



Mr. Benjamin M. Lawsky
Superintendent of Financial Services
Mr. Dana V. Syracuse
Office of General Counsel
New York State Department of Financial Services
One State Street, New York, NY 10004

Re: Bitwage, Inc.’s Response to Proposed Rulemaking Regarding Regulation of the Conduct of Virtual Currency Businesses

Dear Mr. Lawsky and Mr. Syracuse:

This comment letter is submitted on behalf of Bitwage, Inc. (“Bitwage”) in response to the proposed BitLicense rule reflected in the notice appearing at 2014-15 N.Y. St. Reg. 14 (“Proposed Rule”).

Bitwage is a Delaware corporation, formed in May 2014, with its principal office in Palo Alto, California. Bitwage offers payroll services that allow an employer and employee to agree contractually on a portion of the employee’s pay to be received in virtual currency. The Bitwage solution plays an important role in the Bitcoin ecosystem by enabling a scalable and reliable way to provide Bitcoins to the people who need it most (e.g. the unbanked) and by creating an easy, secure, and compliant on-boarding process for mainstream adoption.

Bitwage understands the Department’s concern with the Virtual Currency Business, as it is a very new arena with many different players. However, the technology is evolving at an accelerated pace and many applications are emerging using the underlying technology that have nothing to do with monetary functions.

Bitwage believes in responsible regulation of Virtual Currency Businesses as we believe it should benefit and protect consumers while also not stifling innovation in an maturing start-up ecosystem by onerous regulations and overbearing fee and bonding structures that would lock out the small business entrepreneur.

Bitwage has a unique perspective on the Proposed Rule as it relates to our specific area for innovation. In most jurisdictions there is a money transmitter exemption for Payroll Providers due to the fact the Provider is facilitating the payment of wages between employers and employees. Many Payroll Providers also provide access to various medical plans, retirement plans, savings plans as well as investment options allowing portions of their payroll to be put in these vehicles.

Currently, the Department does not regulate payroll providers and only a couple of the large payroll companies are registered as money transmitters in New York specifically for the money transmission side of their business, not for the payroll services. In fact, § 641. of the license requirement states. “No person shall engage in the business of selling or issuing checks, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the superintendent as provided in this article . . .”

Payroll providers do not fit this definition specifically because the provider is NOT receiving money for transmission. Payroll providers are receiving the money to provide payroll services for an employer to facilitate payments to employees. These highly regulated services include deductions for taxes that are forwarded to state and federal governments as well as employee benefit plans including, but not limited to, health, retirement and disability.

The Payroll Provider is just the provider of these tax and allocation services for the employer to pay the employee and provide the various options for the employee to invest in.

Bitwage will provide the same tax calculations as well as various deductions to employers and employees. However, due to the proposed BitLicense, Bitwage and other Payroll Providers interested in offering payouts in Virtual Currencies would be subject to licensing, background and bonding requirements that would limit the feasibility of Virtual Currency payroll services being provided in New York.

Bitwage urges the department to consider how these regulations, developed specifically for consumer protections with businesses conducting money transmitter like services with virtual currency, may adversely affect startups involved in Virtual Currency Business that do not conduct business similar to that of money transmitters. Regarding payroll in particular, payroll transactions are already highly regulated. Dates, amounts, and parties involved in payroll transactions are already reported to both state and federal governments for tax purposes. Requiring a payroll company to record and report the same information to a different government agency is both duplicative and a waste of resources.

Below, we will discuss the definitions of Virtual Currency Business Activity and how payroll companies, which are not typically considered money transmitters, are included. Should the department decide that such ambiguity in the definitions of Virtual Currency Business Activity

might include many Virtual Currency Businesses that do not act in a similar fashion to money transmitters, we urge the department to provide further clarity so as to not stifle innovation for these types of businesses.

