

BitLicense – Revised Proposed Rules

Benjamin M. Lawsky
Superintendent of Financial Services
Department of Financial Services
One State Street
New York, NY 10004
March 27th 2015

Dear Superintendent Lawsky:

This letter is submitted on behalf of Novauri LLC (Novauri) in response to the BitLicense regulations proposed by the New York Department of Financial Services (NYDFS).

ABOUT NOVAURI

Novauri is a virtual currency startup based in Denver, Colorado and San Francisco, California. Novauri is preparing to pilot their brokerage service in Q2 2015. This service will allow bitcoin users to purchase and sell bitcoin using ACH debits and credits from their bank accounts. The brokerage service features a user-controlled wallet architecture that puts the customer in full custody and control of their virtual currency. Our service is intentionally designed so that our systems and staff have no access or control of the virtual currency wallets that store customers' bitcoin. This approach prevents the thefts that repeatedly plague services built around centrally controlled wallet designs. The Novauri brokerage service will serve as an onramp for a distributed yet compliant peer to peer money transfer network. Additional details are forthcoming on this remittance service.

BETTER, AND MOVING IN THE RIGHT DIRECTION

The revised proposed rules for the BitLicense are clearly the result of much hard work and deliberation. Areas that were technically impossible to comply with in the original version are now refined and largely practicable in their execution for most companies. It's evident from reading the revised proposed rules that much care and thought went into their creation.

STILL SOME ROOM FOR IMPROVEMENT

With this said, the proposed regulation has room for improvement. Here are several areas that Novauri feels could easily be revised and improved:

- Redundancies across State and Federal requirements are barriers to entry for market entrants and serve no useful purpose
- Cyber-security provisions are improved but still prescriptive, static, and destined to become anachronistic
- Licensing exemptions are based on the discretion of authorities and not quantifiable measures of risk

1. Redundancies across State and Federal requirements are barriers to entry for market entrants and serve no useful purpose

FinCEN clearly specifies that administrators or exchangers of virtual currency are to be considered as money transmitters under the auspices of the Bank Secrecy Act (BSA). The BSA has clear rules related to anti-money laundering and reporting for money transmitters that are largely duplicative with the measures in the revised proposed rules for the BitLicense. As

FinCEN's charter is to protect against financial crimes with the States focused on consumer protection, requiring redundant AML procedures at the State level when these procedures are already required and enforced by FinCEN creates a barrier to entry. Small businesses lack the scale to survive the increased fixed costs these redundancies introduce.

Novauri recommends removing these provisions and replacing the redundant language related to financial crimes and enforcement with a simple statement: The rules and regulations applying to bitcoin at a Federal level (especially from FinCEN) shall apply to all applicable virtual currency businesses with activities in New York State.

2. Cyber-security provisions are improved but still prescriptive, static, and destined to become anachronistic

The proposed revised rules are much improved from the original proposal, yet still prescribe cybersecurity measures specifically that are likely to grow less efficient with time. This includes the creation of a "cyber security program", the designation of specific employee roles, written business continuity and disaster recovery plans that assume the use of hosted/non-distributed data storage and application architecture models, and "training" of employees to execute these plans for models that may not apply for every business.

This is ineffective, as technologies are continuously evolving. Novauri recommends that the NYDFS require businesses that act as fiduciaries for customer deposits to hold deposit insurance or make surety bond deposits for 100% of the value of all fiat and virtual currency deposits in the event that these businesses elect to operate without insurance. If the business has faulty security, the insurance company can make that determination and increase their premiums. In the event that the business's security is unsafe, the insurance companies will not issue insurance at all and the business must provide surety bond deposits to cover this amount with the State. This is a "future proof" way to ensure cybersecurity without creating static rules and regulations that will decay in their effectiveness over time.

3. Licensing exemptions are based on the discretion of authorities and not quantifiable measures of risk

The proposed revised rules leave licensing exemptions to the discretion of the Superintendent. While this is much improved from the original rules, discretion is not predictable or quantifiable, and will cause a demand for legal experts who are familiar with the inner workings of the exemptions process. Small businesses who lack the capital or connections to access these experts will again suffer a barrier to entry into the marketplace. Here Novauri recommends a risk-based exemption model based on quantifiable indicators. The NYDFS should create tiers of transaction principal volume and scale the licensing requirements based on this volume. As virtual currency businesses are overseen closely by their banking partners, restrictions on this volume may be instituted by the banks responsible for their oversight.

CONCLUSION

The revised proposed rules are improved and reflect much hard work, care, and thought. Novauri requests that the NYDFS consider revising the proposal as suggested above. These changes will give the technology the room it needs to grow and evolve.

Sincerely,

Will Madden
Founder & CEO
Novauri, LLC