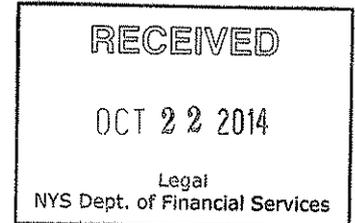




General Counsel's Office
One TSYS Way
Post Office Box 2567
Columbus GA 31902-2567

October 21, 2014

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



Dear Mr. Syracuse:

Total System Services, Inc. ("TSYS") appreciates the opportunity to comment on the New York State Department of Financial Services ("DFS") proposal to establish a regulatory framework for virtual currency businesses (the "Proposal"). TSYS also appreciates the steps the DFS has taken to engage the industry in advance of, and following the release of, the Proposal, as well as Commissioner Benjamin M. Lawsky's recently reported statements that the Proposal represents a starting point, and not an ending point.

TSYS is a leading payments processor and provider of loyalty marketing solutions. As further discussed below, the broad definition of "Virtual Currency" set forth in the Proposal appears to cover rewards programs with cash-back offerings. As a result, administrators of rewards programs with cash-back offerings, including banks, could be viewed as engaging in "Virtual Currency Business Activity," and thus, to the extent their program involves New York or a resident of New York, such administrators would be subject to the requirements of the Proposal. For the reasons described below, we believe that rewards programs with cash-back options should be excluded from the definitions of Virtual Currency. Moreover, we believe that banks and other depository institutions that offer such programs should be expressly exempt from the requirements of the Proposal.

- 1. The DFS should Clarify the Application of the Proposal to Electronic Representations of Fiat Currency.*

The Proposal would define "Virtual Currency" to mean "any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology." While the Proposal states that "Virtual Currency shall be broadly construed," the plain language of the proposal could be read to cover all digital representations of Fiat Currency,¹ including bank deposits, prepaid access balances, and rewards balances. It

¹ Under the Proposal, "Fiat Currency" means "government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law."

cannot be the result that the DFS intends to regulate through the Proposal activities involving these types of “digital units” that are well beyond any reasonable definition of virtual currency. Limiting Virtual Currency to currencies that are not pegged to Fiat Currency or currencies that have a corresponding cash value could be one approach to clarifying the scope of application of the defined term “Virtual Currency.”

2. The DFS should Clarify the Application of the Proposal to Cash-Back Rewards Programs.

There is an exclusion from the proposed definition of “Virtual Currency” for “digital units that are used exclusively as part of a customer affinity or rewards program,” provided that these “digital units...cannot be converted into, or redeemed for, Fiat Currency.” The DFS appears to have carefully crafted a definition of Virtual Currency to claw back any rewards program in which the rewards can be converted into or redeemed for Fiat Currency. However, there are many reward programs with cash-back options that are entirely distinct from virtual currency, as it generally conceived.

Rewards programs with cash-back options are common among banks that hold deposit accounts and credit card issuers. Rewards programs generally, and programs with cash-back options specifically, are very popular among consumers.² Cash-back options may have several different redemption capabilities, including applying cash-back credit to a specific transaction or account, issuing a bank-branded prepaid card in the amount of the cash-back credit, or issuing a check to the primary cardholder in the amount of the cash-back credit.

Based on the claw back from the rewards program exclusion in the Proposal, certain redemption capabilities (e.g., a bank issuing a check or prepaid card to an accountholder or cardholder in the amount of the cash-back credit) could subject an issuing bank to licensing, supervision, and examination under the Proposal. The Proposal would also, among other things, impose capital requirements, restrictions on permissible investments, requirements for prior approval for material changes to existing products or services, and extensive recordkeeping requirements. These requirements under the Proposal may conflict with pre-existing authority, for example regarding permissible investments, and regulatory requirements, for example regarding bank capital.

