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Dear Dana,

With basis on the invitation issued by the New York State Department of Financial Services, through this médium, I would like to express the following ideas regarding the definition 200.2 (m) of the Virtual Currency Regulatory Framework (*Virtual Currency*).

Te content of the referred definition is a rather accurate one, and certainly it could serve as a model for other jurisditcions in the US andd abroad; however, the term "*currency*" should be avoided and such definition should be developed under the term ***Virtual Media of Exchange***, with the aim of uniform this definition with those that currently are in force such as the definition of "*Money*" in the Section 1 (201) of the Uniform Commercial Code that covers all the sovereign media of exchange under the term "*currency*".

Just as Macleod (1906: 292) explains, the spirit of this term has its origin in the foundation of the Common Law that established that the property of money passed along with the honest possession of it in every exchange, and from this institutionalized practice, money was said to be current, and from this exceptional property, the expression arose of the currency of money, and gradually it was a common practice to call the money itself currency. If we work with this original definition, certainly we can use the word currency to describe Virtual Media of Exchange under a Chartalist theory of money's origin, considering that the term money is a generic used to describe private innovations and sovereign currencies in academic contexts.

However, there is a difference between the original and the current uses derived from the evolution of law and the legal use of the generic money. As result of this latter, some governmental agencies and economists ignore the legal definitions that apply to our context or have not been aware of their existence and use the term “*currency*” to apply to all media of exchange, including financial innovations such as Virtual Media of Exchange (Cross 1944: 362-363).

Therefore, in strict legal terms, we use the term “*currency*” only to define a sovereign medium of exchange recognized by every Nation through their respective monetary legislations. If we analyse these latter, most of them do not integrate in their content under the terms “*money*” and/or “*currency*” the innovations that constitute private money. The spirit of these lines can be appreciated in the following normative examples:

- 1) The Uniform Commercial Code defines "money" as the media of exchange authorized by sovereign entities as a part of its currency.**
  
- 2) The Monetary Law of the United Mexican States in its Article 2 dictates that the only currency of legal tender shall be the banknotes issued by the central bank, and the metallic coins minted with basis on the characteristics set forth in the corresponding decree;**
  
- 3) According to the article 105a (2) of the Treaty establishing the European Community, the single currency is materialized through coins and bank notes issued with the authorization of the European Central Bank (ECB), and these pieces of metal and paper, as established in their respective regulations, have the status of legal tender within the Community.**
  
- 4) Under the spirit of the Bulletin published by the Federal Reserve betwixt 1943 and 1944<sup>[1]</sup> (Cross 1944: 363), the §5103 (Legal Tender) of the Title 31 of the U.S. Code stipulates that the United States coins and currency (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues.**

Despite these positive expressions of the law around the globe, we are incurring in an abuse of language. This abuse is not new. If we study contexts relating to this problem such as the nineteenth century of Macleod where some enthusiasts tried to include under the term “*currency*” instruments such as bills of exchange and deposits (Macleod 1906), or our particular context where CNBC (2013) affirmed erroneously, through the popular interpretation of “*currency*”, that Bitcoin was considered legal tender under the German legislation<sup>[2]</sup>. Against these misinterpretations, Samuel Jones Loyd, Lord Overstone, stated accurately that these innovations do not constitute a currency because this term contemplates only the precious metals converted into coin under a sovereign act, and the notes that, through a legal fiction denominated incorporation (Dávalos 2005: 85), represent a particular amount of coins, constituting the currency of a particular country (Macleod 1906: 316).

I do not have any doubt that some enthusiastic followers of the Austrian School of Economics will argue that, through the use of the term “*money*” in some legal instruments such as the cease and desist letter issued by the California Department of Financial Institutions to the Bitcoin Foundation, they are recognizing the future consolidation of a new global paradigm similar to the *moneta imaginaria* of Gasparo Scaruffi<sup>[3]</sup> (Nussbaum 1949). However, the referred document expresses, erroneously, that the Bitcoin Foundation is warned to cease and desist from conducting the business of money transmission in the State of California under the California Financial Code in force. Why erroneously? Well, under the Section 2003(n) of the referred Code, “*Money*” is defined as a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments. In simple worlds: a sovereign unit of exchange. A currency as described above. We can found this spirit in the Proposed Virtual Currency Regulatory Framework that states in its definition 200.2 (m) that these media of exchange can be used only as payment for purchases with the issuer or other designated merchant, **but**

they cannot be converted into, or redeemed for sovereign currency. As consequence of this latter I am proposing through this document that the referred definition should be structured around the term "**Virtual Media of Exchange**" in absence the sovereign recognition. In the future, we could use the term "**Virtual Currency**" to define sovereign media of exchange issued by a Central Bank or other sovereign entity.

## References

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Best regards,

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[1] The word "currency" in these documents is applied to paper money issued by sovereign entities.

[2] CNBC recognized later that this story incorrectly stated that the virtual "currency" was legal tender, confirming the original criteria that defines this innovation only as "private money".

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[3] Scaruffi, in his work *Alitinfo* (True Light), proposed that all the current coins were to be incorporated into the moneta imaginaria system according to scientific principles applicable all over the world (Nussbaum 1949: 422).