

March 27, 2015

Superintendent Benjamin M. Lawsky
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Re: New York State Department of Financial Services Proposed Rule Title 23,
Chapter 1, Part 200: Virtual Currencies

Superintendent Lawsky:

LedgerX LLC (“**LedgerX**”) welcomes the opportunity to comment on the revised proposed rules recently published by the New York State Department of Financial Services (the “**DFS**”) pertaining to virtual currency business activity (the “**DFS Proposed Rules**” or the “**Rules**”).¹ The DFS previously proposed rules on July 17, 2014² and LedgerX submitted a comment on such proposed rules (attached hereto as Exhibit A).³

LedgerX is a company based in New York that has applied to become a federally registered and regulated derivatives exchange and clearing organization for derivatives on virtual currency products (e.g., options and swaps based on virtual currencies such as Bitcoin). LedgerX was created to offer merchants, financial institutions and liquidity providers a solution for managing market exposure in virtual currencies through the use of federally regulated, exchange-traded and centrally-cleared derivatives products. LedgerX has submitted applications with the U.S. Commodity Futures Trading Commission (“**CFTC**”) to become registered as a swap execution facility (“**SEF**”) and a derivatives clearing organization (“**DCO**”) and such applications are currently being reviewed by the CFTC. Upon approval of these applications by the CFTC, LedgerX will be regulated by the CFTC and LedgerX, as well as the virtual currency transactions executed on or cleared through LedgerX pursuant to the CFTC-approved LedgerX rulebook, will become subject to the “exclusive jurisdiction” clause of the U.S. Commodity Exchange Act, as amended (“**CEA**”).⁴ This clause provides that:

The [CFTC] shall have exclusive jurisdiction . . . with respect to accounts, agreements (including any transaction which is of the character of, or is

¹ DFS Proposed and Revised Bitlicense Regulatory Framework (Feb. 25, 2015) (available at www.dfs.ny.gov/legal/regulations/revised_vc_regulation.pdf).

² DFS Proposed Bitlicense Regulatory Framework (July 17, 2014) (available at www.dfs.ny.gov/about/press2014/pr1407171-vc.pdf).

³ LedgerX Comment Letter on DFS Proposed Bitlicense Regulatory Framework (Oct. 21, 2014) (available at www.dfs.ny.gov/legal/vcrf_0500/20141022%20VC%20Proposed%20Reg%20Comment%20266%20-%20LedgerX.pdf).

⁴ 7 U.S.C. § 1, *et seq.*

commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 7 of this title or a swap execution facility pursuant to section 7b-3 of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the [CFTC] pursuant to section 23 of this title.⁵

Accordingly, while DFS may have authority to promulgate virtual currency regulations applicable to non-CFTC-regulated entities, the CEA pre-empts the DFS’s ability to adopt substantive regulations governing CFTC-regulated entities. For this reason, DFS should modify the DFS Proposed Rules to expressly exclude CFTC-regulated entities. Failure to make this exemption creates a significant risk of successful constitutional challenge to the DFS final rules.

I. The CFTC Has Exclusive Jurisdiction Over, and is the Appropriate Regulator of, Derivatives Contracts, Exchanges and Clearing Organizations

A. Commodity Exchange Act Regulatory Framework

While virtual currencies may be relatively new products, they are but one manifestation of a larger asset class known as “commodities.” The CEA defines “commodity” very broadly to include enumerated goods and products, as well as “all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.”⁶ CFTC Chairman Massad has testified that virtual currencies come within this definition of “commodity”:

While the CFTC does not have policies and procedures specific to virtual currencies like bitcoin, the agency’s authority extends to futures and swaps contracts in any commodity. The CEA defines the term commodity very broadly so that in addition to traditional agricultural commodities, metals, and energy, the CFTC has oversight of derivatives contracts related to Treasury securities, interest rate indices, stock market indices, currencies, electricity, and heating degree days, to name just a few underlying products. Derivative contracts based on a virtual currency represent one area within our responsibility.⁷

Just as is the case with other commodities, this exclusive jurisdiction arises from the express terms of the CEA. Various state and federal regulatory authorities may have jurisdiction over

⁵ 7 U.S.C. § 2(a)(1)(A).

⁶ 7 U.S.C. § 1a(9).

⁷ CFTC Chairman Timothy G. Massad, Testimony Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry (Dec. 10, 2014).

physical, spot or forward transactions; however the CEA grants the CFTC *exclusive* jurisdiction with respect to accounts, agreements (including any transaction which is an option) and transactions involving swaps or futures contracts traded on or executed on a designated contract market (“DCM”) (*i.e.*, a futures exchange) or a SEF, such as LedgerX (collectively referred to as, “Exchanges”).⁸ Section 12(e) of the CEA explicitly pre-empts any other federal or state statute, or any rule or regulation thereunder, that governs commodity derivatives that are traded on a CFTC-registered entity (such as a SEF), other than anti-fraud provisions of general applicability.⁹

The expansive scope of the CFTC’s exclusive jurisdiction over Exchange transactions in all commodities is clear, as the CFTC has noted:

Before the 1974 amendments to the CEA, questions had arisen regarding the authority of the SEC and state securities administrators to assert jurisdiction with respect to futures-related accounts and futures transactions. Section 2(a)(1)(A) was meant to address these claims of overlapping jurisdiction and to make plain that the CFTC’s jurisdiction is exclusive with respect to futures trading on designated contract markets. This is confirmed through reading the committee reports and floor statements. For example, the Report of the Senate Committee on Agriculture, Nutrition and Forestry on the 1974 CEA amendments states:

While the Committee did wish the jurisdiction of the Commodity Futures Trading Commission to be exclusive with regard to the trading of futures on organized contract markets, it did not wish to infringe on the jurisdiction of the Securities and Exchange Commission or other government agencies. Therefore, the Committee adopted clarifying amendments to the House bill. *The Committee wished to make clear that where the jurisdiction of the Commodity Futures Trading Commission is applicable, it supersedes State as well as Federal agencies.*¹⁰

Thus, virtual currency swaps and options contracts traded on a SEF, like any other commodity, are within the *exclusive* jurisdiction of the CFTC. LedgerX’s contracts will constitute commodity swaps and options transactions traded on a SEF, and LedgerX’s SEF and DCO will be registered with the CFTC, operate within CFTC regulations, and operate under the oversight of the CFTC. Accordingly, LedgerX and its contracts will be subject to the *exclusive* jurisdiction

⁸ 7 U.S.C. § 2(a)(1)(A). See e.g., *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 357-67 (1982).

