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October 21, 2014

Dana V. Syracuse, Esq.  
New York State Department of Financial Services  
Office of the General Counsel  
One State Street  
New York, NY 10004-1561

Re: Proposed Title 23, Ch. 1  
Part 200 Virtual Currencies Rules

Dear Ms. Syracuse:

I write to comment regarding the “BitLicense” regulatory framework that has been proposed by the New York State Department of Financial Services (“DFS”). I applaud the efforts of DFS to ensure that businesses dealing in virtual currency are both honest with their consumers, and at the same time, are robust in their anti-money laundering and anti-fraud practices.

That said, I am respectfully concerned that the BitLicense regulatory framework inadvertently lacks an important piece, similar to that which is used by New York State law enforcement agencies for prosecuting individuals and business entities that violate regulations covering money transmitters under Article 13-B of the New York State Banking Law (the “Banking Law”). Without clear regulatory guidance stating that virtual currency businesses are subject to the Banking Law, or alternatively, a corollary New York State statute criminalizing violations of the proposed BitLicense regulations, New York State law enforcement agencies may lose some of their ability to prosecute those who use Bitcoin to further their illegitimate and unlawful activities. As New York State is the home to the financial capital of the world, the State and its law enforcement agencies and partners cannot afford to take this threat lightly.

On January 29<sup>th</sup> of this year, at a hearing held by DFS, I had the opportunity to address the growing concern that virtual currency businesses pose to law enforcement, particularly given that cybercriminals can cloak themselves with layers of anonymity, far beyond those currently utilized, through the use of virtual currency.

As I testified to at the hearing:

The anonymity offered by [virtual currency] payment systems attracts criminals who can now more easily move, conceal, and launder their illicit profits. My Office has investigated and prosecuted these kinds of cases . . . . While we have and will continue to aggressively prosecute individuals who use digital currency to facilitate their criminal activities, we need stronger tools to combat new emerging threats derived from these payment systems.

I further testified at the hearing that:

There should be no ambiguity that digital currency exchanges that transmit value act as “money transmitters,” and are therefore required to comply with the same licensing, reporting, and anti-money laundering regulations imposed on banks and other money exchangers.

Virtual currency exchanges are, undoubtedly, businesses that facilitate the movement of value. Even if DFS chooses to regulate these virtual currency businesses under a “BitLicense” regulatory framework, it is important to clearly state that these virtual currency businesses are also money transmitters, in order to ensure that such businesses are brought under the ambit of Article 13-B of the Banking Law. Bringing these businesses under the Banking Law’s regulation of money transmitters would provide state law enforcement agencies with a critical and essential tool: the ability to prosecute violators of the Banking Law by using the criminal penalties of Banking Law section 650. The criminal penalties (which include felony level offenses) would provide a direct means to enforce the law against unlicensed virtual currency businesses.

However, as currently proposed, the BitLicense regulatory frameworks seems to enable an individual or business entity to obtain a “BitLicense” while not necessarily being considered a money transmitter. By not specifically stating that virtual currency businesses are money transmitters covered by the Banking Law, the proposed regulatory framework creates an air of ambiguity for both the state judiciary and state law enforcement agencies, and potentially removes what should be an indispensable tool for law enforcement.

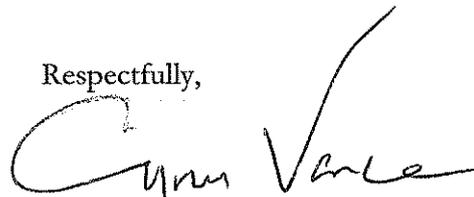
As I testified at the hearing, the nature of a virtual currency exchange, in converting cash to virtual currency and allowing an individual to send the virtual currency to any “address” designated by the customer (absent at least some means of the virtual currency business being certain that a customer is doing no more than simply purchasing virtual currency for his or her own personal account), clearly constitutes money transmission. The potential risk for abuse is not a burden that should be borne by the public, particularly when the entire public does not and may never use virtual currency. Rather, any business dealing in virtual currency—

like all other regulated money transmitters—should bear the burden of ensuring that its services are not being used for illegitimate and unlawful means.

In this regard, it is notable and important that both the federal judiciary and the federal government have apparently taken the position that virtual currency business are, in fact, money transmitters under the parallel federal regulatory scheme. This allows for both federal regulatory and federal criminal enforcement actions against violators. This past August, in a matter pending before United States District Judge Jed S. Rakoff, the Court concluded that “Bitcoin clearly qualifies as ‘money.’”<sup>1</sup> The Court upheld the federal indictment and reached its conclusion in a prosecution charging the defendant with, among other crimes, conducting an “unlicensed money transmission business.” *Id.* The Court’s decision was in line with guidance issued by the Financial Crimes Enforcement Network (“FinCEN”) a year earlier, which also concluded that virtual currency businesses are money transmitters.<sup>2</sup> I believe that DFS should reach the same result as the federal authorities and conclude, at the very least, that virtual currency businesses constitute money transmitters under Article 13-B of the Banking Law.

Of course, there are aspects about virtual currency businesses that may justify further, more robust and enhanced regulation under the proposed BitLicense regulatory framework, and I support DFS in those endeavors. First and foremost, however, the status of virtual currency businesses as subject to the Banking Law must be unequivocally affirmed. Absent such regulatory clarity, the ability of New York State law enforcement agencies to investigate and criminally prosecute virtual currency businesses that violate New York State law may be needlessly and dangerously eviscerated. I respectfully call on DFS to ensure that such a lapse does not occur.

Respectfully,



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<sup>1</sup> United States v. Faiella, 2014 US Dist. LEXIS 116114 (SD NY August 19, 2014).

<sup>2</sup> See FIN-2013-G001, issued March 18, 2013 (“[A]n administrator or exchanger is a [Money Services Business] under FinCEN’s regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person.”) ([http://fincen.gov/statutes\\_regs/guidance/pdf/FIN-2013-G001.pdf](http://fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf))