

WALL STREET BITCOIN ALLIANCE

An Advocacy Group for Wall Street
in the Digital Currency Age

Superintendent Benjamin M. Lawsky
New York State Department of Financial Services
One State Street
New York, NY 10004

Re: Comments on Revised BitLicense Regulatory Framework Proposal for Virtual
Currency Firms

Dear Superintendent Lawsky:

The Wall Street Bitcoin Alliance (“WSBA”) appreciates the opportunity to comment on the New York State Department of Financial Services’ (“DFS”) revised BitLicense Regulatory Framework Proposal published in the New York State Register on February 25, 2015.

The WSBA is a trade advocacy group comprised of financial market professionals representing banking, brokerage, hedge funds and institutional investors. The WSBA mission is to guide and promote comprehensive adoption of digital currency technology across financial markets. We do this by engaging with regulators, policymakers and technology innovators through direct communication, comment letters, studies and more to guide the public dialogue about bitcoin and blockchain technology, so that the financial markets can realize the full potential of these capabilities. We seek to do this in a way that is effective, complies with all regulatory safeguards and ultimately paves the way for more efficient and profitable markets.

We believe that bitcoin and the blockchain represent a seismic shift in how financial markets, and all aspects of the global economy, operate. In the same way that the Internet gave us a powerful way to share and access information, bitcoin and blockchain technology now give us a powerful way to share and access value. As we work to incorporate and adapt these powerful advances in technology to the world of "Finance 2.0", having an organized, strategic approach will help all participants involved in the Bitcoin ecosystem.

WSBA commends DFS for its efforts to create a comprehensive BitLicense framework that aims to provide a strong foundation for market stability and consumer protection, while accommodating a future of innovation in the growth and development of virtual currencies.

WSBA supports the spirit and intent of the BitLicense framework as put forth by DFS. Since the overall focus of WSBA is the financial markets and financial markets

participants, we would like to take this opportunity to point out some relevant areas of the concern within the Framework, and we ask that DFS consider substantive changes to these areas prior to making a final ruling as regards the BitLicense requirement. These questions and concerns are as follows:

LACK OF CLARITY REGARDING BITLICENSE EXEMPTION OR REQUIREMENT TO ACQUIRE A SINGLE BITLICENSE

Section 200.3 (c)(1) indicates that “...Persons chartered under New York Banking Law *and* are approved by the superintendent to engage in Virtual Currency Business Activity...” are exempt from the Licensing requirements. We believe that this requirement is unclear, and that the Superintendent should clarify if such exemption is predicated upon such “Persons” applying separately to engage in Virtual Currency Business Activity, and if so, what form said application, as distinct from the application for a BitLicense, should take.

In addition, with many legal opinions looking at digital currencies as a form of “money”, we would like to call attention to the fact that it seems unclear in the current Framework if those digital currency businesses requiring a BitLicense are also required to possess a money transmitter license for New York State, or if such BitLicense could stand in lieu of said money transmitter license. We believe that the Superintendent should clarify this to eliminate any doubt within the digital currency ecosystem.

CONCERNS REGARDING PLAUSIBILITY OF UTILIZING “QUALIFIED CUSTODIANS” IN CURRENT ENVIRONMENT

Section 200.9 (a) of the Proposed Framework requires that each Licensee maintain “...surety bond or trust account in United States dollars for the benefit of its customers in such form and amount as is acceptable to the superintendent...” and that such trust account must be maintained “...with a Qualified Custodian”. The Framework further also defines a “Qualified Custodian” as a “...a bank, trust company, national bank, savings bank, savings and loan association, federal savings association, credit union, or federal credit union in the State of New York, subject to the prior approval of the superintendent.”

The WSBA has significant concerns about the difficulty in fulfilling this requirement. Firstly, given our working experience with small companies that operate in the areas of financial services and financial technology, we have seen firsthand the difficulty that many of these firms have opening qualified trust accounts or surety bonds with firms that would fall under the Frameworks definition of “Qualified Custodian”. Many banks, trust companies, national banks, savings banks, savings and loan associations, federal savings associations, credit unions, or federal credit unions in the State of New York continue to either not fully understand the actual value proposition of the digital currency ecosystem, or see these businesses and capabilities as competitive threats.

We would suggest that the Superintendent give considered thought to specifically defining tiers based upon size of Licensee client holdings that would give some clarity and certainty to Licensees as the specific form and amount that they would be subject to this requirement. In addition, given the difficulty noted above, we offer as a possible alternative our suggestion that the Superintendent allow a prolonged “ramp up” period that allows Licensees the ability to fulfill the trust account or surety bond requirement over 12 months from BitLicense granting date. We believe that as more banks, trust companies, national banks, savings banks, etc become more familiar and comfortable with the ecosystem of digital currencies, the ability to obtain said trust account or surety bond will become easier for Licensees over time.

