



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

20 October 2014

Dear Mr Syracuse

We would be grateful if you would treat this letter as the submissions of the United Kingdom Digital Currency Association (“UKDCA”) in relation to the draft New York regulations (“the regulations”) relating to the conduct of business involving Virtual Currency promulgated by the Superintendent of Financial Services on the 23rd July 2014.

The UKDCA is a non-profit organisation that promotes the use and development of digital currency technologies in the UK through education, lobbying and public engagement. Its membership includes major virtual currency businesses (“VCBs”) operating within the UK.

As a UK-based organisation it would not be appropriate for UKDCA to make detailed submissions in relation to the regulations (though we would comment in passing that the requirements imposed upon licensees by the draft

Regulations are to our knowledge considerably more onerous than those imposed upon financial intermediaries under UK and EU law). However, the UKDCA notes with concern the apparent extra-territorial ambit of the regulations.

The effect of the regulations as currently drafted is that any person conducting Virtual Currency Business Activity (as defined), commits a criminal offence under New York law unless that person complies with the licensing requirements contained within the regulations.

“Virtual Currency Business Activity” is defined in Section 200.2 (n) of the draft regulations as “the conduct of any one of the following types of activities **involving New York or a New York Resident**” (emphasis added).

The phrase “New York Resident” is defined in a very broad manner so as to include “any Person that resides, is located, has a place of business, or is conducting business in New York”.

The phrase “involving New York” is undefined but is also potentially of very wide ambit.

We respectfully suggest that this provision entails the assertion of an unduly wide extra-territorial jurisdiction, is likely to disadvantage New York residents by excluding them from the opportunity to interact with overseas VCBs, and if adopted elsewhere would set a most unfortunate precedent.

We give the example of a UK-based VCB such as a virtual currency exchange which complies with all relevant UK and European legal requirements and which has no particular connection with New York. Such a VCB will of course inevitably have an online presence which will be accessible to people throughout the world. Its customers will thus be drawn from a variety of countries throughout the world.

If the regulations are passed in their present form then if such a VCB were to permit even a single New York Resident (as defined) to open an account, then it would be obliged to comply with the full panoply of the Regulations. This would include (by way of example) the requirement contained in Section 200.15(g)(2) to carry out enhanced due diligence in relation to all of its customers wherever located. With respect, we do not think that the assertion by the State of New York of criminal jurisdiction in such circumstances is appropriate.

Furthermore, overseas VCBs which are unable or unwilling to incur the cost of compliance (and we suspect the vast majority of overseas VCBs will fall into this category) will be compelled to refuse to accept New York residents as clients and indeed to avoid conducting any of the regulated activities with any other person that conducts business in New York.

As a consequence, New York residents (which, as defined, include any person or company which itself conducts business in New York) will be shut out from interacting with the vast majority of overseas VCBs. In practical terms VCBs are likely simply to avoid forming commercial or other business relationships with New York based businesses and entrepreneurs.

Finally, we observe that if other jurisdictions were to adopt a similar approach then this would entail the need for VCBs wherever based to obtain a license from each jurisdiction in which its customers are resident. Globally there are many hundreds of regional/federal and national jurisdictions. The result would be an impossibly onerous regulatory burden.

We therefore urge you to consider amending the draft regulations to exempt from their scope any overseas VCB that engages in VC activity with New York residents or involving the State of New York only incidentally to its main business and which does not otherwise have a permanent presence in New York.

Yours faithfully

Siân Jones

Co-lead, Exchanges Regulation & Accounting Working Group

UK Digital Currency Association

