

March 27, 2015

[REDACTED]

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

Mr. Dana V. Syracuse
Office of General Counsel
New York State Department of Financial Services
One State Street, New York, NY 10004-1511

[REDACTED]

Re: Comments on the Proposed Rules regarding the Regulation of the Conduct of Virtual Currency Businesses – Addition to Part 200 to Title 23NYCRR

Dear Mr. Lawsky and Mr. Syracuse:

Ripple Labs, Inc. (“Ripple Labs”) submits the following comments in response to the New York Department of Financial Services’ (“NY DFS”) Proposed Rulemaking on the Regulation of the Conduct of Virtual Currency Businesses, reflected in the notice appearing in the February 25, 2015 New York State Register, I.D. no. DFS-29-14-00015-RP (the “revised proposal”).

Ripple Labs is the technology company that created and supports the Ripple settlement infrastructure – an open-source distributed payment solution for sending funds within and between ledgers. The Ripple settlement infrastructure enables payment in any fiat or virtual currency.

Ripple Labs greatly appreciates the thoughtful revisions that NY DFS has made to the original BitLicense proposal and is grateful for the opportunity of continued participation in the revision process. The revised virtual currency licensing proposal takes into account issues such as a robust cyber security program and specific risks of virtual currency, both of which we discussed in our initial comments.

In this letter, we address two overarching themes that we believe will be essential to an enhanced and effective virtual currency regulation:

1. Align virtual currency and money transmitter licensing regulations

2. Join other regulators to develop a coordinated, national standard for the licensing of virtual currency-related businesses

Reflecting these two themes, we address a series of specific topics in which we believe improvements can be made. These areas are as follows:

- a. Scope and Definitions
- b. AML Requirements
- c. Cyber Security
- d. Additional requirements

We thank you for considering our comments and are happy to assist with any questions.

1. Align virtual currency and money transmitter licensing regulations

a. Scope/Definitions

Ripple Labs commends the NY DFS for acknowledging our original concern regarding the scope of the virtual currency licensing proposal. We asked that definitions of “virtual currency” and “business activity” be revisited to provide greater clarity. Not only did Mr. Lawsky address this issue in public speeches, but also the revised proposal has redefined these two terms to ensure that software development is not encompassed in either. As a technology startup that develops software, Ripple Labs is appreciative of this change.

In our previous comments, we also suggested that the NY DFS focus on a few primary risks associated with virtual currency, specifically volatility and the importance of securing passwords. We would like to expand upon this suggestion to propose that the NY DFS first clearly define what they believe to be the key risks of virtual currency.

When defining these risks, it will be important for the NY DFS to consider the various use cases of each type of virtual currency - not all virtual currencies are created equal. Some are used directly by consumers as a replacement for fiat currencies, while others, such as XRP, function primarily as a security mechanism and operational tool.

Assessing the unique risks of each virtual currency based on their specific use cases, and consequently, detailing the ways in which each risk can be mitigated, would provide greater justification for the differing regulations that the NY DFS has proposed between virtual currencies and money transmitters.

Another important point when considering the scope of the revised proposal is that, similar to money transmitters, many virtual currency companies and networks, such as Ripple, also use traditional fiat currency. The line distinguishing virtual currency companies from money transmitters is continuing to blur.

b. AML Requirements are Inefficient and Burdensome

In our initial comment letter, we stated our concern over a series of duplicative AML requirements. We previously suggested that the NY DFS look to existing federal AML standards, as we believe these are sufficient and applicable to virtual currency. We note that other states, California specifically, have deferred to national AML standards, avoiding conflicting or burdensome duplication of AML monitoring requirements. Our previous concerns included collecting accountholder identity details, reporting transactions exceeding \$10,000, filing separate suspicious activity reports with the NY DFS, and verifying accountholders with transactions exceeding \$3,000. We acknowledge and appreciate that the revised proposal does refine some of these requirements. However, we continue to believe that the amended regulation could benefit from further clarification regarding a few specific topics.

Collection of Identity Details

The DFS calls for recording, “the identity and physical address of the party or parties to the transaction that are customers or accountholders of the Licensee, and to the extent practicable, any other parties to the transaction...” It is unclear in this context, if “to the extent practicable” protects virtual currency companies from being penalized if they cannot provide all components of the personal identification information itemized by the NY DFS.¹

Further clarification is needed around the terms “customers” and “accountholders.” “Customers” implies the occurrence of buying and selling. In this case, collecting the identification details of the parties involved would be the responsibility of the gateway, or bank.

¹ BitLicense Proposal § Section 200.15(e)(1)(i)

It is important to understand that banks and smaller, entrepreneurial companies interact with virtual currencies. Thus, banks ought to be able to continue to use the same systems and processes that they currently use, as these have proved effective for mitigating Customer Identification Program (“CIP”) and other AML risks. Similarly, smaller, entrepreneurial companies should be able to create innovative products without having to contend with the uncertainty of ambiguous requirements. The DFS should be mindful of this if they create new categories of activity that trigger AML obligations; they should do that carefully so as not to inadvertently create multiple, overlapping requirements for the same activity.

