

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
23 NYCRR PART 102**

VIRTUAL CURRENCY LICENSEE ASSESSMENTS

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 102, 201, 202, 206, 301, and 302 of the Financial Services Law, do hereby promulgate Part 102 of Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL OF THE FOLLOWING MATERIAL IS NEW)

§ 102.1 Background

§ 102.2 Definitions

§ 102.3 Billing and Assessment Process

§ 102.4 Computation of Assessment

§ 102.5 Penalties/Enforcement Actions

§ 102.6 Special Assessments

§ 102.1 Background.

In 2015, the Department of Financial Services (“Department”) adopted 23 NYCRR Part 200, which required persons engaged in virtual currency business activity, as defined in 23 NYCRR 200.2(q), to obtain a license, subject to certain exemptions, before engaging in such activity in New York. This licensing regime was created under the authority granted to the Department by the Financial Services Law (“FSL”).

Generally, the Department’s costs and expenses are charged to and paid by persons regulated by the Department. At the time that Part 200 was adopted, FSL section 206 provided that the costs and expenses of the Department would be respectively charged to and paid by the persons regulated by the Department pursuant to the Banking Law or the Insurance Law, with no provision made for the assessment of costs for persons regulated pursuant to the FSL. In 2022, the Laws of New York, Chapter 58, Part III, amended FSL Section 206 (a), as of June 30, 2022, to require the Department to assess the costs and expenses of regulating persons licensed pursuant to 23 NYCRR Part 200 (“Licensees”). FSL section 206 (a) now states: “[p]ersons regulated under [the FSL] that engage in ‘virtual currency business activity,’ as that term is defined by the department, shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating such persons....”

To effectuate the authority granted by the recent amendment of the FSL, this regulation sets forth the basis for allocating the Department’s costs and expenses among Licensees, and the process for making such assessments. This regulation only applies to Licensees, and the assessment only covers the costs and expenses associated with the Department’s oversight of each person’s virtual currency business activities. Accordingly, to the extent that a person is licensed to engage in virtual currency business activities under the FSL, and concurrently as a money transmitter pursuant to Article XIII-B of the Banking Law, such person will be billed separately for each license. To the extent that a person holds multiple licenses to

engage in virtual currency business activities pursuant to 23 NYCRR Part 200, such person will be billed separately for each license. Persons who engage in virtual currency business activities as a limited purpose trust company or a banking organization will continue to be assessed under 23 NYCRR Part 101. To such an extent that a person holds both a limited purpose trust charter under the Banking Law and a license pursuant to 23 NYCRR Part 200, such person will be billed separately for each charter and license.

§ 102.2 Definitions.

The following definitions apply in this Part:

(a) *Hourly Rate* means the average hourly salary and fringe benefit cost of the examiners and staff assigned to the supervision of Licensees plus a multiplier, as determined by the superintendent, representing a portion of the other operating overhead expenses of the Department.

(b) *Custody Basis* means the measurement tool used to assess 50% of the Supervisory Hours, as defined below, among Licensees. The Custody Basis is based on the total United States Dollar value of virtual currency held on behalf of customers by each Licensee averaged over the prior four quarter-end balances reported. Depending on the total virtual currency custody average, the Custody Basis for each Licensee will be categorized by size as small, medium, or large, resulting in an allocation, respectively, of 5%, 15%, and 30% of 50% of the Supervisory Hours.

(c) *Custody Basis Assessment* for an individual Licensee means the product of the Custody Basis Hours and the Hourly Rate.

(d) *Custody Basis Hours* means the Custody Basis share of either 5%, 15%, or 30% of the total Supervisory Hours, divided by the total number of Licensees that have the same Custody Basis share.

(e) *Licensee* means any person who is licensed pursuant to 23 NYCRR Part 200. The term Licensee shall only apply to the virtual currency business activities, as that term is defined in 23 NYCRR 200.2(q), of persons licensed pursuant to 23 NYCRR Part 200.

(f) *Person* means an individual, partnership, corporation, association, joint stock association, trust, or other entity, however organized.

(g) *Regulatory Component* represents the cost of examining licensees. For an individual Licensee means the Total Operating Cost, as defined below, less the Supervisory Component divided by the total number of Licensees.

