



March 27, 2015

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

Re: Proposed Regulations: Title 23, Chapter I, Part 200: Virtual Currencies

Dear Mr. Syracuse:

This letter is submitted on behalf of Circle Internet Financial, Inc. (“Circle”) in response to the revised Regulation of the Conduct of Virtual Currency Businesses published in the New York State Register on February 25, 2015 (“Proposed Rule”) and issued by the New York State Department of Financial Services (“NYDFS”).

Circle provided detailed comments to the original proposal on October 16, 2014. We appreciate the changes made, however we still have some concerns about the Proposed Rule. If finalized, we believe several aspects of the proposal could negatively impact consumers and businesses that wish to utilize digital currencies in New York. The following summarizes the main areas of the Proposed Rule where we would seek further changes and/or clarification.

1. The anti-money laundering (“AML”) requirements go beyond federal standards

We believe the current AML regulatory framework at the federal level provides adequate oversight of digital currency firms. The Proposed Rule outlines new state-specific AML requirements that are either duplicative and/or broader than FinCEN rules in several areas. First, the Proposed Rule requires suspicious activity reports (“SAR”) to be

reported directly to the NYDFS. Unlike FinCEN, which allows thirty days to report this activity, the Proposed Rule requires immediate notice. There also does not appear to be dollar thresholds or safe harbor protections on these SARs (unlike what is required under federal law). Second, the Proposed Rule requires reports of all transactions of \$10,000 or above within 24 hours to the NYDFS. This is not required under federal rules, nor is it applicable to other non-cash transactions at these levels. This type of reporting would necessitate significant resources and would be difficult to implement. Third, the proposal requires firms to collect the identity and physical address of any party to a digital currency transaction. We agree that Know Your Customer (“KYC”) and Customer Identification Program (“CIP”) standards are important, but feel that the Proposed Rule contradicts federal rules which require a risk-based approach toward identification of customers. The proposed approach would create an uneven regulatory balance between digital currency firms and traditional money transmitters.

2. NYDFS discretion over business choices could harm innovation

The Proposed Rule imposes a wide range of requirements over key business decisions. Most significantly, the proposal requires both notice and prior written approval for “any plan or proposal to introduce or offer a new product, service, or activity, or to make a material change to an existing product, service, or activity, involving New York or New York residents.” The digital currency industry (and related technology) is evolving rapidly. We believe this provision could negatively impact business decisions and the ability to quickly bring new products and services to the market for consumers. The NYDFS has the ability to examine firms on an ongoing basis and review products and services to ensure there is no negative impact on consumers. It is unclear why a pre-approval is needed or how long it would take the NYDFS to act on a notice of a new product or material change in services. Also, it would seem that this rule would allow NYDFS to influence product developments and the competitive landscape. We suggest that this provision be eliminated or the NYDFS consider having a notice provision in which all new products or “material” business changes are provided to the NYDFS at the time of implementation. We appreciate that the Proposed Rule states that Licensees may contact the NYDFS to seek a determination on what constitutes a “material change”, however we believe more guidance on this definition is needed to avoid inconsistent interpretations on an ad hoc basis and Licensees needing to seek repeated determinations without any suggested timeframe for a response.

3. Uncertainty over multiple licenses

We believe there is still an open question about whether certain digital currency firms will need dual licenses in New York. Many digital currency firms have other product offerings that may trigger existing money transmitter licensing requirements. Given that the Proposed Rule includes most of the traditional money transmitter requirements, the NYDFS should clarify that firms with a BitLicense do not need to have a separate money transmission license. Otherwise, firms would be subject to duplicative requirements and be forced to waste time and resources applying for multiple licenses.

4. The requirement for NYDFS to review change of control and acquisitions could chill venture capital (and other) investments into digital currency firms

The Proposed Rule requires prior written approval for any merger or acquisition, which is not currently required under New York money transmitter regulations. We believe that these regulations should be applied consistently by the NYDFS.

Under the Proposed Rule, “control” would be presumed if a Person directly or indirectly controls or holds the power to vote 10% of a company’s voting stock. This contrasts with the New York money transmitter statute, which states that control exists for 25% holders. There are significant negative implications for venture capital firms and investors as well as the ability to effectuate potential business transactions if control is defined at the lower threshold. As a result, we believe the Proposed Rule should be revised to be consistent with the levels for other money transmitters. We appreciate the changes to the most recent version of the Proposed Rule which provide the NYDFS discretion to determine whether “control” may or may not exist at the lower threshold based on a number of factors, however we do not think the distinction is necessary and the definition of “control” should be consistent with the New York money transmitter statute.

5. Some of the disclosure requirements are onerous

The requirements for marketing disclosures and recordkeeping requirements seem excessive and impractical. As currently drafted, the Proposed Rule would require firms to maintain a vast majority of materials and work product for an extended period. We believe the NYDFS should limit the retention requirement to material disclosures or those that were actually disclosed to New York customers in a widespread manner. In addition, the requirement to list a legend in all materials that the Licensee is

authorized in New York could be excessive. We believe that it may be more appropriate to list this information on a corporate website or somewhere else in a clear and conspicuous manner rather than in every individual marketing disclosure.

We agree with the intent to provide consumers with proper education about how digital currency works and the associated risks. The consumer protection obligations under the Proposed Rule however are broad, vague, duplicative and unnecessary. We believe that the NYDFS should carefully consider the timing and content of disclosures and determine how effective they may be for protecting consumers. As currently constructed, these disclosures would result in unnecessary costs for compliance and could negatively impact the efficiency of digital currency payment transactions. We believe the NYDFS should clarify or reduce requirements for Licensees to disclose “all material risks associated with its products, services and activities and Virtual Currency generally”. We don’t believe that consumers would benefit from such an extensive laundry list of risk disclosures. We believe the NYDFS should either provide a shorter list of model disclosures for digital currency firms or take an approach where the Licensee is given discretion to tailor consumer disclosures. Similarly, we do not feel that the requirements for Licensees to provide disclosures around potential liability to customers under federal or state laws and regulations is practical or necessary.

The Proposed Rule requires Licensees to provide customers with all terms and conditions associated with a transaction for each transaction. We believe this would be unduly burdensome. Customers should be given full terms and conditions prior to establishing a relationship with a Licensee and should acknowledge these conditions. It is not necessary to duplicate this process for every transaction. It provides little benefit to the consumer and negatively impacts their ability to conduct a transaction. Customers should be provided details of transactions (pricing, etc.) upon completion of the transaction. And, any material changes in the original terms and conditions, or any transaction that does not fall within those parameters, should require additional disclosures be provided to customers prior to the transaction.

Conclusion

Thank you again for the opportunity to provide comments to the Proposed Rule. We encourage the NYDFS to consider the impact of the proposal prior to issuing a final rule. We also request that NYDFS coordinate with the Conference of State Bank Supervisors (“CSBS”) Emerging Payments Task Force to develop uniform rules across the states. We believe that the information gained through the NYDFS public comment process could be beneficial to the CSBS initiative. If NYDFS were to create a separate set of rules

distinct from the CSBS proposal however, we fear this could lead to incongruous standards among the states for digital currency businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Beccia". The signature is fluid and cursive, with a large loop at the end.

John A. Beccia