⁹ 7 U.S.C. § 16(e).

¹⁰ Brief of CFTC in *U.S. Commodity Futures Trading Commission v. Amaranth Advisors L.L.C., et al.*, at 12-13 (quoting S. Rep. No. 93-1131, at 23 (1974), as *reprinted in* 1974 U.S.C.C.A.N. 5843, 5863 (1974)).

of the CFTC and CFTC-regulated entities and transactions conducted on or pursuant to the rules of a CFTC-regulated entity must be exempted from the DFS Proposed Rules. Failure to do so will result in conflict between the CEA and the DFS Proposed Rules.

1. General Principles of Pre-emption

Under the U.S. Constitution’s Supremacy Clause, federal law prevails over state law, giving rise to principles of pre-emption. Where Congress has created a regulatory structure that is intended to be exclusively federal – whether that exclusivity is stated expressly, or merely implied in the pervasive scheme of federal regulation – states may not enter the field reserved to the federal regulators. This is commonly known as field pre-emption. States may not regulate in the field even if their regulations purport to be consistent with, or merely supplemental to, the federal regulations. Indeed, even state regulations outside the federal field, in a related area that Congress has expressly preserved for the States, will be pre-empted if it conflicts with, or frustrates, the federal regulatory structure.¹¹

2. The DFS Proposed Rules Cover the Same Subject Matter as the CFTC Regulatory Scheme and are Thus Subject to Pre-emption

The CEA and CFTC regulations provide comprehensive regulation of commodity derivatives such as futures contracts, options and swaps, and provide a regime for the registration, regulation and oversight of exchanges, clearinghouses and intermediaries such as brokers, dealers and advisors.

The DFS Proposed Rules cover many of the same areas as the CEA and CFTC regulations, but in different ways and with different thresholds. While DFS may believe that its standards are appropriate, when applied to a comprehensively regulated field, DFS may not substitute its own determinations for those of the CFTC. The CEA and the CFTC rules provides robust, time-tested regulation with decades of precedent and the CFTC’s staff is knowledgeable and has significant experience in overseeing commodity derivatives contracts and Exchanges. Additionally, the CFTC generally considers market participant protection to be paramount, which should allay any concerns that the DFS has. For example, the CEA mandates strong customer protection rules, which were recently amended to strengthen the protections afforded to customers.¹² As discussed in our initial Comment Letter dated October 21, 2014, other examples of the CFTC regulations that the DFS is purporting to pre-empt include: (i) Licensure; (ii) Capital Requirements; (iii) Custody and Protection of Customer Assets; (iv) Material Change to Business; (v) Reports and Financial Disclosures; (vi) Anti-Money Laundering; (vii) Cyber Security Program; (viii) Business Continuity and Disaster Recovery; (ix) Books and Records; (x)

¹¹ See, e.g., *Gibbons v. Ogden*, 22 U.S. 1 (1824); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000).

¹² Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68,506 (adopted Nov. 14, 2013).

Complaints; (xi) Consumer Disclosures; and (xii) Compliance.¹³

B. Pre-emption of the DFS Proposed Rules Is Consistent with the Objectives of the CEA

Regulation of futures, options and swaps markets by the CFTC and not other regulators, whether they be for virtual currencies or other commodities, is consistent with Congress’s goal of moving unregulated over-the-counter markets onto federally regulated and transparent markets.

Regulated derivatives exchanges such as LedgerX play an important role in the development of financial markets by providing liquidity and a secure venue for investors to manage short- and long-term risk. Similar to exchanges for financial products, LedgerX will serve the critical role of providing price transparency and a level-playing field for market participants to transact. The existence of a derivatives exchange for an underlying instrument generally increases liquidity and improves price discovery in the instrument, which reduces transaction costs, and we expect the same to be true with virtual currencies.¹⁴ This fits squarely within the legislative purposes of the CEA.¹⁵

C. Retail Market Participants Are Ineligible to Transact on LedgerX

The CEA limits the scope of participants who transact on SEFs to “eligible contract participants,” as defined in the CEA.¹⁶ In short, “eligible contract participants” are financially

¹³ See *supra* Note 3.

¹⁴ See generally, Cade Metz, *The Next Big Thing You Missed: There’s a Surefire Way to Control the Price of Bitcoin*, WIRED (discussing the need for Bitcoin derivative products as a way to protect against risk), available at <http://www.wired.com/2014/01/bitcoin-derivatives/>; Jerry Brito, Houman Shadab & Andrea Castillo, Abstract, *Securities, Derivatives, Prediction Markets and Gambling*, COLUM. SCI. & TECH. L. REV. (forthcoming 2014) (discussing the benefits that Bitcoin derivatives products will have); Interagency Task Force on Commodity Markets, Interim Report on Crude Oil (July 2008) (discussing generally the value of the price discovery function of futures markets and its help in reducing price volatility, allocating price risk and allowing more efficient business planning).

¹⁵ See, e.g., Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o) (stating that the Act, including significant amendments to the CEA, is meant “To promote the financial stability of the United States by improving accountability and transparency in the financial system...[and] to protect consumers from abusive financial services practices.”).

¹⁶ An “eligible contract participant” is defined in Section 1a(18) of the CEA. 7 U.S.C. § 1a(18). Generally, the following types of entities are considered eligible contract participants: (i) registered broker dealers; (ii) registered futures commission merchants; (iii) banks and other financial institutions; (iv) commodity pools with more than \$5 million in assets that are managed by a registered commodity pool operator; (v) entities with \$10 million in assets; (vi) entities with a guarantor that is an entity with \$10 million in assets; (vii) entities with a net worth of at least \$1 million entering into the contract for hedging purposes; (viii) individuals with amounts invested on a discretionary basis that exceed \$10 million, or \$5 million if the individual is entering into the contract for hedging purposes; or (ix) an entity all of whose owners are eligible contract participants having in aggregate at least \$1 million in net worth and are entering into an interest rate, FX or commodity derivatives in order to hedge a commercial risk.

sophisticated parties. LedgerX’s derivatives products will not be available to retail market participants and retail market participants will not be able to transact on or through LedgerX. As such, the CFTC is in a better position to adequately regulate LedgerX and similar entities that provide services to sophisticated parties as they are familiar with these types of clients and have immense experience overseeing the interactions between such parties.