We do not believe it could be the intent of the DFS to require licensing under the proposal for banks that offer cash-back rewards programs. Banks are generally empowered to offer deposit accounts on the terms prescribed by the bank and to offer credit on terms agreed upon with the accountholder.³ Accordingly, we request that the DFS clarify that cash-back rewards programs offered by banks would not be viewed as Virtual Currency for purposes of the Proposal.

² According to the American Bankers Association Credit Card Market Monitor (Second Quarter, 2014), from the fourth quarter of 2008 to the fourth quarter of 2013 the number of “balance active” rewards card accounts has increased by 18.4 percent and the number of “balance active” non-rewards cards has declined 40.6 percent. Over the same period, the number of new rewards accounts has increased 11.2 percent while new non-rewards accounts declined 51.3 percent.

³ See e.g., N.Y. Banking Law §§ 96(1) (empowering banks to receive deposits of moneys, securities or other personal property upon such terms as the bank or trust company shall prescribe).

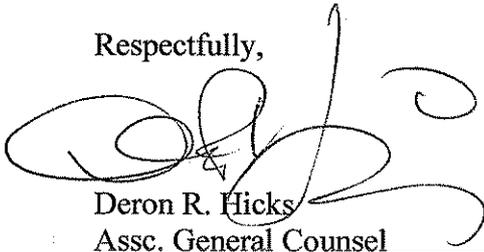
3. *The DFS should Expressly Exempt Banks from the Requirements of the Proposal.*

As discussed above, without expanding the exclusion from the definition of Virtual Currency to all cash-back rewards programs, banks offering cash-back rewards programs would be viewed as Persons engaged in Virtual Currency Business Activities subject to the licensing, examination and supervision provisions of the Proposal. Moreover, without clarifying the definition of Virtual Currency, bank holding deposits on a book-entry basis could be subject to the same requirements. For these reasons, it is notable that there is no express exemption in the Proposal for banks or other depository institutions,⁴ where such an exemption is universal in legacy money transmitter statutes.⁵ Banks are generally empowered to receive currency for transmission; secure, store, hold, or maintain custody or control of consumer assets; and perform currency exchange services. Therefore, without an exemption for banks, the Proposal appears to impede essential bank powers without any apparent regulatory analysis.⁶

Furthermore, the Proposal, as applied to federally-chartered banks, would be preempted by the National Bank Act and implementing regulations.⁷ Therefore, the Proposal would likely put state-chartered banks, including the New York-chartered banks supervised by the DFS, at a competitive disadvantage to their federally-chartered counterparts.

We would welcome the opportunity to discuss our comments or the next version of the proposed regulatory framework for BitLicenses.

Respectfully,



Deron R. Hicks
Assc. General Counsel

⁴ The Proposal only excludes Persons chartered under New York Banking Law to conduct exchange services and approved to engage in virtual currency business activities, and merchants or consumers that use Virtual Currency solely for the purchase or sale of goods or services.

⁵ See e.g., N.Y. Banking Law § 641(1) (stating that “nothing in [the New York Money Transmission Law (N.Y. Banking Law §§ 640-652-B)] shall apply to a bank, trust company, private banker, foreign banking corporation licensed pursuant to [N.Y. Banking Law] or foreign banking company authorized to operate pursuant to the International Banking Act of 1978 (12 U.S.C. §§ 3101 *et seq.*), as amended, savings bank, savings and loan association, an investment company, a national banking association, federal reserve bank, [Edge Act Corporations], federal savings bank, federal savings and loan association or state or federal credit union.”)

⁶ We further note that banks are generally subject to extensive regulation with respect to many of the substantive elements of the Proposal. For example, banks are subject to capital requirements, approval requirements for certain changes to operations; extensive recordkeeping requirements; regular examinations; and regular reporting. Moreover, banks are supervised to ensure effective AML compliance and cybersecurity programs, as well as business continuity and disaster recovery plans.

⁷ See 12 C.F.R. §§ 7.4007 (preempting state law limitations on checking accounts) and 7.4008 (preempting state law limitations concerning lender licensing, among other things).