



March 27, 2015

Office of the General Counsel
New York State Department of Financial Services
One State Street, New York, NY 10004

Re: Regulation of the Conduct of Virtual Currency
Businesses – Addition of Part 200 to Title 23 NYCRR

Ladies and Gentlemen:

Xapo, Inc. (the “*Company*”) respectfully submits the following comments on the revised Regulation of the Conduct of Virtual Currency Businesses (the “*BitLicense Proposal*”) published by the New York State Department of Financial Services (the “*NYDFS*”) on February 25, 2015.

The Company appreciates that the NYDFS has taken the time to review the numerous comment letters submitted and we believe that it has proposed meaningful revisions to the BitLicense Proposal. For example, the addition of the conditional licensure framework is a step in the right direction and we note meaningful steps in the right direction around reporting requirements, consent waiting periods, clarity on the licensing process (including cost) and elsewhere.

We have offered additional suggestions on the BitLicense Proposal below, and we note that the BitLicense Proposal now includes a company’s participation with a self-regulatory organization as a factor for granting a conditional license. The Company was pleased to see recognition of the potential importance of self-regulatory organizations within the ecosystem. We have taken the lead on developing a self regulatory organization framework addressed to the Bitcoin industry. Several of our industry counterparts have indicated their willingness to support this, and we are in the process of soliciting feedback. The self-regulatory organization would develop rules to govern the its members with oversight by third party auditors. The goal of the self-regulatory organization is to provide members with a framework to address governance, risk management, and other critical matters that may not yet be addressed by existing domestic and international regulations. It would also provided consumers and regulators with transparency as to the standards of behavior required of members. We are in the process of developing a framework of standards which will later be broken into precise rules that would be adopted and maintained by the self-regulatory organization. These rules would form the basis of the requirements of an applicant during the certification process and for ongoing compliance. At a high level, the rules would employ a risk-based approach that would allow for flexibility based on a company’s business and would address the following topics:

- Corporate governance;
- Risk management;
- Solvency;
- Prevention of money laundering, terrorism financing and other illicit activities; and
- Consumer protection.

We believe that an effective self-regulatory organization would serve numerous interests and would ultimately benefit industry members as well as the regulatory community. We would certainly welcome your office’s participation on the development of the self-regulatory organization, and we’d be happy to discuss this live.

Regarding the BitLicense Proposal, we continue to believe that effective regulation of the digital currency industry must protect consumers and deter illicit activities, but it should help to foster innovation. As such, we

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believe that several areas of the BitLicense Proposal would benefit from additional revision. The Company's letter is brief as the specifics of many of our comments have been covered in a letter we filed jointly with the Industry Working Group, consisting of contributions from Coinbase, Circle, The Bitcoin Foundation, CoinX, Bitreserve, Bitnet, Bitstamp and Bitpay.

1. **The BitLicense Proposal remains overly broad in scope and application.** Many elements in the BitLicense Proposal relating to the application, granting and maintenance of a license remain subject to the Superintendent's discretion. The risk is that this type of discretion can create unpredictability, may be inconsistently applied, and may even be subject to abuse (for example, favoring one business model or company over others).

While many of these discretionary aspects are analogous to the discretion afforded in New York's existing money transmission statutes and regulations, the difference is the existing money transmission framework has become well-established and well-defined through application, which offers predictability and clarity. The accumulated experience with the existing framework provides a known path for regulated business to comply with regulatory requirements. Bitcoin companies do not have the benefit of past practice and interpretive guidance. The discretion left to the Superintendent in the BitLicense Proposal means that bitcoin companies remain subject to unknown risks, including selective application or enforcement.

We believe that to appropriately balance innovation with consumer protection and the deterrence of illicit activity, the BitLicense Proposal should utilize objective criteria or, at minimum, guidance as to subjective criteria. This would allow a licensee to comply with the licensure framework on an ongoing basis.

2. **The BitLicense Proposal continues to impose an undue burden on bitcoin companies.** The regulatory framework application to bitcoin companies would be in excess of New York's existing money transmission licensure framework on several key points. This is unduly burdensome at present in light of the volume and activity of bitcoin companies. We believe that bitcoin transactions may be at a level so small as to not be suitable for existing regulation, or possibly any regulation at all, so to face increased regulation seems inconsistent with allowing a nascent industry to innovate in a responsible way.

Specific examples include the capital requirements contained in Section 200.8 and the pre-approval requirements relating to material changes in the business contained in Section 200.10. Our proposal is to strike these requirements rather than to amend them. In any form, they disadvantage bitcoin companies relative to other companies.

Other sections would benefit from changes to conform to New York's existing money transmitter framework, which is would also be consistent with Federal guidance. Specific examples include the record-keeping requirements in Section 200.12 and the anti-money laundering requirements in Section 200.15. The existing money transmitter framework references the federal requirements in these areas. We believe this is a reasonable balance. As currently written many of the reporting and record-keeping provisions contained in the BitLicense Proposal are duplicative of existing federal anti-money laundering reporting regulations. This means that a company with a BitLicense must invest a significant amount of cost and time to comply, without any commensurate additional benefit in deterring illicit activity. If a bitcoin company determines that the cost of compliance outweighs its ability to provide services to users, this could have the unintended effect of forcing consumers to use less reputable services.

Although the change of control pre-approval process contained in Section 200.11 seems largely consistent with the existing money transmitter framework, we believe that it is unduly burdensome on bitcoin companies. We believe that the revisions made to this section from the original BitLicense proposal were improvements, but we believe further revision is necessary. Though the bitcoin industry is a financial services industry, it is driven by technology. The pace of change in the bitcoin industry means that the existing waiting periods and pre-approval process could chill growth and deter innovation. We continue to favor revision the requirement of consent to one of

notice (at which point, ongoing compliance with the licensure requirements could be evaluated by NYDFS).

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In light of the relatively low volume and narrow scope of the activities of bitcoin companies and the rapid pace of change in the bitcoin industry, we believe that the BitLicense Proposal would benefit from additional revisions to level the playing field for bitcoin companies. We favor a framework that affords clarity for virtual currency companies and protection for New York consumers, such as that afforded to traditional money transmitters in New York. We look forward to continuing to engage with NYDFS to reach an appropriate and balanced set of regulations.

Very truly yours,

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

John O. Reinsch, Esq.
Senior Vice President, Legal & Strategy