D. Other Regulatory Regimes and Other States Recognize the Appropriate Jurisdictional Division

On the other hand, the DFS’s proposed regulation of virtual currency wallet-type businesses or spot (immediate transfer) exchanges is appropriate and we support this regulation. The separation of jurisdictions between the physical nature of commodities or spot transactions versus derivative transactions where a commodity is the underlying asset in a derivative contract has worked well for the commodities industry and has led to effective regulation for both types of activities.

While the CFTC has exclusive jurisdiction over commodity derivatives traded on a regulated platform, other agencies, state and federal, often have jurisdiction over various types of commodity matters. For example, while the Federal Energy Regulatory Commission has jurisdiction over natural gas pipelines and the physical delivery of electricity, the CFTC maintains exclusive jurisdiction over natural gas and electricity futures, swaps and options. Similarly, the U.S. Department of Agriculture and state agencies have jurisdiction over agricultural standards and food distribution, while the CFTC has exclusive jurisdiction over agricultural derivatives, such as corn futures or grain swaps. With respect to virtual currencies, we respectfully suggest the DFS recognize the CFTC’s exclusive jurisdiction over virtual currency derivatives if the DFS asserts its jurisdiction over virtual currency transmission.

II. There Are Multiple, Simple Solutions to Address this Problem

DFS could easily adopt multiple approaches to resolve the issues identified in this comment letter, while still preserving the overall approach for unregulated market segments proposed in the DFS Proposed Rules.

A. FinCEN Approach

The Financial Crimes Enforcement Network’s (“**FinCEN’s**”) regulations provide one straightforward solution to the issue at hand. Persons registered with and regulated and examined by the CFTC are excluded from the definition of “money services businesses,” under the FinCEN regulations, even if they otherwise meet the definition of a money services business (e.g., are considered to be a money transmitter).¹⁷ FinCEN’s definition of “money services business” states:

¹⁷ See 31 C.F.R. § 1010.100(ff)(8).

Notwithstanding the previous discussion, the term “money services business” does not include:

- ...; or
- A person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.¹⁸

A SEF or DCO registered with the CFTC (such as LedgerX, once its applications are approved by the CFTC) therefore would not fall within the FinCEN’s definition of “money services business,” and would therefore be out of its regulator purview. This deference to the CFTC is in recognition of the strong regulatory framework adopted and enforced by the CFTC. A similar solution could be implemented by revising DFS Proposed Rule 200.3(c) as follows (proposed amendments are italicized):

(c) Exemption from licensing requirements. The following Persons are exempt from the licensing requirements otherwise applicable under this Part:

- (1) Persons that are chartered under the New York Banking Law and are approved by the superintendent to engage in Virtual Currency Business Activity;
- (2) merchants and consumers that utilize Virtual Currency solely for the purchase or sale of goods or services or for investment purposes; *or*
- (3) *persons that are registered with, and regulated and examined by, the Commodity Futures Trading Commission or Securities and Exchange Commission.*

Adopting this suggested revision would similarly recognize the CFTC’s exclusive jurisdiction over the derivative transactions at issue.

B. Conditional License Approach

Another potential solution would be to develop and expand the concept of a Conditional License, as found in DFS Proposed Rule 200.4(c). Allowing federally-regulated entities to obtain Conditional Licenses would allow the DFS to maintain an accurate directory, with the existing regulatory scheme that such entities operate under ensuring that they operate in a safe and fair manner.

If a federally-regulated entity Conditional License is the DFS’s preferred solution, LedgerX suggests that a few necessary clarifications be added to the DFS Proposed Rules to potentially avoid the issue of federal pre-emption. First, DFS should specify that, provided the federally regulated entity is meeting its federal regulator’s requirements, the entity will be deemed to be

¹⁸ *Id.*

meeting DFS's requirements. This will eliminate the problem of DFS Proposed Rules that overlap with federal requirements. LedgerX respectfully requests that the DFS prevent overlapping burdensome regulatory obligations and federal pre-emption issues by making duplicative requirements inapplicable to federally-regulated entities.

In addition, the currently proposed two-year period of validity for Conditional Licenses would lead to too much uncertainty for businesses and is unnecessary for entities that are already federally regulated. With respect to federally-regulated entities, LedgerX proposes that a Conditional License should be valid until that entity ceases to be regulated by a federal regulator.

III. The DFS Proposed Rules Are Overly Burdensome

A. The DFS Proposed Rules Will Stifle Growth and Innovation in the Virtual Currency Sector

While LedgerX as a CFTC-registered entity must be exempted from the scope of the DFS Proposed Rules, LedgerX remains concerned about the effect of the DFS Proposed Rules as currently drafted on virtual currency business growth. We respectfully request that the DFS review how the Rules would impact the ability of the virtual currency market to develop. LedgerX believes that the DFS Proposed Rules could significantly impede financial innovation and the ability of companies to start-up in this space.

For example, DFS Proposed Rule 200.8 regarding capital requirements is vague and appears to be extremely subjective, making it impossible for companies to effectively plan capital needs and funding. This industry, being new, is full of start-ups. A company subject to DFS Proposed Rule 200.8 will not know its capital requirement until after application and superintendent review, making it difficult, if not impossible, to plan its fundraising appropriately prior to application. Additionally, the ambiguity of the DFS Proposed Rules may prevent new companies from obtaining funding at all, as investors will not be willing to tie up money amidst so much uncertainty surrounding licensure.

As currently written, the DFS Proposed Rules also do not provide a procedure to appeal or request further review of the capital requirements, leaving each company's requirements resting solely with the superintendent. In contrast, CFTC rules provide companies notice and flexibility, requiring registered entities to maintain financial resources sufficient to cover the required operating costs for a one year period and giving the entity "reasonable discretion in determining the methodology used to compute such "capital requirements."¹⁹ This provision strikes the correct balance between protecting consumers and giving businesses regulatory certainty and flexibility, in turn encouraging business development. The current DFS Proposed Rules do the opposite, and will discourage the development of a virtual currency industry in New York.

