



January 27, 2020

Linda A. Lacewell, Superintendent  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

**Re: Proposed Coin Listing Policy Framework**

Dear Superintendent Lacewell:

Thank you for the opportunity to comment on the New York State Department of Financial Services ("DFS") proposed regime for the listing of new coins by licensed virtual currency firms ("Proposal"). As the parent company of one of the first parties to be granted a license to conduct virtual currency business activities within New York and with New York residents, Ripple Labs, Inc. ("Ripple") has long valued the relationship we have developed with DFS and appreciates the consideration of our comments on this Proposal.<sup>1</sup> Ripple fully supports both the specific merits of this Proposal as well as the overall initiative to review New York's virtual currency regulatory framework to keep pace with changes in the virtual currency marketplace.

**Executive Summary**

As a leader in the financial technology space,<sup>2</sup> Ripple continuously looks for ways to improve its product offerings to ensure a productive customer experience while remaining compliant with any applicable law, rule or regulation. To this end, XRP II mainly engages in arms-length transactions with institutions; it does not provide exchange services. Since Ripple utilizes one of the most actively traded virtual currencies (XRP) in certain products, Ripple is an interested party in ensuring that the virtual currency marketplace remains as efficient, liquid and transparent as possible.<sup>3</sup>

Accordingly, we support DFS efforts to require licensees to develop, implement and maintain a coin listing or adoption policy as well as the creation of a DFS controlled web page listing all virtual currencies that are permitted for use in business activities of licensees. Both of these proposed options would aid market participants in providing clarity around certain virtual currencies as well as the selection process virtual currency providers utilize in making decisions on which instruments to list. In addition, licensees themselves would benefit from the requirement to develop more robust corporate governance practices, thereby bringing their internal controls further in-line with existing regulatory requirements for traditional market

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<sup>1</sup> XRP II, LLC ("XRP II"), a subsidiary of parent company of Ripple Labs, Inc., is the holder of a New York State virtual currency license. Ripple Labs, Inc. is an enterprise software company and does not engage in virtual currency business activity, as defined in 23 NYCRR 200.2(q).

<sup>2</sup> The terms digital asset, virtual currency, cryptocurrency and others are used interchangeably in the marketplace. For purposes of this comment letter, we use the term virtual currency.

<sup>3</sup> See <https://coinmarketcap.com/> for a ranking of virtual currency trading activity by market capitalization, volume, and trading platform or venue. As of January 13, 2019, XRP is ranked third in terms of market capitalization.

intermediaries. Finally, Ripple believes the proposed changes also further the mission of DFS to ensure adequate consumer protection.

## **I. Ripple Introduction**

Ripple is a technology company that provides efficient solutions to send money globally -- it is not a virtual currency. Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively and with end-to-end visibility anywhere in the world. Ripple is one of the only blockchain companies with actual customers using its products on a commercial basis. With over approximately 300 customers as of the date of this letter, Ripple's software products allow financial institutions to send money globally, on a real-time basis, at a fraction of the cost of traditional services available to market participants.

Ripple's aim is not to replace fiat currencies, but rather to enable a faster, less expensive and more transparent method of making payments that is in the public's best interest. Unlike the large majority of companies utilizing blockchain technology to leverage virtual currencies, Ripple's customers and partners are regulated financial institutions, both banks and payment service providers, who operate within the contours of the existing financial system.

XRP is the virtual currency that is native to the XRP Ledger, a distributed ledger platform. Like other virtual currency networks such as Bitcoin and Ethereum, the XRP Ledger is decentralized, open-source and based on cryptography. Ripple leverages XRP for use in its product suite because of XRP's suitability for cross-border payments. Key characteristics of XRP include speed, scalability, energy efficiency, and cost.

Ripple wishes to clarify one point in the DFS Proposal. In footnote 1, DFS makes reference to "Ripple" as a "coin currently contemplated" for inclusion in the proposed list of pre-approved virtual currencies.<sup>4</sup> We believe that DFS is referring to "XRP" and not "Ripple." Critically, Ripple exists independently from XRP and we would like to take the opportunity to reinforce this fact. XRP does not represent a share, right to profit or distribution of capital in any underlying enterprise. XRP holders are not entitled to any distribution of Ripple's profits or distribution of Ripple's assets were Ripple to be unwound. There is no pooling of contributions among XRP holders; instead, holders separately purchase or sell XRP over the counter or via virtual currency trading platforms, many of which are DFS licensees.

## **II. A Coin Listing or Adoption Policy Furthers the Mission of Consumer Protection**

First, Ripple would like to express support for DFS proposing a requirement that licensees develop, implement and maintain a coin listing or adoption policy. Imposing such a requirement on licensees will ensure New York's virtual currency regulations keep pace with the growth of the marketplace as a whole.

There are currently in excess of 2,300 virtual currencies that trade in the spot markets today.<sup>5</sup> Many of these have little to no liquidity, offer limited price discovery and are extremely

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<sup>4</sup> See FN 1 of DFS Proposal.

