



Benjamin M. Lawsky  
Superintendent of Financial Services  
New York Department of Financial Services  
One State Street  
New York, NY 10004  
March 27, 2015

Dear Superintendent Lawsky:

BitPay, Inc. (BitPay) appreciates the opportunity to comment on the New York Department of Financial Services' (NYDFS) revision of proposed regulations for virtual currency business activities. For background information on BitPay and our prior comments, please refer to our initial comment letter dated October 20, 2014<sup>1</sup>.

### ***BitPay's Comments***

BitPay recognizes NYDFS' positive revisions, including clarifications that a) software development in and of itself is not a covered activity, b) customer identification is required only on a Licensee's own customer, and c) that a transitional license is an available option for prospective Licensees. However, the revised proposal should be further amended with the following minimum:

#### ***1. Parity with Existing Payee-Agent Exemption***

The New York Banking Law Section 641 that 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, nor shall any person engage in such business as an agent, except as an agent of a licensee or as agent of a payee ..." The final provisions of the BitLicense should incorporate similar "agent of a payee" language to be on a level playing field with New York's traditional money transmission license standards.

Additionally, clarification is needed around the proposed prohibition in §200.3 which states, "[l]icensees are not authorized to exercise fiduciary powers, as defined under Section 100 of the Banking Law." One of the powers enumerated in Section 100 of the Banking Law is the power to "act as ... agent of any person or corporation, foreign or domestic, for any lawful purpose." While this is likely intended to prohibit Licensees from providing trust accounts or acting as trustees, BitPay serves as an agent of its merchants (i.e., payees) to enable their acceptance of bitcoin as a form of payment. This is standard practice for many merchant processors and has historically reduced the payment risk for consumers. BitPay requests clarification in the final regulations to ensure that serving as an agent of a payee remains permissible.

#### ***2. Avoiding Duplicative or Additive AML Requirements***

Federal AML requirements already require submission of Suspicious Activity Reports (SAR) and Currency Transaction Reports (CTR). NYDFS' requirement for submission of a new, Virtual CTR is over burdensome. As Licensees would have ongoing recordkeeping requirements, NYDFS could review transactions over \$10,000 during examinations, and

coordinate with Licensees on an ad-hoc basis to monitor further transactions that are consistent with risk-based supervision principles.

### **3. Unnecessary Ongoing Transaction Disclosures**

BitPay does not engage in consumer services, whether providing remittance services to a consumer to send currencies to another consumer, or exchanging services such as from one fiat/virtual currencies to another fiat/virtual currency. Our customers are merchants, who sell and market their goods and services and permit bitcoin as a form of payment. Prior to onboarding merchants, BitPay discloses our Terms of Use to each merchant. Section §200.19(c) is unnecessary as BitPay discloses details of each transaction in real-time through a secure dashboard to and for each merchant. Requiring additional transaction disclosures and subsequent acknowledgement of the same (§200.19(d)) would be redundant and unnecessary since the Terms of Use are the same for each transaction and the details of the transactions are available to merchants in their dashboard. The NYDFS should re-evaluate §200.19(c) and determine whether ongoing transactions disclosures are necessary for certain relationships such as merchant processors, and/or clarify the applicability of these ongoing transaction disclosures.

Sincerely,

*Tim Byun*

Chief Compliance Officer

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<sup>i</sup> See [http://www.dfs.ny.gov/legal/vcrf\\_0500/20141020%20VC%20Proposed%20Reg%20Comment%20146%20-%20Bitpay.pdf](http://www.dfs.ny.gov/legal/vcrf_0500/20141020%20VC%20Proposed%20Reg%20Comment%20146%20-%20Bitpay.pdf)