Another example is DFS Proposed Rule 200.11, which would require that the superintendent

¹⁹ CFTC Rule 37.1303.

give prior written approval of any change in control of a Licensee, even though the person seeking to require control of the Licensee must still apply for its own License. Additionally, the 120-day period that the DFS has to approve a change in control is unnecessarily long (especially in light of the superintendent's ability to extend this period indefinitely). We note that with so many new companies in the virtual currency space, acquisitions and changes in control are expected to be relatively common. The uncertainty regarding what is needed for approval of a change in control, and the timing of seeking and receiving superintendent approval will have a significant cooling effect on acquisitions of New York-based virtual currency companies. We respectfully recommend that only a notice of a change in control and a description of ownership need be submitted to the DFS prior to the change in control, provided that the business and operations of the Licensee will not change. In the event that the DFS has a concern with the new ownership, the DFS then can take appropriate actions to gain comfort with the new ownership.

In a similar vein, DFS Proposed Rule 200.10 would require a Licensee to obtain the DFS's prior written approval for any new "product, service, or activity," creating another potential roadblock for businesses to create useful, innovative virtual currency products and introduce them to the market. The Proposed Rule does not speak at all to the length of time that the superintendent may take in evaluating the new business line and is incredibly vague in its description of the requirements for obtaining approval. This is another area that would cause a company significant trouble with respect to funding and strategy certainty, making it an overly onerous burden on a company without a clear benefit.

In contrast, the CFTC allows registered entities, such as SEFs, to self-certify new products by submitting relevant information about the product to the CFTC and attesting that the product does not violate any provision of the CEA or CFTC rules. This affords these businesses flexibility and encourages the creation of new products into the marketplace. LedgerX recommends that as long as the Licensee attests that it is in compliance with applicable DFS final rules and that the new product will not cause the Licensee to violate other DFS final rules, a Licensee should be able to introduce a new product without the DFS's prior approval.

Our above discussion of the DFS Proposed Rules exemplifies how the Rules will unreasonably hinder the development of a virtual currency industry in New York with little, if no, regulatory benefit to the people of New York. Although we appreciate the DFS's desire to protect consumers by imposing a License regime, we do not understand the rationale for imposing such stringent rules on Licensees. The ambiguity, subjectivity and potential delays these Rules will cause will have a significant chilling effect on investment in virtual currency business in New York. Instead of becoming the new hub for virtual currency innovation, the DFS Proposed Rules are more likely to have the adverse consequence of cutting New York off from innovation in new virtual currency technology. Such consequence is particularly important as the technology is in its initial development phase, pioneering uses in clearing and payment systems, two areas in which New York is currently a leader.

IV. The DFS Proposed Rules Are Inconsistent With Other Proposed Regulatory Frameworks

We suggest that the DFS consider whether the current rules governing the licensing of money transmitters in the state of New York, as well as federal regulation for certain entities, consist of a sufficient pre-existing framework for virtual currency regulation. Instead of creating a completely separate regulatory regime for virtual currencies, as is now the case with the DFS Proposed Rules, the DFS should recognize the overlapping regulations applicable to many entities whose business will involve virtual currencies and enact rules that fill in regulatory gaps, as opposed to replicating existing rules and overburdening new businesses. In addition to conflicting with federal regulations, as described above, the DFS Proposed Rules differ significantly from the virtual currency regulatory framework recently proposed in California and the United Kingdom. If adopted as proposed, the DFS Proposed Rules would isolate New York and dissuade virtual currency businesses from both organizing and operating in New York.

California’s recently introduced virtual currency bill requires that any person engaging in a virtual currency business in California obtain a license that is similar to the money transmitter license required by the State.²⁰ Rather than propose numerous new burdensome requirements (as is exhibited by the DFS Proposed Rules), the California legislation simply requires that applicants register for a license and maintain sufficient capital as required by the Commissioner of Business Oversight, which also oversees money transmitters.²¹ This approach accommodates innovation and growth while at the same time ensuring the soundness of virtual currency businesses operating within California. We support a similar approach in New York – virtual currency businesses should operate under existing money transmitter rules and entities that are federally regulated should not be subject to overlapping regulation. Such a regulatory framework has worked well to date, is already fully developed, gives businesses certainty as to what laws are applicable to them and is more appropriate than the DFS Proposed Rules.

These simpler approaches to regulating virtual currencies, being more appropriate for a growing industry and deferring to existing and effective legislation, are much more likely to become the norm in the U.S., potentially isolating New York as a regulatory outlier. This would undoubtedly hurt New York’s pro-business standing and deny the State an opportunity to increase employment opportunities and add additional sources of tax revenue to its coffers. New York will not become the financial innovator and hub for the next wave of technology development and instead risks becoming a pariah.

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²⁰ California Legislature Assembly Bill No. 1326 Virtual Currency (Feb. 27, 2015).

²¹ *Id.*

Accordingly, we respectfully request that the DFS take our comments into consideration when it adopts final regulations. Thank you for giving LedgerX the opportunity to comment on the DFS Proposed Rules. Should you have any questions regarding our comments, please contact the undersigned at .

Respectfully submitted,



Kari S. Larsen
General Counsel/Chief Regulatory Officer
LedgerX LLC

EXHIBIT A

LedgerX's October 21, 2014 Comment Letter Regarding the DFS Proposed Bitlicense Regulatory Framework

October 21, 2014

Superintendent Benjamin M. Lawsky
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Re: New York State Department of Financial Services Proposed Rule Title 23,
Chapter 1, Part 200: Virtual Currencies

Superintendent Lawsky:

LedgerX LLC ("**LedgerX**") welcomes the opportunity to comment on proposed rules recently published by the New York State Department of Financial Services (the "**DFS**") pertaining to virtual currency business activity (the "**DFS Proposed Rules**").

