March 27, 2015

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

Re: Notice of Proposed Rulemaking for the Regulation of the Conduct of Virtual Currency Businesses

Dear Mr. Syracuse:

The Internet Association respectfully submits these comments in response to the Notice of Proposed Rulemaking related to virtual currency businesses issued by the New York State Department of Financial Service ("NYDFS" or "Department"). The Internet Association is the unified voice of the Internet economy, representing the interests of leading Internet companies[1] and their global community of users. It is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users.[2]

The Internet Association recognizes the challenges faced by the NYDFS in fashioning new rules for new and emerging technologies, including virtual currencies. While we did not submit comments to the Department's first notice, some of our member companies did, and we thank the Department for accepting many of these comments. While our member companies appreciate the improvements made to the Department's proposal, we remain concerned that portions of the proposed rule would create regulatory inefficiencies for businesses that may stifle future innovation unnecessarily. Put simply, as currently written, the benefits of the proposed rule are heavily outweighed by its costs.

[1] The Internet Association's members include Airbnb, Amazon.com, AOL, auction.com, CoinBase, eBay, Etsy, Expedia, Facebook, Gilt, Google, Groupon, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, Practice Fusion, Rackspace, reddit, salesforce.com, Sidecar, SurveyMonkey, TripAdvisor, Twitter, Yahoo, Yelp, Uber and Zynga.

Specifically, we believe that the recordkeeping requirements called for by the proposed rule are already established by state and federal authorities and serve to undermine the free and open nature of many virtual currency networks.

New York has existing rules on money transmission regulations

As written, the proposed rule would require that virtual currency businesses engaging in money transmission in New York acquire both a money transmission license and a virtual currency business license ("BitLicense"). We believe that requiring such a dual licensing regime places enormous operational and administrative burdens on businesses with no apparent benefit to society. Our association believes that NYDFS's proposed rule is unnecessary as it is already established New York state law. To rectify this issue, we suggest amending the state's money transmission regulations to add definitions for "Virtual Currency" and "Virtual Currency Business Activity." This would lead to a more efficient regulatory structure that would not place undue burdens on business and would encourage innovation rather than hinder it.

Federal anti-money laundering (AML) obligations require registration and reporting policies.

Federal law already requires virtual currency exchanges (among others) to register as Money Service Businesses (MSBs) and establish risk-based Anti-Money Laundering (AML) policies. The Department's proposed rule includes new, unprecedented state level AML reporting and recordkeeping requirements that are duplicative of these Federal obligations.

The proposed rule requires licensees to: (i) collect the identity and physical address of any parties to a virtual currency transaction, (ii) file state-mandated activity reporting on a 24-hour deadline, and (iii) verify the identity of any customer who establishes an account, among many other requirements. While we note that (i) and (iii) do contain some "practicality" caveats, these new requirements may cause virtual currency businesses in New York to shut down or block the IP addresses of New York State end-users.

Perhaps most importantly, these recordkeeping and verification requirements are not supported by the underlying Bitcoin Protocol, which is designed to protect the end-user's identity. In other words, the draft rule would force businesses to operate closed, proprietary virtual currency networks. This would eliminate the greatest feature of the Bitcoin protocol - and the larger Internet that underlies it – namely, its global open access.

Internet Association

In closing, we thank NYDFS for engaging in this thoughtful rulemaking effort and for your consideration of these and other comments. We remain optimistic that policymakers will take heed from decades of positive Internet policymaking that created unprecedented innovation and economic growth and apply those lessons to these and other new technologies.

Respectfully submitted,

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Internet Association

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