quickly evolving marketplace. At best, digital currency firms could provide various case scenarios to determine projections and capital needs. Based on this, we feel the Proposed Rule should provide for minimum adequate capital to ensure safety and soundness of firms while also allowing businesses (especially start up and smaller entrepreneurial entities) to grow. This is important for an industry that operates on a full reserve model and is unlike banks, which can leverage assets. While determining minimum capital levels is appropriate, we believe there should be guidance that includes potential ceilings for capital requirements that may be required by the NYDFS.

This section of the Proposed Rule also seems to regulate how a licensed entity allocates retained earnings and profits and states that digital currency firms may only invest retained earnings in high-grade permissible investments (which do not include Bitcoin). First, we believe that digital currency firms should be allowed to hold Bitcoin as a permissible investment. Second, we feel that firms should be allowed to decide how to invest their own profits. The NYDFS should provide clarification on the restrictions on investments of retained earnings and whether this applies to earnings associated with net minimum capital requirements or all of a firm's retained earnings.

Section 200.9 – Custody and Protection of Customer Assets

We believe it is vital that digital currency firms protect and secure digital assets as a custodian of customer funds. Digital currency companies should fully reserve against customer funds and no action should be taken to encumber or change control over those funds.

This section requires that each Licensee 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. Similar to discussion on capital requirements, we believe there should be more clarification on how minimum levels are determined and what potential maximum bonds may be required. Bonding requirements for digital currency firms should be similar (if not the same) as other money transmitters.

The section seems to be restrictive as to how customer assets may be held by Licensees and could unintentionally prevent Licensees from transferring assets or taking actions on behalf of customers through the normal course of business. As long as there is no change of control, these types of administrative transfers should be permitted.

Section 200.10 – Material Changes to Business

This section of the Proposed Rule requires both notice and 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." We believe this could negatively impact business decisions and the ability to

quickly bring new products and services to the market for consumers. It is unclear how long it would take the NYDFS to act on a notice of a material change. Also, it would seem that this rule would create a slippery slope of the NYDFS influencing the competitive landscape and regulating specific products outside the traditional rulemaking processes. It would seem more appropriate for the NYDFS to utilize its supervisory and enforcement powers to oversee this marketplace and ensure safety and soundness and consumer protection in that manner. We suggest that this provision be eliminated or that the NYDFS consider having a notice provision in which all "material" business changes are provided to the NYDFS in a timely manner following implementation. The NYDFS should also provide additional clarity on what is considered a "material change" and the criteria used to determine this definition to avoid confusion in the marketplace and the reporting burdens on Licensees.

Section 200.11 – Change of Control; Mergers and Acquisitions

This section requires prior written approval for any merger and acquisition, which is not currently required under New York money transmitter regulations. We believe that these regulations should be applied consistently by the NYDFS.

We also believe the definition of "control" should be consistent with New York money transmitter statute. Under the Proposed Rule, "control" would be presumed if a Person directly or indirectly controls or holds the power to vote ten percent of a company's voting stock. This contrasts with the New York money transmitter statute, which states that control exists for 25% holders. There are significant negative implications for venture capital firms and investors as well as the ability to effectuate potential business transactions if control was defined at the lower threshold. As a result, we believe the Proposed Rule should be revised to be consistent with the levels for other money transmitters.

Section 200.12 – Books and Records

This section outlines various books and records requirements for digital currency firms. The list of requirements and the length of time such records should be maintained (*i.e.,* 10 years) seems to be burdensome and inconsistent with standard schedules of record retention based on relevant laws. For example, the Bank Secrecy Act requires a 5 year retention for most documents. In addition to the retention length, more clarity is needed on the actual records that need to be retained. Some of the records listed may have little value to the NYDFS.

This section also provides NYDFS with the ability to examine the books and records of Licensees and their Affiliates. It would seem that this is an overreach of the NYDFS authority, especially in relation to affiliated companies that may have an unrelated business or may not operate in New York.

Section 200.13 – Examinations

Similar to the books and records requirements of the Proposed Rule, this section grants NYDFS the authority to examine affiliated companies for the purpose of determining the financial condition of the Licensee. There should some parameters on the authority given to the NYDFS, such as limiting this oversight authority to only extreme instances when a review of an Affiliate may be necessary or appropriate.