I. Background

LedgerX is a new company based in New York that has applied to become a federally registered and regulated derivatives exchange and clearing organization for derivatives on digital currency products (e.g., options based on digital currencies such as Bitcoin). LedgerX was created to offer merchants and institutional market makers a solution for managing market exposure in digital currencies through the use of regulated, exchange-traded and centrally-cleared derivatives products. To this end, LedgerX has submitted applications with the U.S. Commodity Futures Trading Commission ("**CFTC**") to become registered as a swap execution facility ("**SEF**") and a derivatives clearing organization ("**DCO**"). Upon receipt of approvals, LedgerX intends to initially list derivatives products based on the Bitcoin digital currency, including options to purchase or sell Bitcoin to financially sophisticated parties that are "eligible contract participants" as defined by the Commodity Exchange Act, as amended ("**CEA**").¹ LedgerX's

¹ An "eligible contract participant" is defined in Section 1a(18) of the CEA, 7 U.S.C. § 1a(18). Generally, the following are considered eligible contract participants: (i) registered broker dealers; (ii) registered futures commission merchants; (iii) banks and other financial institutions; (iv) commodity pools with more than \$5 million in assets that are managed by a registered commodity pool operator; (v) entities with \$10 million in assets; (vi) entities with a guarantor that is an entity with \$10 million in assets; (vii) entities with a net worth of at least \$1 million entering into the contract for hedging purposes; (viii) individuals with amounts invested on a discretionary basis that exceed \$10 million, or \$5 million if the individual is entering into the contract for hedging purposes; or (ix) an entity all of whose owners are eligible contract participants having in aggregate at least \$1 million in net

derivatives products will not be available to retail market participants.

Regulated derivatives exchanges such as LedgerX play an important role in the development of financial markets by providing liquidity and a secure venue for investors to manage short- and long-term risk. Similar to exchanges for financial products, LedgerX will serve the critical role of providing price transparency and a level-playing field for market participants to transact. The existence of a derivatives exchange for an underlying instrument generally increases liquidity and improves price discovery in the instrument, which reduces transaction costs, and we would expect the same to be true with digital currencies.²

LedgerX's clearing organization will act as a central counterparty to all transactions effected on the SEF, thereby reducing credit, delivery and systemic risks to the parties involved in the transaction. The clearing organization will stand between each party to a transaction (*i.e.*, the clearing organization will buy every contract from each seller and sell every contract to each buyer), and effectively guarantees the performance of each trade. LedgerX will operate a fully-collateralized clearing organization on which all transactions will be fully-collateralized at the time market participants enter into a transaction. No leverage is involved under a fully-collateralized clearing model because LedgerX participants may not buy or sell contracts on margin. The fully-collateralized feature greatly reduces systemic risk and minimizes the risk of counterparty default. The clearing organization will facilitate the delivery of the underlying digital currency when a long put or long call holder chooses to exercise its option to deliver or to receive delivery of the digital currency, respectively. After an option is exercised, the clearing organization will collect payment and transfer the digital currency. The clearing organization will take temporary possession of the asset in a settlement account before transferring the digital currency to the appropriate buyer's account. The clearing organization will not hold digital currency in a proprietary account.

LedgerX supports the efforts of the DFS to adopt and implement a regulatory framework for digital currency businesses and to serve as the model for a regulatory approach that strikes an appropriate balance between protecting consumers and promoting innovation. We welcome this opportunity to share our comments on, and recommendations to, the DFS Proposed Rules. Specifically, LedgerX wishes to provide input on three topics, each of which we believe is significant to an effective and well-functioning regulatory framework for digital currencies, and each of which addresses our belief that LedgerX and entities providing similar services should

worth and are entering into an interest rate, FX or commodity derivatives in order to hedge a commercial risk.

² See generally, Cade Metz, *The Next Big Thing You Missed: There's a Surefire Way to Control the Price of Bitcoin*, WIRED (discussing the need for Bitcoin derivative products as a way to protect against risk), available at <http://www.wired.com/2014/01/bitcoin-derivatives/>; Jerry Brito, Houman Shadab & Andrea Castillo, Abstract, *Securities, Derivatives, Prediction Markets and Gambling*, COLUM. SCI. & TECH. L. REV. (forthcoming 2014) (discussing the benefits that Bitcoin derivatives products will have); Interagency Task Force on Commodity Markets, Interim Report on Crude Oil (July 2008) (discussing generally the value of the price discovery function of futures markets and its help in reducing price volatility, allocating price risk and allowing more efficient business planning).

not be subject to the DFS Proposed Rules as they currently are crafted. The DFS regulatory framework should provide adequate protection while encouraging innovation in and growth of small businesses.

With this goal in mind, LedgerX first will address the overlapping regulatory regimes for some entities that will result if the DFS Proposed Rules are enacted without modification. Next, we discuss our view that the DFS Proposed Rules should not apply to entities whose use of digital currency is ancillary to the main service that they provide. Finally, we discuss the ways in which the DFS Proposed Rules are more stringent than the regulations that govern banks chartered in New York State. We believe that this stringency is unwarranted given the fact that the oversight of digital currencies can be incorporated into existing regulatory regimes.

II. The DFS Proposed Rules Apply Duplicative Requirements to Federally-Registered Entities, Such as CFTC-registered SEFs and DCOs, and Would Preempt Federal Regulation of Such Entities.

- A. The DFS does not have jurisdiction over options or swap transactions effected on or subject to the rules of a CFTC-registered SEF or cleared by a CFTC-registered DCO.*

The CEA grants the CFTC *exclusive* jurisdiction with respect to accounts, agreements (including any transaction which is an option) and transactions involving swaps or futures contracts traded on or executed on a designated contract market (“**DCM**”) or a SEF (collectively referred to as, “**Exchanges**”).³ The CEA and CFTC regulations provide comprehensive regulation of commodity derivatives such as futures contracts, commodity options and swaps, and for a regime for the registration, regulation and oversight of Exchanges and intermediaries such as brokers, dealers and advisors. The CEA mandates strong customer protection rules, and the CFTC recently amended the customer protection regulations to strengthen the protections afforded to customers.⁴ Digital currencies are within the definition of the term “commodity” as defined in the CEA.⁵ Options on commodities, such as digital currencies, are within the exclusive jurisdiction of the CFTC.

Furthermore, Section 12(e) of the CEA preempts any other federal or state statute, or any rule or regulation thereunder, that governs commodity derivatives that are traded on a CFTC-registered entity (such as a SEF), other than anti-fraud provisions of general applicability.⁶ Under the U.S.

³ 7 U.S.C. § 2(a)(1)(A).

⁴ Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68,506 (adopted Nov. 14, 2013).

⁵ 7 U.S.C. § 1a(9).

⁶ 7 U.S.C. § 16(e).