<sup>5</sup> See FN 2, *supra*. For example, coinmarketcap.com lists over 2,300 virtual currencies on its website. However, the number of actual virtual currencies brought to market could far exceed this number. The "spot" or "cash" market refers to the actual purchase and sale of the virtual currency itself, either in exchange for another virtual currency or fiat currency, while the "derivative" market refers to synthetic instruments that rely upon the actual virtual currency itself as a basis for price discovery, but do not generally result in the actual purchase and sale of a virtual currency.

susceptible to manipulation and insider abuse. In addition, virtual currency trading platforms remain largely focused on building a retail customer base, sometimes through incentives that solely benefit the platform at the expense of such customers. Consumers are faced with a growing number of available options for purchasing and selling virtual currencies; seemingly each day we witness a new entrant to the marketplace. Information provided to customers is frequently limited to that which is required by law, rule or regulation (e.g., certain information relating to the provider's anti-money laundering or cybersecurity programs) or set forth in the provider's terms of service or user agreement.

Ripple believes that any coin listing or adoption policy should consider all material factors in the decision whether or not to list a particular virtual currency.<sup>6</sup> Although what DFS is proposing does not require the public disclosure of such information, Ripple believes that by requiring licensees to develop, implement and maintain a coin listing or adoption policy, providers would nonetheless still need to consider these factors in evaluating whether or not to list a particular virtual currency.<sup>7</sup> Thus, the end result is that where a retail customer seeks to use the services of a provider that supports a specific virtual currency, the individual would do so with the confidence that a decision to list such virtual currency was made in accordance with a sound decision-making process that takes into consideration matters relating to consumer protection.

The above discussion is not intended to suggest that the virtual currency markets operate without their share of "good actors." In fact, many platforms or services go well above and beyond what is solely required by law, rule, regulation or contractual obligation and provide additional transparency to both their customers and the marketplace as a whole. However, without an adequate framework in place that both carefully considers the risks to customers and discloses potential conflicts of interest, retail customers may not always receive all relevant information. Putting in place a framework that virtual currency licensees must take into consideration all of the facts and circumstances before listing a particular virtual currency for trading is in line with DFS' primary policy goal of ensuring consumer protection.

### **III. The Proposal is a Hallmark of Good Governance Practices**

In proposing that licensees develop, implement and maintain a coin listing or adoption policy, DFS lists a number of attributes that any such policy should contain at a minimum. These requirements address due diligence that should be conducted by the licensee itself in reaching a decision to list a specific virtual currency, as well as oversight functions that should be performed by a board of directors (or equivalent body) to ensure that the licensee follows the policy accordingly. Ripple believes these actions are consistent with good corporate governance practices that are employed by traditional financial markets participants today.

Imposing a requirement that a licensee conduct a full risk assessment before deciding to list a particular virtual currency is not without precedent in regulated financial markets today. For example, the CFTC requires registered swap dealers to adopt and maintain a formal "new product policy" as part of their risk management program.<sup>8</sup> This requirement addresses many

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<sup>6</sup> Although DFS lists a number of factors in the Proposal, Ripple believes it is up to the licensee to determine materiality, which would be integrated into the coin listing policy and adopted by the appropriate body that provides oversight for the licensee.

<sup>7</sup> DFS Licensees are required to provide certain information about their proposed business model upon application, as well as when it experiences a material change in business. See NYCRR 200.4(a)(8), 200.10.

<sup>8</sup> 17 CFR 23.600(c)(3).

of the elements that DFS lists in the current proposal. Similar requirements exist for other CFTC registrants as well. However, under existing regulation, DFS requires licensees to obtain written approval from DFS prior to offering a “materially 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.”<sup>9</sup> What DFS is proposing will shift the responsibility for determining whether a particular virtual currency may be listed to the licensee itself, provided that DFS approves the licensee's coin listing or adoption policy.

If adopted, this proposal will bring New York's virtual currency framework more in-line with that of other regulated markets, appropriately placing responsibility on the licensee to implement proper governance routines at the risk of potential regulatory exposure if they fail to do so. As the virtual currency industry continues to grow, Ripple believes shifting of regulatory burden from policymakers and regulatory authorities to the licensees themselves is a strong indicator of marketplace maturity. Ripple fully supports DFS' proposal to require a licensee to develop, implement, and maintain such a policy as a good corporate governance practice.

**IV. The Proposal Aids in Providing Regulatory Certainty to Market Participants**

The Proposal to list virtual currencies that licensees may use to conduct business activities without prior approval of DFS will provide clarity and guidance to market participants around virtual currencies that can be traded within New York and with New York residents. This approach provides stability for market participants, as the virtual currencies in DFS's proposed list already have been trading for several years on many platforms.<sup>10</sup>

Ripple believes that including XRP on this proposed list is appropriate from both a commercial and regulatory standpoint because it is one of the most liquid virtual currencies with a stable history dating back over seven years. The XRP Ledger is known for its transaction speed, energy efficiency, low cost, and decentralized and permissionless nature, all attributes that make XRP suitable for payments use cases.

**Conclusion**

Ripple appreciates the opportunity to comment on the DFS Proposal and is supportive of the steps DFS is taking to review its regulations on virtual currency business licensees. We are happy to discuss any of the issues raised in this letter further with DFS staff.

Sincerely,



**Benjamin S. Melnicki**  
Americas Head of Regulatory Affairs  
Ripple Labs, Inc.

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<sup>9</sup> 23 NYCRR 200.10.

<sup>10</sup> Failure to include XRP on such a list would be disruptive not only to the virtual currency marketplace as a whole, but to traditional financial market participants who conduct cross-border payments using XRP to facilitate remittances.