Reporting, Filing, and Verifying Transactions

Ripple Labs would also like to reiterate our previous concerns with reporting transactions exceeding \$10,000 and verifying accountholders with transactions exceeding \$3,000. Requiring virtual currency licensees to submit reports for each user that exceeds these thresholds is not only burdensome, but also inefficient.

Rather than impose these additional regulations for virtual currency companies, we strongly urge the DFS to consider relying on the existing AML requirements the Bank Secrecy Act (“BSA”) imposes on Money Service Businesses (“MSBs”). Filing SARs separately with the DFS also continues to widen the gap between virtual currency licensees and money transmitters. We feel strongly that there should be one approach most effective for measuring AML risk, and these regulations only take us one step further from that goal.

Cyber Security Program

Ripple Labs commends the DFS for its constructive amendments to the original virtual currency licensing proposal cyber security requirements. We expressed initial concern over burdensome requirements such as enclosing hardware in locked cages, conducting a third party source code review, and maintaining audit records for ten years, as they created an uneven playing field for virtual currency companies and money transmitters. We also suggested a more tailored approach to developing a cyber security examination. We appreciate that the DFS has since acknowledged these concerns and appropriately modified the program in the revised proposal.

d. Additional requirements

We would like to restate the importance of an even playing field between virtual currency licensees and licensed money transmitters. The proposed regulation, as revised, continues to impose additional burdens on virtual currency licensees, which do not reflect differences in risk between these companies and traditional money transmitters. These include:

- Requirement to obtain prior written approval for any proposed “material change” to the business (not required of money transmitters)
- Minimum capital requirements (While Ripple Labs appreciates that capital requirements may now be met by virtual currency, money transmitters have no minimum capital requirements)
- Investment restrictions (more onerous than those of money transmitters)
- Requirement to obtain prior written approval for change of control triggered at 10% of a company’s equity (instead of at 25% for money transmitters)
- Reports and financial disclosures
- Establishing a written business continuity and disaster recovery plan (not required of money transmitters).

These regulations only serve to widen the gap between virtual currency businesses and money transmitters, ultimately stifling innovation in the payments technology space. Differences between rules for virtual currency businesses and money transmitters should only exist to address risks unique to only one of these sectors. The NY DFS should clearly describe the unique risks it is aiming to address. Otherwise, differing rules between these two related sectors ultimately means that consumers are not being consistently protected from the same risks. Strong public policy should ensure equal protections across related sectors.

2. Coordinating a National Standard for the Licensing of Virtual Currency-related Businesses

The current regulatory regime governing virtual currency-related businesses in the United States is highly fragmented, making registration and licensing very cumbersome, especially for start-ups, small companies, and businesses with broad reach.

To properly monitor risks, regulators should align their licensing and oversight regime to match the business activities of the sector. Given the virtual currencies are national and global in scope, licensing of these firms should occur at the same level.

A national, coordinated approach is needed to ensure that consistent consumer protections exist across all 50 states and to ensure that risks of these business activities are monitored on the national level.

Other countries have realized the need for addressing risks on the national and global level. Specifically, the ECB recently [stated](#):

“Regulatory responses [to virtual currencies] are likely to be more effective if they are internationally coordinated.

A patchwork of inconsistent national-level regulatory responses to financial stability concerns may not address risks -- as the activity of agents in this market may be international.”

Ripple Labs strongly supports the ECB’s call for a coordinated regulatory effort.

National and global coordination is not a new concept in financial services. For instance, in an effort to minimize systemic risk, regulators globally coordinate capital standards through the Basel Committee on Banking Supervision. The G-10 and International Monetary Fund exist to drive a global coordination in monetary policy and financial stability.

There is a strong historical precedent for national and global coordination when regulating business practices that are national and global in scope. The licensing of virtual currency-related businesses squarely fits into this category. To effectively regulate and mitigate risks stemming from this emerging sector, oversight should be driven and aligned at the national and global level.

National coordination is a particularly pressing need for those applications of virtual currency that are designed to interact with the payment system. The payment system is the backbone of a nation’s economic health. If new technological developments relating to payments are to reach their full potential in supporting greater economic activity and the prosperity that comes with it, they should be governed by a single set of national rules.

We strongly believe that the United States must address the fragmentation in its regulatory approach to virtual currency by creating national standards for services that are national and global in reach. Furthermore, common licensing standards would help drive payments innovation forward, while ensuring safety and equal protection for all states. We appreciate New York’s willingness to take leadership by being the first state to articulate a comprehensive framework for the regulation of virtual currency-related businesses, and encourage its regulators to continue to show leadership by coordinating efforts with other state regulators in this area.

Ripple Labs appreciates the opportunity to submit this letter. We are pleased to assist with any questions and look forward to continued participation in the NY DFS' efforts.

Sincerely,

Karen Gifford
Chief Compliance Officer
Ripple Labs, Inc.