Constitution’s Supremacy Clause, any state law that conflicts with a federal law is preempted by the federal law.⁷ LedgerX intends to list derivatives contracts on digital currencies on its SEF and clear such contracts through its DCO. Both LedgerX’s SEF and DCO will be registered with the CFTC, operate within CFTC regulations, and operate under the oversight of the CFTC. Accordingly, LedgerX and its contracts will be subject to the *exclusive* jurisdiction of the CFTC and should be exempt from the DFS Proposed Rules as it fits within a pre-existing federal regulatory scheme.

B. The CEA and CFTC regulations already provide a comprehensive regulatory framework for SEFs and DCOs that does not need to be duplicated through the DFS Proposed Rules.

SEFs, DCOs and the trading and clearing of commodity options and other derivatives are subject to a comprehensive regulatory and customer protection regime under the CEA. SEFs and DCOs must register with, and be approved by, the CFTC. SEFs and DCOs adhere to the applicable Core Principles set forth in the CEA.⁸ The Core Principles require, among other things, that SEFs and DCOs have adequate financial, operational and managerial resources; have adequate and appropriate risk management capabilities; maintain books and records; and have appropriate standards for participant and product eligibility. The CFTC has promulgated regulations for SEFs and DCOs that expand upon and implement these Core Principles. In many cases, this regulatory framework already encompasses the DFS’ proposed key requirements for firms holding licenses to engage in Virtual Currency Business Activity, as defined in DFS Proposed Rule 200.2(n) (“**Licensees**”). For example, the CFTC regulatory framework encompasses the safeguarding of consumer assets, maintenance of books and records, dispute resolution mechanisms, disclosure statements, anti-money laundering (“**AML**”) compliance, cyber security, financial and other reporting obligations, compliance officer requirements, emergency procedures and notification, among other items, and requires that registered entities are examined by the CFTC or National Futures Association, as set forth in more detail below.

Safeguarding Consumer Assets. Section 200.9 of the DFS Proposed Rules requires Licensees to adhere to rules governing the custody and protection of customer assets. The DFS Proposed Rules require that each Licensee must hold digital currency of the same type and amount as any digital currency owed or obligated by the Licensee to a third party. Licensees also would be prohibited from selling, transferring, assigning, lending, pledging, or otherwise encumbering assets, including digital currency, that the Licensee stores on behalf of another person. Each Licensee would be required to maintain a bond or trust account in U.S. dollars for the benefit of its customers in such form and amount as is acceptable to the DFS for the protection of the Licensee’s customers.

CFTC regulations similarly require the protection of customer assets. DCOs must comply with

⁷ See, e.g., *Gibbons v. Ogden*, 22 U.S. 1 (1824); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000).

⁸ See 7 U.S.C. § 7b-3(a) (applicable to SEFs) and 7 U.S.C. § 7a-1 (applicable to DCOs).

stringent rules regarding the segregation of all customer collateral from the DCO’s proprietary funds.⁹ SEFs and DCOs are also subject to stringent regulatory capital and liquidity requirements that accomplish the same goals as those in the DFS Proposed Rules.¹⁰

Digital Currency Receipts, Books and Records. DFS Proposed Rule 200.12 requires that Licensees maintain books and records that record, among other things, transaction information and statements or valuations provided to customers, and records demonstrating compliance with the DFS Proposed Rules.

CFTC recordkeeping rules for SEFs and DCOs are even more extensive than those proposed by the DFS. SEFs and DCOs are subject to comprehensive recordkeeping and reporting obligations under CFTC regulations.¹¹ For example, SEFs and DCOs must maintain records of *all* activities related to their businesses.¹² In addition, SEFs are required to “capture and retain audit trail data necessary to detect, investigate, and prevent customer and market abuses.”¹³ The data a SEF must record and maintain to comply with the CFTC’s audit trail requirement is exhaustive. Additionally, the CFTC requires SEFs and DCOs to make all rulebooks and fee schedules, among other types of information, publicly available to ensure transparency and open access.¹⁴

Consumer Complaint Policies. DFS Proposed Rule 200.20 requires that each Licensee establish and maintain written policies and procedures to resolve consumer complaints in a fair and timely manner. Licensees must also provide notice, in a clear and conspicuous manner, that consumers can bring complaints to the DFS’ attention for further review and investigation.

CFTC regulations require that DCOs provide dispute resolution procedures and aggrieved customers may also avail themselves of reparations procedures administered by the CFTC.¹⁵ LedgerX, for example, will provide a dispute resolution process to all market participants, which is outlined in LedgerX’s rulebook. LedgerX’s rulebook will be available on the LedgerX website in accordance with the CFTC rules discussed above.¹⁶

⁹ See 7 U.S.C. § 6d(a) and CFTC Rule 39.15. See also, 7 U.S.C. § 6d(f), CFTC Rules 1.20-1.30 and Part 22 of the CFTC’s regulations (delineating, among other things, segregation requirements and permitted uses of customer funds for cleared swaps and for other derivative instruments).

¹⁰ CFTC Rule 37.1302 (applicable to SEFs) and CFTC Rule 39.11 (applicable to DCOs).

¹¹ CFTC Rule 1.31.

¹² CFTC Rule 37.1000 (applicable to SEFs) and CFTC Rule 39.20 (applicable to DCOs).

¹³ CFTC Rule 37.205.

¹⁴ CFTC Rule 39.21.

¹⁵ CFTC Rule 39.17.

¹⁶ See *supra* note 11.

Consumer Disclosures. DFS Proposed Rule 200.19 states that Licensees must provide clear and concise disclosures to consumers about potential risks associated with digital currencies.

Under CFTC rules, commodity intermediaries, such as futures commission merchants (“FCMs”) and commodity trading advisors (“CTAs”), are required to make similar disclosures of material risks to customers.¹⁷ In addition, LedgerX intends to provide participants with risk disclosure statements as appropriate.

AML Compliance. As part of its AML compliance program, Section 200.15 of the DFS Proposed Rules requires each Licensee to: maintain extensive information related to digital currency transactions; verify customers’ identities; maintain records of the information used to verify such identities; monitor for transactions that might signify money laundering, tax evasion, or other illegal or criminal activity; and notify the DFS immediately upon detection of these types of transactions. In addition, a Licensee must notify the DFS within 24 hours of being involved in any transaction exceeding a U.S. dollar value of \$10,000 in one day, by one person. To meet these reporting requirements, Licensees must utilize an approved methodology of calculating the value of digital currency in fiat currency.