Section 200.14 – Reports and Financial Disclosures

We believe the quarterly and annual financial reporting requirements (and related attestations) are excessive and inconsistent with requirements for other money transmitters. Specifically, the Proposed Rule includes the need for Licensees to provide an attestation in conjunction with the annual financial statement as to the compliance with all laws, rules and regulations applicable to it, and management's conclusion as to whether the Licensee has complied with the same, which is not required of money transmitters or other financial services firms reporting to the NYDFS. We believe that this section should be removed. We also believe that that some of the information required to be provided with quarterly financial statements, such as projections and strategic plans, are beyond what other money transmitters provide and seem unnecessary in light of other requirements under the rule to provide the NYDFS with information on material changes.

Section 200.15 – Anti-Money Laundering

We believe that federal laws, specifically the Bank Secrecy Act and FinCEN requirements for certain virtual currency firms, are an appropriate, effective solution for protecting against money laundering and financial crimes risks. The Proposed Rule outlines several AML requirements that are inconsistent with FinCEN regulations and/or other state money transmitter regulations.

First, the Proposed Rule requires suspicious activity reports ("SAR") to be reported directly to the NYDFS. Unlike FinCEN, which allows thirty days to report this activity, the Proposed Rule requires immediate notice. There also does not appear to be dollar thresholds or safe harbor protections on these SARs (unlike what is required under federal law). We would like clarification on how this information would be investigated and why it needs to be reported directly to the NYDFS. If New York insists on having specific reporting requirements, at the very minimum they should clarify that the requirements only apply to transactions involving a sender or recipient from New York and extend reporting deadlines to align with equivalent federal laws.

Second, the Proposed Rule requires reports of all transactions of $10,0000 or above within 24 hours to the NYDFS. This is not required under federal rules, nor is it applicable to other non-cash transactions at these levels. This type of reporting would necessitate significant resources. It may not even be possible to provide the NYDFS with these

transactions in that time window. We would request that the NYDFS consider removing this requirement and/or providing further clarification regarding the potential use of this data.

Third, the recordkeeping requirements related all digital currency transactions are too burdensome. Collecting physical addresses and verifying identities on both sides of the transactions is impractical (if not impossible) and goes way beyond funds transfer recordkeeping and travel rule requirements under federal law. Requiring this information is also contrary to the open source protocol and decentralized nature of digital currency and raises issues relating to consumer's financial right to privacy. This part of the Proposed Rule is inconsistent with other sections, which indicate that only transactions over $3,000 require certain recordkeeping (versus a requirement for all transactions).

Fourth, this section provides that no Licensee will knowingly allow the transfer or transmission of Virtual Currency when the action will obfuscate the identity of an individual or counterparty. This issue relates to the financial right to privacy and anonymity that digital currency provides. This privacy allows consumers to avoid data leakage and protect themselves from identity theft. Of course, bad actors often attempt to obfuscate identities to conduct criminal activity. In those cases, it is incumbent upon digital currency firms to rely upon AML policies and procedures to identify and report this activity. However, legitimate customers should not be penalized for trying to protect their identities. We believe that the NYDFS should make it clear that only "unlawful" attempts to obfuscate identities are prohibited.

Fifth, this section requires enhanced due diligence for accounts involving foreign entities, which includes controls to assess the risks of these parties, the nature of their business (if applicable) and purpose of the activity. While it is appropriate for Licensees to perform KYC procedures and risk assess new customers, this requirement seems overly prescriptive and not aligned with requirements for regular money transmitters. It seems that this type of enhanced diligence should be conducted when necessary based on customer profiles and the risk posed to the firm.

Section 200.16 – Cyber Security Program

We believe cyber security protections are appropriate given that many digital currency firms are custodians of customer assets and that these assets could be subject to theft or other losses. However, we believe security protocols should be applied consistently to all money transmitters. These rules should be risk-based and ensure that larger firms have more comprehensive programs while smaller firms have enough controls to protect against risks as their business grows. As currently drafted, these programs could significantly reduce competition and innovation in this nascent market.

The NYDFS should consider more principles-based regulations in this section. For example, some of the requirements, such as an independent source code review and mandatory penetration testing, are overly prescriptive and disproportionate compared to

approach taken to certain other financial institutions. These principles could include the need to (1) appoint a Chief Information Security Officer, (2) conduct a documented risk assessment and (3) develop a policy and system of controls based on the risk assessment. From here, digital currency firms would be given discretion to comply with the spirit of the law, which is to adequately protect against cyber security risks. If the NYDFS chooses to pursue a more prescriptive approach, we would recommend additional analysis on the types of controls and audits that would be most effective in this space.

Also, the ten year recordkeeping requirement under this section is excessive and would probably not provide for retention of material information for this length of time. We recommend that the NYDFS consider reducing this time period to be aligned with other laws relating to financial services.

