

The BitLicense Needs a Safe Harbor

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Dear Mr. Lawskey and Mr. Syracuse,

The undersigned companies, organizations, and individuals are members of the technology community and have an interest in researching and promoting decentralized technology, and investing in and providing services and software products that use or leverage digital currency to citizens of the state of New York.

We as a community understand the public policy goals behind the New York Department of Financial Services rulemaking under Title 23, Part 200: Virtual Currencies or “BitLicense.” At the same time, we seek to promote policies that will enable the tremendous amount of potential that digital currencies and associated technologies have to offer. For example, if allowed to flourish, this technology can provide compelling solutions for the 93 million Americans that are un- or underbanked, enable workers abroad to send remittances home without hefty fees,¹ eliminate the substantial public policy challenge of continual data breaches where citizens’ personally identifiable information is compromised, and bring jobs to the state of New York.²

Developing sound policy that enables innovation can make the difference between a future in which technology has helped solve these problems, and one in which entrepreneurs are stifled because they cannot afford the cost of compliance. We seek to strike a balance between these two by proposing a safe harbor for the BitLicense.

This safe harbor would enable startups, open source projects, and innovators to develop new technologies and services without having to go through the costly and complicated licensing process ,

¹ “The World Bank calculates the average fee on remittances at 8%, yet charges can be three times as high.” <http://www.theguardian.com/global-development/2014/aug/18/bitcoin-remittances-market-digital-cash>.

²<http://www.coindesk.com/new-york-bitcoin-job-fair-shows-demand-bitcoin-%20wage-payments/>

while compelling good behavior on behalf of these actors that meet public policy goals of consumer protection, security, and safety. Under a safe harbor, entities should be required to follow best practices in security,³ including the latest advancements in blockchain-based technology to increase transparency and safety, disclose policies around consumer protection, and comply with relevant AML laws including, if applicable, registration with the Financial Crimes Enforcement Network (FinCEN).

The safe harbor should cover at a minimum four main areas:

(1) Small startups: Within the first 24 months of launching, startups should be given leeway to grow without the burden of tens or hundreds of thousands of dollars in compliance fees. The safe harbor should exempt small startups from licensing requirements, with two years as a starting point to get off the ground, without having to first seek permission from the Department of Financial Services. It should also allow for the possibility of renewal after this period.

(2) Microtransactions: Companies and open source projects that enable people to send small payments—anywhere from fractions of a cent to single digit dollars worth—should be allowed to innovate in the same way that other industries such as prepaid cards can. Under the safe harbor, intermediaries should be allowed to process a fixed amount per user per week in transactions without the requirement of a license.

(3) Security intermediaries: Those that hold keys in order to secure digital currency but do not have the ability to control (and therefore lose) the funds should not be subject to licensing the way that banks or custodial firms are. Examples of this technology are multisignature or threshold encryption, but we're only at the beginning in terms of what is possible. These innovators enable greater security and less risk for consumers, and the development of this technology should be encouraged.

(4) Protocols and new currencies: BitLicense currently requires anyone that “control[s], issue[s], or administer[s] a virtual currency” obtain a license. Requiring innovators to do so would stifle many of the new developments in the space. From new assets on top of sidechains to tokens for decentralized file storage systems, creators of new decentralized protocols and technologies should be able to experiment without asking for explicit permission to do so. The safe harbor should ensure that this crucial aspect of innovation can continue.

The NYDFS has demonstrated a willingness to partner with the bitcoin and virtual currency community by making a good-faith effort of publicly engaging the community to collaboratively draft these rules and regulations that will support commerce and innovation while still providing strong consumer protections for those residing in New York and beyond. We believe that a safe harbor is a natural extension of New York's stated goals, and will enable it to strike that balance.

³ One example of such a standard is a new set of proposals developed by industry leaders: <http://blog.cryptoconsortium.org/ccss/>

Thank you for your consideration of our request and we would be happy to speak further on these issues at your convenience.

Sincerely,

Union Square Ventures
Coinbase
Blockstream
Jeremy Allaire, CEO, Circle
Sean Neville, CTO, Circle
John Beccia, General Counsel, Circle
George Frost, General Counsel, Bitstamp Ltd.
Azba Habib, Regulatory Counsel, BitPay
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Will O'Brien, CEO, BitGo
Ben Davenport, CPO, BitGo
Patrick Murck, Executive Director, Bitcoin Foundation
Adam Ludwin, CEO, Chain, Inc.
John Q Smith, COO, ChangeCoin (creator of ChangeTip)
Mike Masnick, Founder, TechDirt and COPIA Institute
Sascha Meinrath, Director, X-Lab
Paul Veradittakit, VP, Pantera Capital
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Tom Mornini, CEO, Subledger
Byron Gibson, COO, Mirror
Alex Morcos, Co-Founder, Chaincode Labs
Alan Reiner, CEO, Armory Technologies, Inc.
Peter Todd, Bitcoin Core developer
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Ryan Shea, CEO, Onename
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Ryan Breslow, Stanford Bitcoin Group
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