CFTC rules already require CFTC-regulated intermediaries to maintain and perform comprehensive AML and Know-Your-Customer policies and procedures with regard to their customers.¹⁸

Cyber Security Program, Business Continuity and Disaster Recovery. DFS Proposed Rule 200.16 provides that each Licensee must maintain a cyber security program and conduct penetration and vulnerability testing of its electronic systems at specified times. A Licensee also would be required to establish and maintain a written business continuity and disaster recovery (“BCDR”) plan reasonably designed to ensure the availability and functionality of the Licensee’s services in the event of an emergency or other disruption to the Licensee’s normal business activities.

CFTC rules also require CFTC registrants to maintain cyber security programs and BCDR plans, and to undergo periodic testing of BCDR plans. SEF and DCO applicants must provide to the CFTC detailed technology information for evaluation and must conduct testing to the CFTC’s satisfaction. Once registered, SEFs and DCOs must maintain robust BCDR policies and procedures.¹⁹ The plans must be reviewed on a continuing basis as part of any audit conducted

¹⁷ See CFTC Rule 1.55 (governing FCMs) and CFTC Rules 4.31, 4.34 and 4.35 (governing CTAs).

¹⁸ See 31 U.S.C. § 5312(c)(1)(A) (incorporating FCMs into the Bank Secrecy Act’s (the “BSA’s”) definition of “financial institution,” thereby subjecting FCMs to the requirements of the BSA). See also 31 C.F.R. § 103.17 (requiring FCMs to report suspicious transactions to the Financial Crimes Enforcement Network and requiring reporting for certain transactions of at least \$5,000).

¹⁹ See CFTC Rules 37.3 and 37.1401(b) (applicable to SEFs) and 39.3 and 39.18(e) (applicable to DCOs).

by CFTC staff and must be tested annually by the SEF and DCO.

Independent DFS Examinations. DFS Proposed Rule 200.14 states that examinations of Licensees will be conducted whenever the Superintendent of the DFS deems necessary – but no less than once every two calendar years – to determine the Licensee’s financial condition, safety and soundness, management policies, and compliance with laws and regulations.

CFTC registrants, such as SEFs and DCOs, are already subject to periodic examination by the CFTC. Other CFTC-registered intermediaries, such as FCMs and CTAs, are subject to examination by designated self-regulatory organizations such as Exchanges and the National Futures Association. The CFTC publishes CFTC examination reports of Exchanges on the CFTC’s website for public review.

Reports and Financial Disclosures, Audit and Capital Requirements. Under DFS Proposed Rule 200.14, each Licensee must submit to DFS quarterly and annual financial statements. The annual financial statement must be accompanied by an opinion of an independent certified public accountant and an evaluation by such accountant of the accounting procedures and internal controls of the Licensee. In addition, under DFS Proposed Rule 200.8, the DFS will determine individual capital requirements applicable to Licensees.

CFTC registrants are already subject to comprehensive periodic financial reporting and audit requirements. SEFs and DCOs must submit quarterly and annual financial statements to the CFTC for evaluation.²⁰ Generally, SEFs and DCOs must have adequate financial, operational and managerial resources to discharge each of their responsibilities, and financial resources are deemed adequate if the value of the financial resources exceeds its operating costs for a one-year period, as calculated on a rolling basis.²¹

Compliance Officer. DFS Proposed Rule 200.7 mandates that Licensees designate a qualified compliance officer to oversee a compliance program.

CFTC rules require SEFs and DCOs to appoint qualified chief compliance officers who are responsible for monitoring the registrant’s compliance with CFTC requirements and other applicable laws and regulations, among other enumerated duties.²²

Notification of Emergencies or Disruptions. DFS Proposed Rule 200.17(d) requires a Licensee to promptly notify the DFS of any emergency that may affect the Licensee’s ability to fulfill regulatory obligations or that may have a significant adverse effect on the Licensee, the Licensee’s counterparties or the market.

²⁰ CFTC Rule 37.1305 (applicable to SEFs) and CFTC Rule 39.11(f) (applicable to DCOs).

²¹ CFTC Rule 37.1300(b) (applicable to SEFs) and CFTC Rule 39.11(a)(2) (applicable to DCOs).

²² CFTC Rule 37.1500 (applicable to SEFs) and CFTC Rule 39.10(c) (applicable to DCOs).

CFTC rules require Exchanges and clearing organizations to report critical and emergency events to the CFTC and certain emergency information to the public.²³

As demonstrated by the examples above, CFTC registrants, such as SEFs and DCOs, are subject to significant federal oversight that is equivalent to, and in most cases more robust than, the DFS Proposed Rules. While supporting the concept of consumer protection and regulation of digital currency service providers, LedgerX urges the DFS to exempt federally-regulated Exchanges and clearing organizations from the DFS Proposed Rules in light of the comprehensive and robust federal regulatory regime that already applies to such entities and in consideration of the significant overlap between the two regulatory regimes. The regulatory overlap that will arise if the DFS Proposed Rules are adopted as proposed will undoubtedly lead to unnecessary costs without the commensurate regulatory benefit. The result would stifle innovation and push “Virtual Currency Business Activity” out of New York and into less regulated locales. The costs of being subjected to both federal and state oversight clearly outweigh any potential benefit provided by two regulatory regimes, given that it is unclear what, if any, additional public protection would be provided by the double oversight.

C. To avoid duplicitous regulation, the DFS should revise the DFS Proposed Rules to exempt transactions and entities that are otherwise regulated by the CFTC in the same manner as other states and the federal government.

Many states explicitly exempt transactions that are within the jurisdiction of the CFTC from certain state laws that overlap with the federal commodities laws. For example, North Carolina exempts “an account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act”²⁴ from a state law restricting the sale, purchase or offer to sell or purchase or offer to enter into as seller or purchaser of any commodity contract or commodity option.²⁵ Just as states such as North Carolina leave commodity transactions to CFTC regulation, New York should similarly leave the regulation of transactions effected by or through a SEF or cleared by a DCO within the purview of the CFTC. Federal law also exempts CFTC-regulated entities from certain laws in recognition of the fact that additional regulation is unwarranted. Specifically, “persons regulated and examined by the SEC or CFTC,” including registered SEFs and DCOs, are excluded from the definition of “money services business[es]” for purposes of federal AML laws.²⁶ The DFS should similarly pattern the DFS Proposed Rules, deferring to the robust regulatory regime that

²³ CFTC Rule 37.1401(d) (SEFs) and CFTC Rule 39.18(g) (DCOs).