Please review the following clarifications and comments on the impact of the Proposed Rule and the BitLicense as it relates to Virtual Currency and Payroll Providers:

Section 200.2 (n)

Virtual Currency Business Activity means the conduct of any one of the following types of activities involving New York or a New York Resident:

(1) Virtual Currency Business Activity means the Conduct of receiving Virtual Currency for transmission or transmitting the same;

(2) Virtual Currency Business Activity means the Conduct of securing, storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;

(3) Virtual Currency Business Activity means the Conduct of buying and selling Virtual Currency as a customer business;

(4) Virtual Currency Business Activity means the Conduct of performing retail conversion services, including

- a. the conversion or exchange of Fiat Currency or other value into Virtual Currency,
- b. the conversion or exchange of Virtual into Fiat Currency or other value, or
- c. the conversion or exchange of one form of Virtual Currency into another form of virtual currency; or

(5) Virtual Currency Business Activity means the Conduct of controlling, administering, or issuing a Virtual Currency.

The definition above captures a wide spectrum of activities involving virtual currency and NY residents. However section 200.2(n) limits the scope of the statute. Below is an analysis of whether Payroll Services fit under the statute's definition of Virtual Currency Business Activity. If Payroll Services do fall under the statutory definition then Payroll Services are subject to Title 23 regulation.

Does the BitLicense Apply to Payroll Services?

A narrow reading of the section 200.2(n) might deem some services out of the scope of Title 23 regulation. Section 200.1—Introduction—indicates, “This Part contains regulations relating to the conduct of business involving Virtual Currency...”

Section 200.2(n) gives the definition of “Virtual Currency Business Activity.”

“Section 200.2(n)(1) *Virtual Currency Business Activity* means the Conduct of receiving Virtual Currency for transmission or transmitting the same”

From the plain language used in this part of the statute it only addresses conduct of receiving virtual currency for transmission or transmitting. Payroll Services helping employers pay in Bitcoin is not receiving virtual currency. The Payroll Provider is providing a service. The service is giving employers the opportunity to pay its employees in virtual currency. At no point during the Payroll Providers’ services does it receive a virtual currency.

“Section 200.2(n)(2) *Virtual Currency Business Activity* means the Conduct of securing, storing, holding, or maintaining custody or control of Virtual Currency on behalf of others”

At no point does the Payroll Provider secure, store, hold or maintain custody or control of Virtual Currency on behalf of others. The Payroll Provider is in the business of issuing employees’ wages from the employer to the employees. Employees’ wages are determined and the dollar amount is converted to virtual currency and paid out to employees. The Payroll Provider does not hold virtual currency. It contracts out with third party services to convert the dollars into virtual currency. The bitcoins are sent to the employees’ wallets.

“Section 200.2(n)(3) *Virtual Currency Business Activity* means the Conduct of buying and selling Virtual Currency as a customer business”

The Payroll Provider is not involved in the buying and selling Virtual Currency as a customer business. The Payroll Providers’ business is focused exclusively on Payroll Services. Its services do not require selling virtual currency as a customer business.

“Section 200.2(n)(4) *Virtual Currency Business Activity* means the Conduct of performing retail conversion services, including the conversion or exchange of Fiat Currency or other value into Virtual Currency, the conversion or exchange of Virtual into Fiat Currency or other value, or the conversion or exchange of one form of Virtual Currency into another form of virtual currency”

The Payroll Provider is not involved in performing retail conversion services. They strictly provide payroll services. It makes available to employers and employees the option of receiving their wages in virtual currency. The Payroll Provider does not itself convert the dollars to virtual currency. The Payroll Provider gives employers the option to pay employees in virtual currency.

Section 200.2(n)(5) *Virtual Currency Business Activity* means the Conduct of controlling, administering, or issuing a Virtual Currency

The Payroll Provider is not involved in issuing, controlling or administering virtual currency.

Although the Payroll Provider is not involved in performing retail conversion services, it is involved in providing employees' wages in bitcoin. Although this process involves converting US dollars into bitcoin, the Payroll Provider does not convert the US dollars into bitcoins. The employer makes funds available to a third party that purchases bitcoins and the Payroll Provider issues the payment to the employees.

Section 200.3(a)

“No Person shall, without a license... engage in any Virtual Currency Business Activity”

Although the Payroll Provider's services do not fit under the definition of 200.2(n), section 200.3(a) bans *any* virtual currency business activity without a state license. Section 200.3 makes two exemptions from licensing requirement and neither exemption apply to Payroll Providers. This would have a significant impact on Virtual Currency as Payroll Providers will not use Virtual Currency and the Blockchain Technology to innovate.