Section 200.18 – Advertising and Marketing

The requirements for marketing disclosures and recordkeeping requirements seem excessive and impractical. As currently drafted, the Proposed Rule would require firms to maintain a vast majority of materials and work product for an extended period. We believe the NYDFS should limit the retention requirement to material disclosures or those that that were actually disclosed to New York customers in a widespread manner. In addition, the requirement to list a legend in all materials that the Licensee is authorized in New York could be excessive. We believe that it may be more appropriate to list this information on a corporate website or somewhere else in a clear and conspicuous manner rather that in every individual marketing disclosure.

Section 200.19 – Consumer Protection

We agree with the intent to provide consumers with proper education about how digital currency works and the associated risks. This section outlines minimum initial disclosures of risks and general disclosures of customer rights, terms/conditions, liabilities and receipt information that need to be provided to consumers at various stages of transactions. We feel that many of these obligations under the Proposed Rule are too broad, vague, duplicative and unnecessary. We believe that the NYDFS should carefully consider the timing and content of disclosures and determine how effective they may be for protecting consumers. As currently constructed, these disclosures would result in unnecessary costs for compliance and could negatively impact the efficiency of digital currency payment transactions. It is not clear that the consumer protection risks bear the need for these costs and burdens. In cases of consumer disclosures considered under federal law, regulators have performed detailed analysis of the utility of the disclosures proposed. We would encourage the NYDFS to conduct a similar analysis for the Proposed Rule.

More specifically, we believe the NYDFS should clarify or reduce requirements for Licensees to disclose "all material risks associated with its products, services and activities

and Virtual Currency generally". We don't believe that consumers would benefit from such an extensive laundry list of risk disclosures. We believe the NYDFS should either provide a shorter list of model disclosures for digital currency firms or take a approach where the Licensee is given discretion to tailor consumer disclosures. Similarly, we do not feel that the requirements for Licensees to provide disclosures around potential liability to customers under federal or state laws and regulations are practical or necessary. This requirement would trigger a broad disclosure. We would ask that the NYDFS provide further clarification on what would be required or eliminate this provision.

The Proposed Rule requires Licensees to provide customers with all terms and conditions associated with a transaction for each transaction. We believe this would be unduly burdensome. Customers should be given full terms and conditions prior to establishing a relationship with a Licensee and should acknowledge these conditions. It is not necessary to duplicate this process for every transaction. It provides little benefit to the consumer and negatively impacts their ability to conduct a transaction. Customers should be provided details of transactions (pricing, etc.) upon completion of the transaction. And, any material changes in the original terms and conditions, or any transaction that does not fall within those parameters, should require additional disclosures be provided to customers prior to the transaction.

Section 200.20 – Complaints

We support properly handling consumer complaints in a fair and timely manner. However, the Proposed Rule requires Licensees to provide the NYDFS with changes to its complaint policies within seven days. This seems overly burdensome and ill defined. We feel that only "material" changes in these policies should be reported to the NYDFS and that the NYDFS should provide more clarity on the types of changes that should be reported. The NYDFS should also provide more clarity on requirements to make certain information on complaint reporting available on a firm's website. This section also gives the Superintendent's office wide discretion over requirements for complaints, which could lead to additional uncertainty on criteria or uneven application of the Proposed Rule.

Conclusion

Thank you again for this opportunity to provide comments to the Proposed Rule. This is a critical moment for the digital currency industry. Several state, federal and international regulatory bodies are currently reviewing what regulation is needed for digital currency firms. These regulatory bodies are closely watching the actions of the NYDFS in relation to this Proposed Rule. We encourage the NYDFS to coordinate with these groups to develop a consistent and coordinated approach to regulation. In particular, we believe the NYDFS should be working closely with the Conference of State Bank Supervisors ("CSBS") Emerging Payments Task Force to develop uniform rules that not only apply to digital currency firms, but all money transmitters. If New York develops rules that vary widely from

other states it would only serve to complicate a state license regime that is already inconsistent, onerous and serves as a barrier to entry for many firms. The end result could lead to firms exiting the New York market.

In addition to our substantive comments relating to areas to be re-considered under the Proposed Rule, we believe further analysis of the benefits and risks associated with this proposal is warranted. Any final rules that are implemented should include an adequate runway for implementation to allow firms to develop proper policies and procedures for compliance and ensure there are no unintended consequences associated with the proposals.

We look forward to collaborating further with the NYDFS on rules to create a regulatory regime that adequately addresses risks while also promoting business innovation. We would be happy to discuss any of the above comments with the NYDFS in more detail.

Sincerely,

John A. Beccia
General Counsel and Chief Compliance Officer