(h) *Supervisory Component* for an individual Licensee means the sum of its Transaction Volume Basis Assessment, as defined below, and its Custody Basis Assessment.

(i) *Supervisory Hours* means the total number of hours worked by staff attributable to the ongoing supervision of Licensees, including the monitoring of Licensees, the processing of license or material business changes, and responding to inquiries.

(j) *Total Operating Cost* means:

- (1) the sum of the total operating expenses of the Department that are solely attributable to its oversight of Licensees; and
- (2) the proportion deemed just and reasonable by the superintendent of the other operating overhead expenses of the Department which may be assessed against Licensees under FSL section 206(a).

(k) *Transaction Basis Hours* means the Transaction Volume Basis, as defined below, share of either 5%, 15%, or 30% of the total Supervisory Hours, divided by the total number of Licensees that have the same Transaction Volume Basis share.

(l) *Transaction Volume Basis* means the measurement tool used to allocate 50% of the Supervisory Hours among Licensees. The Transaction Volume Basis is based on the total number of virtual currency transactions by each Licensee in New York for the prior calendar year. Depending on the total number of virtual currency transactions, the Transaction Volume Basis for each Licensee will be categorized by size as small, medium, or large, resulting in an allocation, respectively, of 5%, 15%, and 30% of 50% of the Supervisory Hours.

(m) *Transaction Volume Basis Assessment* for an individual Licensee means the product of the Transaction Basis Hours and the Hourly Rate.

§ 102.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each Licensee subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25 percent of the anticipated annual amount) based on the estimated budget to cover the Total Operating Cost at the time of the billing, and a final assessment (or true-up), based on the actual Total Operating Cost for the fiscal year. Any Licensee that is licensed for any part of a quarter shall be assessed for the full quarter. Such amounts shall be paid within 30 days of the date of such billing.

§ 102.4 Computation of Assessment.

The total annual assessment for a Licensee shall be the sum of its Supervisory Component and its Regulatory Component.

§ 102.5 Penalties/Enforcement Actions.

All Licensees shall be subject to all applicable penalties, including late fees and interest, provided for by the FSL, the State Finance Law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, expiration or termination of a person's license or such other actions as the superintendent may deem appropriate

§ 102.6 Special Assessments.

When the superintendent shall determine that the expenses associated with a specific examination, investigation or review are best allocated solely to the individual Licensee or Licensees subject to such examination or investigation, rather than to all Licensees generally or any subgroup thereof, such expenses shall be billed separately as provided for in this subdivision. The time of each person associated with such examination or investigation shall be multiplied by the average costs of the examiners and specialists at their respective grade levels assigned to such examination or investigation, plus expenses for travel outside of New York, and the resulting amount shall be assessed separately to each such Licensee subject to such examination or investigation in such amounts as the superintendent shall deem appropriate. Alternatively, if another entity or person is selected to perform an examination, investigation or review of an individual Licensee or Licensees, the expenses associated with such examination, investigation and review shall be the amount of the contract for such services and such portion of the department's administrative expenses associated with such contract as the superintendent shall deem appropriate. The resulting amount shall be assessed separately to each such Licensee subject to such examination, investigation or investigation in such amounts as the superintendent shall deem appropriate. Such special assessments shall be billed within 180 days after the calendar quarter within which such expenses were incurred. Such amounts shall be paid within 30 days of the date of such billing. In making a determination to make a special assessment and to allocate such assessment between one or more Licensees, the superintendent shall include such factors as she or he shall deem appropriate, including, but not limited to: the significance of the examination to the conduct of business by a given Licensee or group of Licensees; the potential seriousness of any violations of law or regulation identified by, or under review in, such examination or investigation; and the extent to which a Licensee attempted to cover up or failed to disclose the existence of such violations.

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the attached new Part 102, Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, was duly authorized by me, pursuant to the authority granted by Sections 102, 201, 202, 206, 301, and 302 of the Financial Services Law, to take effect upon publication of the Notice of Adoption in the New York State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was first published in the New York State Register on January 18, 2023.

Signed copy filed with Department of State

Adrienne A. Harris
Superintendent of Financial Services

Dated: March 31, 2023