What is the impact of NY statute on Payroll Services?

The proposed “BitLicense” casts too wide of a net. In its proposed form, the BitLicense would effectively stop significant innovation in the payroll sector as it would force a large number of small innovators to spend too much time and effort collecting excessive information on their customers, and hold unnecessarily high reserves. Furthermore, a significant feature of the Blockchain Technology is its open network and protocol. The layers of regulations as it relates to Virtual Currency and the Blockchain Technology removes many advantages of these features and runs contrary to encouraging entrepreneurial investment in New York.

In reality, the BitLicense will also stifle innovation by grouping payroll services with money transmitters. As stated above, payroll services and money transmitting are fundamentally different businesses that require different levels of consumer protection. There are many uses, both known and not yet contemplated, for Virtual Currency and the

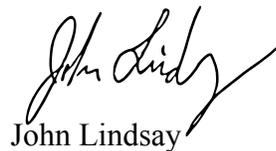
Blockchain Technology. There are many uses of this new technology that have very little to do with the transmission of money. Regulations that are really only appropriate for money transmitters would cripple a growing technology with the potential to change the way that people are paid. Payroll companies, from enterprises to startups and even small businesses, would be required to adopt money transmitting type regulations just to offer Virtual Currencies as an alternative way to pay wages. Barring the likes of Paychex, ZenPayroll, and Gocheto Financials from offering Virtual Currency wages directly inhibits the growth of the Bitcoin economy and hurts the various jobs that have and will be created to support the infrastructure. While certain guidelines are understandable, the interests of the consumers of New York and the United States are not well served by a BitLicense that is too restrictive.

The payroll sector has been virtually unchanged for half a century due to large players, legacy systems and banking protocols that limit the way employees get paid. This has led to an explosion in an industry that preys on the middle and lower income communities the payday advance/loan and check cashing industry. Because employees have to wait until their payday or are unbanked due to financial stress, they are forced to pay bills and cash paychecks through these companies. Fees and interest rates for these companies can exceed the amount of an employee's paycheck if the loan is not paid on time. This has built the payday advance/loan and check cashing industry into a \$9B industry while creating financial stress on employees as well as employers, as employees don't perform well while under financial burdens. The Virtual Currency and Blockchain Technology would allow next generation services to bring this sector into the future while allowing employees the ability to take advantage of getting paid on demand. Whereas the current payment gateways, such as ACH and Wire, are costly and slow, Blockchain Technology allows for cheap, instant transactions. Take the idea of paying an employee every minute. Running this through the ACH system costs on average \$0.30 per minute and 2-4 days to hit the employee's account. This is \$25,000 a year per employee and the payments are not usable for several days. Employers want to take advantage of the economies of scale to pay once every couple weeks, employees living paycheck by paycheck will not be able to wait for the cash to clear for their bills. With Blockchain Technology, paying an employee per minute costs close to nothing and is instant. This allows for innovative technologies like Real-Time Payroll. This means employees no longer have to succumb to the ever-lasting cycle of debt owed to the payday advance/loan and check cashing industries. By overregulation, many of the possibilities like Real-Time Payroll will never come to fruition.

We believe adopting a tiered licensing structure would allow small companies the flexibility to be innovative without excessive capital requirements or onerous recordkeeping regulations. As growth occurs, the companies would likely be able to adopt more rigorous regulation and comply without slowing innovation.

In closing, Bitwage understands the difficulty faced by the Department in developing the regulation of Virtual Currencies in a manner which takes into account the various participants, complexities and concerns involved. However, we would like the Department to consider the points discussed above in relationship to Payroll Providers as well as other servicing companies who have the ability to use the Virtual Currency and Blockchain Technology. Bitwage is committed to complying with all requirements developed by the Department as well as other state and federal authorities in their efforts to regulate the Virtual Currency. We would greatly appreciate the Department taking into account the advantage of allowing innovation within this sector and the benefit to the consumer with the evolution of next generation payroll services.

Regards,



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