<u>**Subject: "Proposed Coin Listing Policy Framework"**</u>

The Proposed Guidance Regarding Adoption or Listing of Virtual Currencies will create a useful framework for BitLicensed exchanges to add and list cryptocurrencies in New York state. While having a clear legal framework will foster innovation and drive business to the state, we also believe the following factors should be considered while designing the regulations in order to strengthen the fairness and transparency of the framework:

1. **There should not be a whitelist.** Publishing a cryptocurrency whitelist naming specific approved projects is detrimental to technological innovation, as it artificially creates "winners" in the virtual currency space. Many legitimate projects share the exact same characteristics and properties as the proposed whitelisted projects - but they are excluded from the whitelist. The reason for this exclusion isn't apparent and appears arbitrary
2. However, if the decision to announce an official whitelist has been made, it should be **clear what criteria were considered and those same set of criteria should be applied automatically to other cryptocurrencies that comply**. This set of requirements can be varied. For example, one set of requirements could be that only cryptocurrencies with transparent blockchains, where the sender and receiver information is available will be considered as an addition to the whitelist. Another set of requirements may center around whether or not the cryptocurrency exhibits characteristics strongly consistent with treatment as a security
3. Furthermore, if the decision to announce an official whitelist has been made, there should be a **standard approach for a cryptocurrency to apply to be added to the whitelist**, should it not "tick the boxes" with all of the requirements defined in bullet 2. We recommend this approach be clear and transparent. The methodology should list what features and criteria are most relevant to the regulators when the decision to whitelist a cryptocurrency is being considered
4. Finally, there should be a **standard approach for exchanges to apply for new cryptocurrency listings.** Requiring exchanges to carry the risk and expense of listing a token may result in unfair practices where only cryptocurrency projects with deep pockets that can offset the cost of a regulatory review are listed. This would violate a fair approach to cryptocurrency evaluation and will stifle financial and technological innovation

We would like to provide more detail on each of the bullet points above:

There should not be a whitelist.
Whitelisting cryptocurrency projects will create an unfair competitive advantage for the selected projects. This list will harm opportunities for many equally transparent and respectable projects within the industry as exchanges may not wish to bear the risk or costs associated with evaluating cryptocurrencies not on the whitelist. This unfair advantage will be particularly pronounced for those projects that are unable to provide necessary financial incentive for exchanges to list them. Thus, being placed on the whitelist has clear advantages to those not on the whitelist as it removes these aforementioned frictions.

Clear what criteria were considered and those same set of criteria should be applied automatically to other cryptocurrencies that comply.

Should the New York Department of Financial Services (NYDFS) decide to nonetheless publish an official whitelist, we recommend several edits to the proposed framework and whitelist:

- We recommend the NYDFS provide clear criteria for how the whitelisted cryptocurrencies were selected to be on the whitelist. What particular criteria were used to determine that a cryptocurrency project warranted being placed on a whitelist? In the absence of objective criteria we recommend a given cryptocurrency be reviewed through the lens of Bitcoin, a NYDFS approved cryptocurrency.
  Some criteria we recommend to use as part of the framework to define inclusion are:
    - Whether cryptocurrencies are forks of the Bitcoin protocol and have made no alterations to the consensus mechanism(s) within Bitcoin. As a result they have a transparent blockchain and allow for AML tools to be used on their blockchain, just like Bitcoin. This is a recommended approach since, ultimately, there is no legal difference between these coins and Bitcoin
    - Include the results from emerging organizations working to create a standard in evaluating cryptocurrencies. An example of this would be leveraging the work of the Crypto Rating Council in categorizing a cryptocurrency project likelihood to be a security
    - Making sure the coin is not a security - fails the Howey Test and does not meet the criteria of a security from the Digital Assets Framework
    - Meets the requirements of the Financial Action Task Force (FATF) Travel Rule
    - No concentrated ownership of the coins, so that no one entity can influence the price by dramatically increasing supply
    - Making sure the network does not profit from the sale of the coin. For example, many cryptocurrencies are only available through services performed for the network such as mining or through secondary markets (example: exchanges)

There are many criteria that can be used to determine which project should be whitelisted. The mechanism for whitelisting cryptocurrencies should list these criteria in a transparent and clear manner.

