

March 27, 2015

VIA COURIER

Office of General Counsel  
Attn: Dana V. Syracuse  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

**Re: Revised Proposed Regulations of Virtual Currency**

Dear Mr. Syracuse:

We write in response to the request for comments on the revised “BitLicense” regulation proposed by the New York Department of Financial Services. I.D. No. DFS-29-14-00015-RP N.Y. St. Reg. (February 25, 2015) (the “Proposed Regulations”). We continue to commend the careful and thoughtful approach the DFS has taken to regulation of Virtual Currency and recognize the work DFS has done to modify its proposal in light of the initial round of public comment.

As you know, we filed extensive comments on the initial draft BitLicense regulations, and we greatly appreciate the Department’s careful consideration of our comments and the changes in the revised proposal. We will not repeat those comments here, but we write principally to expand upon and provide further comments based on the new Proposed Regulations.

**I. The Definition of Virtual Currency**

The definition of Virtual Currency in proposed Section 200.2(p) provides an exclusion for affinity or rewards programs:

Virtual Currency shall not be construed to include . . . (2) digital units that can be redeemed for goods, services, discounts, or purchases with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot

be converted into, or redeemed for, Fiat Currency or Virtual Currency as defined herein

We agree with the Department's position, reflected in this revised definition, that customer affinity or rewards programs should not be regulated as Virtual Currency.

Initial Reference to "customer affinity or rewards program." One of the changes made in the revised Proposed Regulations was to include new language (which we had recommended in our prior comments) that is more typical of the language used to refer to affinity/rewards programs, *i.e.*, clarifying that the units "can be redeemed for goods, services, discounts" and "for digital units in another customer affinity or rewards program." In making this change, however, the revised Regulations also deleted language from the prior version of the Regulations that referred initially to a "customer affinity or rewards program." We believe there is no doubt that the Regulations are not intended to cover such rewards or affinity programs. To avoid any uncertainty or ambiguity, we believe it is helpful for the Regulations to include this language, especially in the event that DFS's definition is adopted in other states. We would therefore support keeping this language from the original version, by beginning this exemption, after "(2)", with the phrase, "customer affinity, rewards, or other programs with". This proposed change is also shown below.

Statement Credits and Cash Back. We previously recommended clarifying that the definition of "Fiat Currency" for this purpose includes only "paper money and coin that circulate as cash" and to include the word "directly" before the references to "converted into" and "redeemed for" Fiat Currency. In both cases, our comments were intended to make clear that the Regulation does not cover card affinity or rewards programs that may be redeemed for features such as (i) billing statement credits (where the rewards are redeemed for a credit that pays down the amount a cardholder owes on a card billing statement) or "cash back" (where rewards are redeemed for cash back in the form of a check or deposit to the cardholder's bank account). We do not think the Proposed Regulations contemplate or the Department intends for such features to cause a card rewards program to be regulated as Virtual Currency and our comments were intended to dispel any uncertainty. A different way to achieve this goal would be to include specific references to such features in the list of redemption options in the definition, by including the words "billing credits" and "cash-back payments" as shown below.

Proposed Changes:

Virtual Currency shall not be construed to include . . . (2) customer affinity, rewards, or other programs with digital units that can be redeemed for goods, services, discounts,

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billing credits, cash-back payments, or purchases with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency as defined herein.”

## II. Application to Already Regulated Institutions

As we discussed in our prior comment letter, we believe the Proposed Regulations should provide an exemption or other appropriate accommodations to avoid duplicative requirements for institutions already regulated by the state, such as licensed money transmitters. We note that other states have provided similar such exemptions. For example, the Texas Currency Exchange law, Tex. Finance Code § 151.502(a)(2) provides an exemption from Texas’s currency exchange licensing regime for entities that are separately licensed under the state’s money transmission regime. In the case of the Proposed Regulations, certain requirements – such as the requirement for executives’ fingerprints – will already have been complied with in the course of obtaining a money transmission license and should be unnecessary if the same entity seeks a virtual currency license.

We appreciate that the Department retains considerable discretionary authority to implement the Regulations in appropriate ways to avoid unnecessarily duplicative requirements, *e.g.*, by taking into account such considerations in the licensing and application process. We would urge the Department to clarify in writing that it retains discretion to avoid duplicative requirements in this fashion, either in the Regulations themselves or in other written guidance, such as an interpretive opinion. Such clarification would provide greater transparency and would help achieve efficiencies for both industry and the Department.

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We thank the Department for its consideration of our comments. If you have any questions, please feel free to contact me directly at [REDACTED] or my partner David A. Luigs at [REDACTED]

Respectfully submitted,



Eric R. Dinallo