CONCERNS ABOUT DISADVANTAGEOUS CAPITAL REQUIREMENTS AS COMPARED TO STANDARD MONEY TRANSMITTERS

In addition to the surety bond or trust account requirement noted in Section 200.9 of the Proposed Framework, Section 200.8 also indicates a minimum capital requirement for Licensees. The WSBA understands that money transmitter licensees are held to no such minimum capital requirements, and we believe that such requirement puts BitLicense holders at a significant competitive disadvantage.

The WSBA reading of the Proposed Framework seems to indicate that Licensees will be held to a confederation of multiple requirements that span those requirements currently adhered to by banks, broker-dealers, money transmitters and other financial institutions. The setting aside of capital, the requirement to collect customer data, post bond, etc seems to impose a significantly higher series of regulatory burdens on the digital currency ecosystem than on other financial products or sectors. For this reason we believe that the minimal capital requirements and other mandates will inhibit innovation and entrepreneurship in this space. The focus of the WSBA as a trade advocacy group is financial services and financial technology firms, and while “Wall Street” is part and parcel of our mandate, our corporate and individual members span banks, broker-dealers, institutional investors, fin-tech firms and more, of all sizes, disciplines and compositions. We believe that the Superintendent should consider, as far as is practical, that the requirements should be aligned with money transmitter licensing as closely as possible, thereby allowing small, medium and large companies to fully participate in the digital currency ecosystem, while allowing for an appropriate level of innovation and entrepreneurship.

CONCERNS ABOUT POSSIBLE CONSTRAINTS ON INNOVATION

Section 200.10 of the Proposed Framework indicates that each Licensee must obtain prior written approval from the Superintendent “...to make any material change to an existing product, service or activity, involving New York or New York Residents”. WSBA has significant concerns about the possible affects of the Section, and how such

requirement may significantly delay or deter solution providers in the digital currency space.

Digital currencies possess unique attributes that are very much based upon the technological nature of this medium of exchange. As such, virtually all product development and enhancement over time will be software based, which often materialize through product and project methodologies meant to facilitate rapid testing, development and deployment. Within the realm of financial markets, one can envision changes such as enhanced security, new, more complex order types, comprehensive analytics and reporting, enhanced data sets and other innovations and enhancements meant to expand use cases and client uptake vis-à-vis digital currencies. In addition, the requirement to obtain permission from the Superintendent prior to any material change seems to differ significantly from the New York State Money Transmitter License requirements, thereby putting digital currency business at significant disadvantage to existing money transmitter businesses. Finally, we believe that the definition of “material change” in section 200.10 (b) is sufficiently vague as to cause difficulty for Licensees of all sizes and resource capabilities to efficiently and effectively determine what would qualify as a “material change”.

It is the opinion of the WSBA that enforcing such requirements will be disadvantageous to Licensees, no matter their size, causing significant costs to inform and advise the Superintendent of such changes or enhancements in advance. This could result in possible loss of new or existing clients, market share and/or competitive position. While we fully agree with the need to protect customers, equally important is the need to cultivate an environment of innovation and growth. The requirement as noted under Section 200.10 will impede the ability of financial service firms, software providers and others to rapidly adapt to new market conditions, test new client services or business models, and respond to changing economic conditions in the world of digital currencies.

The WSBA believes that Section 200.10 (b)(1) should be stricken in its entirety, with Sections 200.10 (b)(2) and (b)(3) standing as sufficient to define materiality. In addition, if the Superintendent were to continue with the requirement for prior written approval of product changes and innovations, we would suggest that this reporting burden be mitigated by allowing Licensees the ability to file quarterly “product roadmaps”, with 90 day approval periods, thereby minimizing the resource burden needed for compliance while allowing the Superintendent line of sight into the product roadmaps of Licensees as they seek to ensure consumer protections.

Finally, one potential that we believe the Superintendent should consider is an exemption for financial service or technology startups that allows them to “incubate” for a period of time while their business model is validated within the marketplace, and during which they can operate in a safe harbor environment pending full licensing. Given the current level of angel and venture capital investment in the digital currency space, firms that process less than \$10 million annually in digital currencies could be

considered as a possible benchmark for inclusion within this exemption. Of course such firms should rightly register with federal money laundering authorities as well as certify sufficient capitalization while under this exemption.

The Wall Street Bitcoin Alliance appreciates the Superintendent's consideration of the points addressed in this comment letter, and would be happy to respond to any questions or comments. As previously noted, we fully support the spirit and intent of the BitLicense Framework, and submit these suggestions and concerns to assist in advancing DFS's stated goals for the conduct of businesses involving virtual currency, while protecting and advancing the growth of innovation in the financial markets as well as the wider economy.

Wall Street Bitcoin Alliance Inc.



Ron Quaranta, Executive Director
March 25, 2015