Standard approach for a token to apply to be added to the whitelist
- If the NYDFS decides to move forward with the proposed whitelist, we recommend a clear and transparent application process for other cryptocurrency projects which wish to be added on the whitelist. Without a clear and transparent application process for cryptocurrency projects, whitelisted projects could enjoy a competitive advantage over non-whitelisted projects indefinitely. This inadvertently leads to regulators cherry-picking winners instead of allowing a competitive marketplace dedicated to technological innovation to emerge

- Regarding the clause "Legal risks associated with any new coin, including any pending or potential regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the new coin, such as actions relating to coins that may facilitate the obfuscation

or concealment of the identity of a customer or counterparty, or coins used to circumvent laws and regulations;"

- o Though this clause is important, we recommend removing it, as it leaves a significant amount of subjectivity and risk for an exchange to list a cryptocurrency. When comparing Bitcoin and several other well-known cryptocurrencies that are forks of Bitcoin, there is no legal difference between the protocols, consensus mechanisms, or transparency of the blockchains. On each of these blockchains, including Bitcoin, a user can use any of a wide array of easy-to-use third-party wallets/services to obfuscate transaction details such as CoinJoin.[1]
- o Third party services such as wallets with privacy features embedded in them (example: CoinJoin), present a significant grey area for both regulators and exchanges. Some third-party wallets add processes and technology that can obfuscate transaction information for a cryptocurrency on a transparent blockchain (such as Bitcoin). KYC/AML service providers such as BlockchainIntel and Chainalysis are able to identify obfuscated information and track aspects of a transaction, removing the effects of a CoinJoin transaction on many networks including the Bitcoin network. In practice the majority of exchanges work with these providers to ensure they are in compliance with local and global regulations, including those set by the FATF Travel Rule. As long as the exchange has this service, there should not be any issues related to CoinJoin for the exchange in question

Therefore our recommendation is a less complex and inclusive wording of the criteria such as: "Many cryptocurrencies have privacy features that obfuscate transaction information such as sender, receiver, and amounts. However, as long as these cryptocurrencies are on a transparent blockchain and the exchange can, through its own means or through a third-party service, identify and filter transaction information, then this criteria has been met for the relevant cryptocurrencies.

Standard approach for exchanges to apply for new cryptocurrency listings. The uncertainty of which factors matter to the NYDFS may impact the desire of exchanges to list non-whitelisted cryptocurrencies. This may also have the unintended consequence that only those projects with deep pockets get listed.

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[1] CoinJoin is a technique for combining multiple payments from multiple spenders into a single transaction or a series of transactions to make it more difficult for outside parties to determine which spender paid which recipient or recipients. Unlike many other privacy solutions, CoinJoin transactions do not require any modification to the bitcoin protocol. In fact, because CoinJoin is simply a technique, it can be performed on literally any transparent blockchain. All transactions remain transparent on the blockchain, including all sources of funds used in the transaction, the destination address(es), and the amounts. Therefore, these transactions can easily be identified as such by any observer - including third party observers - and analyzed by compliance software. CoinJoin has been implemented in a number of wallets, tools, and protocols within Bitcoin or other Bitcoin-forked projects.

Finally, it would be beneficial to cryptocurrency projects' core groups interested in participating on the framework selection, to have the opportunity to participate in any public hearings or other opportunities to interact with the NYDFS on this proposed regulation.

Closing statement
In closing, we applaud the NYDFS's move towards increased transparency and dialogue with stakeholders in the cryptocurrency industry. We believe that by including the recommendations outlined in our proposal, the framework suggested by the NYDFS will result in regulations that create a healthy competitive environment for the cryptocurrency industry in New York as well as other regions given the NYDFS's reputation as a leader in the regulatory space.