²⁴ N.C. Gen. Stat. § 78D-4.

²⁵ N.C. Gen. Stat. § 78D-2. *See also, e.g.*, CA Corp. § 29531; S.C. Gen. Stat. § 39-73-40; Iowa Code § 502A.4; W. Va. Code § 32B-1-4; Miss. Code § 75-89-9; Idaho Code 30-1504; C.R.S.A. § 11-53-105; Neb.Rev.St. § 8-1719; RCW § 21.30.040; NDCC § 51-23-05; Ga. Code § 10-5A-4; N.R.S. § 91.210; 32 M.R.S.A. § 11204.

²⁶ 31 C.F.R. § 1010.100(ff)(8).

the CFTC has established.

Additionally, all FCMs, CTAs, swap dealers and other entities regulated by the CFTC, and associated persons of such entities who are effecting transactions on or subject to the rules of such SEF or DCO, should be exempted where the digital currency transaction is incidental to the derivatives transaction in which they are engaging. As CFTC registrants, these entities and persons, including LedgerX, already will be subject to extensive and robust oversight by the CFTC, which now regulates swaps and has increased regulatory oversight as a result of the Dodd-Frank Act. As other states adopt digital currency laws, we expect that these states will exempt CFTC registrants with respect to derivatives and related digital currency transactions due to the CFTC's monitoring capabilities and expertise in the derivatives industry. Requiring all CFTC registrants to be subject to state regulation merely because a transaction features the incidental use of a digital currency will increase the regulatory burden for these parties without providing any incremental benefit. The effect of duplicative regulations may cause some participants to exit the market altogether.

III. The DFS Proposed Rules Should Not Apply to Entities Whose Use of Digital Currency is Ancillary to the Primary Service that They Provide

As a registered SEF and DCO, LedgerX will facilitate derivatives transactions between holders of digital currency. To enter into a transaction, each counterparty must use a "wallet" service to transfer digital currency to LedgerX as collateral and, if applicable, to receive digital currency from LedgerX upon the completion of the transaction. During the term of each transaction, the only virtual currency that LedgerX will hold is the collateral transferred to it by both counterparties. Because entities like LedgerX will only act as intermediaries between the wallet Licensees of each counterparty, we believe that the intermediaries should be excluded from the DFS Proposed Rules.

In the same way that traditional broker dealers or FCMs, and not the exchanges on which they transact on behalf of customers, are charged with following AML and net capital rules, the wallet service providers should be required to follow the DFS Proposed Rules, as opposed to entities like LedgerX. Wallet service providers are in a better position to know the customer and have a much greater hand in storing and transmitting digital currencies. Requiring both wallet service providers and entities such as LedgerX to become Licensees and to follow the same rules is duplicitous and overly burdensome in the same way that requiring SEFs and DCOs to be regulated by both federal and state regulators is. SEFs and DCOs should only be regulated by the existing regulatory regime governed by the CEA and CFTC. This option is stronger with respect to federally-regulated entities because the regulations are specifically tailored to the activities of these types of entities, which are already supervised by an agency with expertise in regulating such entities.

In order to ensure that the DFS Proposed Rules do not encompass entities like LedgerX that are merely intermediaries for digital currency, we suggest that the DFS narrow its definition of

“receiving or transmitting” and “securing, storing or maintaining custody”²⁷ so that only entities that are formed to primarily perform these services are subject to the DFS Proposed Rules, whereas entities like LedgerX, whose transmittal and custody of digital currencies is ancillary to its primary services (acting as an exchange and clearinghouse) and whose customers must use existing Licensees in order to use its platform, are unaffected by the DFS Proposed Rules.

IV. The DFS Proposed Rules Are More Stringent in Many Cases than the Regulations that Govern Banks, Despite the Fact that Banks Pose a Greater Systemic Risk than Virtual Currency Businesses

Finally, LedgerX contends that the DFS Proposed Rules are needlessly more extensive in several respects than those governing banks licensed in New York, even though banks represent a greater systemic risk than a business that is involved with digital currencies. For example, under Section 128 of the New York State Banking Code, a bank must preserve all of its required records for at least six years. Under the DFS Proposed Rules, Licensees must preserve records for at least ten years. It is unclear why there is a difference in recordkeeping requirements, as both banks and Licensees may perform similar functions when they hold and transfer traditional currencies or digital currencies.

Additionally, under the DFS Proposed Rules, Licensees would only be permitted to invest in high-quality, short-term investments. Banks are not under the same restrictions. Instead, banks may make long-term investments in any type of debt that is “not in default as to either principal or interest when acquired.”²⁸ Also, the DFS Proposed Rules require that any employee of the Licensee must submit their fingerprints to the FBI. In contrast, under the New York State Banking Law, only the persons submitting the application on behalf of the bank is required to submit fingerprints.²⁹

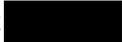
We do not understand the rationale for imposing more stringent rules on Licensees than on banks. The DFS Proposed Rules may impede the establishment of digital currency businesses in New York. In addition, we suggest that the DFS consider whether the current rules governing the licensing of money transmitters in the state of New York, as well as federal regulation for certain entities, consist of a sufficient pre-existing framework for digital currency regulation. Instead of creating a completely separate regulatory regime for digital currencies, as is now the case with the DFS Proposed Rules, the DFS should recognize the overlapping regulations applicable to many entities whose business will involve digital currencies in some way (such as those described in Section II.B) and enact rules that fill in regulatory gaps as opposed to replicating existing rules and overburdening new businesses. Accordingly, we respectfully request that the DFS takes our comments into consideration when the DFS adopts final regulations.

²⁷ As defined in DFS Proposed Rule 200.2(n).

²⁸ N.Y.S. Banking Law § 97(1).

²⁹ N.Y.S. Banking Law § 4002.

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Thank you for giving LedgerX the opportunity to comment on the DFS Proposed Rules. Should you have any questions regarding our comments, please contact the undersigned at 


Respectfully submitted,

/s/ Kari S. Larsen

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